

ENGINEERING AGREEMENT

FOR

**ROCHELLE MUNICIPAL UTILITIES
CITY OF ROCHELLE, ILLINOIS
WATER RECLAMATION DIVISION**

Water Reclamation Plant Improvements Phase 2



**WILLETT HOFMANN
& ASSOCIATES INC**

ENGINEERING ARCHITECTURE LAND SURVEYING

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IDENTIFICATION OF THE PARTIES

THIS AGREEMENT made by and between Rochelle Municipal Utilities, City of Rochelle, Ogle County, Illinois (hereinafter called the OWNER) and WILLETT, HOFMANN & ASSOCIATES, INC., CONSULTING ENGINEERS, 809 East 2nd Street, Dixon, Illinois, hereinafter called the ENGINEER).

SECTION 1 – PROJECT SCOPE

- 1.1. Construct a new fine screen and dewatering unit for the influent bypass channel.
- 1.2. Construct piping to connect the anaerobic lagoon effluent piping to the Headworks building.
- 1.3. Convert aeration bays 5 -8 for biological nutrient removal.
- 1.4. Replace the clarifier drive unit, install covers on the effluent trough and repaint all carbon steel items on the two (2) clarifiers.
- 1.5. Demolish the three (3) existing tertiary sand filters and install four (4) cloth type tertiary filters. Also replace the roof membrane and all exterior doors.
- 1.6. Regrade the excess flow lagoon berms and bottoms and install a bentonite liner on the interior slopes of excess flow lagoon #2 and rip rap on the interior slope of the excess flow lagoon #2 berm adjacent to the Kyte Creek. Demolish all existing equipment and remove sludge from excess lagoon #1. Regrade the berm slopes and bottom of excess flow lagoon #1. Also, install a new excess flow lagoon lift station to return the flow to the head end of the water reclamation plant.

SECTION 2 - SERVICES OF THE ENGINEER

2.1 General

- 2.1.1. The ENGINEER agrees to perform professional services in connection with the Project as hereinafter stated.
- 2.1.2. The ENGINEER will serve as the OWNER's professional representative in all phases of the Project, and will give consultation and advice to the OWNER during the performance of his services.

2.2 Design Phase

During the design phase the ENGINEER will:

- 2.2.1. Provide the necessary engineering topographic surveys and field verify dimensions of the equipment, buildings, and structures where the work will be performed.
- 2.2.2. Prepare detailed engineering construction drawings.

2.2.3. Prepare the Project Manual which will include the bidding and contract documents, the general and technical specifications and the IEPA loan program requirements.

2.2.4. Prepare an Engineer's Design Summary to be submitted to the IEPA with the Water Pollution Control construction permit application.

2.2.5. Prepare the IEPA Water Pollution Control construction permit application forms.

2.2.6. Prepare an opinion of probable cost estimate for the Project based on the completed drawings and specifications.

2.2.7. Conduct five (5) design meetings with the OWNER to review the construction drawings, specifications, project cost estimate and make site visits to look at equipment to be used on this Project at various stages of the project design.

2.2.8. Furnish five (5) copies and an electronic pdf format of the Construction Drawings and the Project Manual.

2.3 Construction Phase

During the construction phase the ENGINEER will:

2.3.1. Assist the OWNER in obtaining and evaluating bids and awarding a contract for the construction.

2.3.2. Conduct a pre-bid meeting conference and a pre-construction meeting conference.

2.3.3. Spend as much time and provide as many Resident Project Representatives (RPR) as the ENGINEER deems necessary to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents; the RPR will not be responsible for the techniques and sequences of construction or the safety precautions incident thereto; and during such visits and on the basis of the RPR's on-site observations as an experienced and qualified design professional, he will keep the OWNER informed of the progress of the work, will endeavor to guard the OWNER against defects and deficiencies in the work of the Contractor, and may disapprove work as failing to conform to the Contract Documents. The ENGINEER is not responsible for testing or inspection of materials other than that which may be required at the site of the work. It is estimated the project will take approximately 14 months to completed and will require one (1) full-time RPR observer or approximately 2,400 hours of construction observation.

2.3.4. Set construction stakes to establish line and grade of the work to such extent as to control and reference the construction. Construction staking will be required for the excess flow lagoon modifications and the anaerobic lagoon effluent site piping.

2.3.5. Review shop drawings, diagrams, illustrations, catalog data, schedules and samples, the results of tests and inspections and other data which the Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents; and organize and assemble operation and maintenance manuals supplied by the equipment manufacturers and warranty certificates supplied by the equipment manufacturers and general contractor.

2.3.6. Consult and advise with the OWNER; act as the OWNER's representative; issue all instructions of the OWNER to the Contractor; prepare routine change orders as required; whenever he considers it necessary or advisable to insure the proper carrying out of the intent of the Contract Documents, he may, as the OWNER's representative, direct the Contractor to stop the work or require special examination or testing of the work (whether or not fabricated, installed or completed); he will act as interpreter of the terms and conditions of the Contract Documents and judge of the performance thereunder.

2.3.7. Based on his on-site observations as an experienced and qualified design professional and on his review of the Contractor's applications for payment, and supporting data determine the amount owed to the Contractor and approve in writing payment to the Contractor in such amounts; such approvals of payment to constitute a representation to the OWNER, based on such observations and review, that the work has progressed to the point indicated and that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the Contract Documents, subject to the results of any subsequent test called for in the Contract Documents and any qualifications stated in his approval.

2.3.8. Prepare the IEPA Water Pollution Control Revolving Fund Loan Disbursement form on a monthly basis to obtain IEPA reimbursement to the OWNER for all loan eligible planning, design and construction phase expenses.

2.3.9. Conduct, in the company with the OWNER, a final inspection of the Project for conformance with the design concept of the Project and compliance with the information given by the Contract Documents and approve in writing final payment to the Contractor.

2.3.10. Revise the contract drawings to reflect the changes made during construction as furnished to the ENGINEER and to represent graphically the locations of the improvements and although the drawings are not warranted as to their accuracy, the location of the improvements shown can be found within reasonable tolerance.

2.3.11. Through the on-site observations of the work in progress and field checks of materials and equipment the ENGINEER will endeavor to provide protection for the OWNER against defects and deficiencies in the work, but the furnishing of such resident project representation shall not make the ENGINEER responsible for the Contractor's failure to perform the construction work in accordance with the Contract Documents.

2.3.12. Obtain GPS data for the newly installed facilities for incorporation into the City's GIS system.

2.4 IEPA Loan Application Documents

2.4.1. Prepare the IEPA Water Pollution Control Revolving Fund loan application documents for the OWNER's execution and submit the documents to the IEPA on behalf of the City.

2.4.2. Prepare the draft Ordinance Authorizing the City to Borrow Funds from the IEPA Water Pollution Control Revolving Fund Loan program for the City Attorney's review and approval by the City Council.

SECTION 3 - ADDITIONAL SERVICES OF THE ENGINEER

If authorized in writing by the OWNER, the ENGINEER will furnish or obtain from others additional services of the following types which will be paid for by the OWNER as indicated in subsection 6.1.4.

- 3.1. Furnishing of additional or nonstandard core borings, probings or subsurface explorations; hydrographic surveys; laboratory testing and inspection of samples or materials; and other special consultation.
- 3.2. Additional services due to significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction.
- 3.3. Revising previously approved studies, reports, design documents, drawings, or specifications.
- 3.4. Preparing documents for alternate bids requested by the OWNER for work which is not executed.
- 3.5. Preparing detailed renderings, exhibits or scale models for the Project.
- 3.6. Investigations involving detailed consideration of operations, maintenance, and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material and labor; and material audits or inventories required for certification of force account construction performed by OWNER.
- 3.7. Preparing special change orders requested by the OWNER.
- 3.8. Making an inspection of the Project prior to expiration of the guarantee period and reporting observed discrepancies under guarantees provided by the construction contract.
- 3.9. Additional or extended services during construction made necessary by: (1) work damaged by fire or other cause during construction; (2) prolongation of the construction contract time by more than 25%; (3) acceleration of the work schedule involving services beyond normal working hours; and (4) contract default due to delinquency or insolvency.
- 3.10. Extensive assistance in the initial start-up and test operation of equipment or systems and the preparation of an operation and maintenance manual for the water reclamation plant.
- 3.11. Additional services and costs necessitated by out of town travel required of the ENGINEER other than visits to the Project as required by Section 1.
- 3.12. Serving as an expert witness for the OWNER in any litigation or other proceeding involving the Project.
- 3.13. Additional services in connection with the Project not otherwise provided for in this Agreement.

SECTION 4 - THE OWNER'S RESPONSIBILITIES

The OWNER will:

- 4.1. Provide full information as to his requirements for the Project.
- 4.2. Assist the ENGINEER by placing at his disposal all available information pertinent to the site of the Project including previous reports and any other data relative to design and construction of the Project.
- 4.3. Guarantee access to and make all provisions for the ENGINEER to enter upon public and private lands as required for the ENGINEER to perform his work under this Agreement.
- 4.4. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the ENGINEER and shall render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of the ENGINEER.
- 4.5. Advertise for Proposals from bidders, open the proposals at the appointed time and place, and pay for all costs incident thereto.
- 4.6. Provide such legal, accounting and insurance counseling services as may be required for the Project.
- 4.7. Designate in writing a person to act as OWNER's representative with respect to the work to be performed under this Agreement, and such person shall have complete authority to transmit instructions, receive information, interpret, and define OWNER's policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by this Agreement.
- 4.8. Give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.
- 4.9. Obtain approval of all governmental authorities having jurisdiction over the Project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the Project.
- 4.10. Furnish, or direct the ENGINEER to provide, at the OWNER's expense, necessary additional services as stipulated in Section 3 of this Agreement, or other services as required.
- 4.11. Furnish the ENGINEER with a description of and the names of owners and lien holders of property adjacent to the proposed improvement, where such data is needed for the preparation of plans and/or right of way or easement plats.

SECTION 5 - PERIOD OF SERVICE

- 5.1. Unless sooner terminated as provided in subsection 7.1, this Agreement shall remain in force for period of sixty (60) days after the final contractor pay request and closeout documents have been approved by the OWNER.

SECTION 6 - PAYMENTS TO THE ENGINEER

6.1. The OWNER will pay the ENGINEER for the services performed as follows:

6.1.1. For all work under the Design Phase, the OWNER shall pay the ENGINEER a lump sum fee of \$ 342,000.00. Such basic fee shall be due and payable as follows:

Monthly during the design phase of the ENGINEER's work, he shall be paid an amount computed by multiplying the percentage of work performed by the lump sum fee. From the partial payments thus computed each month, there shall be deducted all previous partial fee payments made to the ENGINEER.

6.1.2. For all work under the Construction Phase of the Project, the OWNER shall pay the ENGINEER an amount equal to the established billing rates of the ENGINEER – Billing Rate being defined herein as payroll, social security, retirement deductions, unemployment tax, insurance overhead and profit. In addition, all materials and out-of-pocket expenses shall be paid at their actual cost to the ENGINEER; that payment for such services will be made monthly to the ENGINEER during the course of the ENGINEER's work, upon his submission to the OWNER of an itemized statement showing such time, rates and employees' names. The Construction Phase fee budget amount is \$330,000.00.

6.1.3. For all work under the IEPA Loan Application Documents, the OWNER shall pay the ENGINEER a lump sum fee of \$ 10,000.00. Such basic fee shall be due and payable as follows:

Monthly as the IEPA Loan Application Documents are completed, the ENGINEER shall be paid an amount computed by multiplying the percentage of work performed by the lump sum fee. From the partial payments thus computed each month, there shall be deducted all previous partial fee payments made to the ENGINEER.

6.1.4. For "Additional Services" performed:

6.1.4.1. By personnel assigned to the regularly established office of the ENGINEER, an amount equal to the established billing rates of the ENGINEER as defined in subsection 6.1.2 above.

6.1.4.2. In connection with administering sub-contracts for services by others than described in 6.1.4.1. ante, an amount equal to the actual costs billed to the ENGINEER, plus 5% to cover overhead and handling.

6.1.4.3. In addition, all materials and out-of-pocket expenses shall be paid at their actual cost to the ENGINEER; that payment for such services will be made monthly to the ENGINEER during the course of the ENGINEER's work, upon his submission to the OWNER of an itemized statement showing such time, rates and employees' names.

6.1.5. As per Section 1, the OWNER authorizes the ENGINEER to perform the work as detailed below. The authorized work is estimated to be \$682,000.00, and work will not be performed in excess of this amount without prior authorization by the OWNER. The estimated cost breakdown is as follows:

Design	\$342,000
Construction Observation	\$330,000
IEPA Loan Application Documents	<u>\$ 10,000</u>
TOTAL	\$682,000

6.2 General

6.2.1. If any portion of the Project is not bid or put under contract for a period of 6 months after completion of the design phase, the ENGINEER's compensation shall be in accordance with subsection 6.1.2.

6.2.2. If this Agreement is terminated upon completion of any phase of the ENGINEER's services, the progress payments to be made in accordance with subsection 6.1 on account of that and all prior phases shall constitute total payment for services rendered; if terminated during any phase of the work, the ENGINEER shall be paid for services performed during such phase on the basis of his reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the ENGINEER shall be paid all terminal expenses resulting therefrom plus payment for additional services then due.

6.2.3. If, prior to termination of this Agreement, any work designed or specified by the ENGINEER during any phase of the work is suspended in whole or in part for more than three months, or abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed on account of it prior to receipt of such notice from the OWNER as provided in subsection 6.2.2 for termination during any phase of the work.

SECTION 7 - GENERAL CONSIDERATIONS

7.1 Termination

7.1.1. This agreement may be terminated by either party by seven days' written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If this Agreement is so terminated, the ENGINEER shall be paid as provided in subsection 6.2.2.

7.2 Ownership of Documents

7.2.1 All documents, including original drawings, estimates, specifications, field notes and data are and remain the property of the ENGINEER as instruments of service. The OWNER may, at his expense, obtain a set of reproducible record prints of drawings and copies of other documents, in consideration of which the OWNER will use them solely in connection with the Project, and not for the purpose of making subsequent extensions or enlargements thereto and he will not sell, publish, or display them publicly. Re-use for extensions of the Project, or for new projects, shall require written permission of the ENGINEER and shall entitle him to further compensation at a rate to be agreed upon by OWNER and ENGINEER.

7.3 Estimates

7.3.1. Since the ENGINEER has no control over the cost of labor and materials, or over competitive bidding and market conditions, the estimates of construction cost provided for herein are to be made on the basis of his experience and qualifications, but the ENGINEER does not guarantee the accuracy of such estimates as compared to the contractor's bids or the Project construction cost.

7.4 Insurance

7.4.1 The ENGINEER shall secure and maintain such insurance as will protect him from claims under the Workmen's Compensation Acts and from claims for bodily injury, death, or property damage which may arise from the performance of his services under this agreement.

7.5 Successors and Assigns

7.5.1 The OWNER and the ENGINEER each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the ENGINEER shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

SECTION 8 - SPECIAL PROVISIONS

8.1. The OWNER and the ENGINEER mutually agree that this Agreement shall be subject to the following special provisions, which together with the provisions hereof and the exhibits hereto represent the entire Agreement between the OWNER and the ENGINEER; they may only be altered, amended, or repealed by a duly executed written instrument.

8.2. All additions and deletions made in the printed words of this Agreement were so made prior to its execution by the parties hereto.

8.3. The ENGINEER certifies that the services of anyone that has been debarred or suspended under the Federal Executive Order 12549 has not or will not be used for planning, design, and construction work.

8.4. No member of the governing body of the Unit of Local Government and no other officer, employee, public official, or agent of the Unit of Local Government who exercises any functions or responsibilities in connection with the planning or carrying out of the project, shall have any personal financial interest, direct or indirect, in this contract; and the ENGINEER shall take appropriate steps to assure compliance.

8.5. The ENGINEER covenants that he/she presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his/her services hereunder. The ENGINEER further covenants that in the performance of this contract, no person having such interest shall be employed.

SECTION 9 – WATER POLLUTION CONTROL LOAN PROGRAM ENGINEERING REQUIREMENTS

9.1 Audit and Access to Records

9.1.1. The ENGINEER agrees to include subsections 9.1.2 through 9.1.5 below in all his contracts and all subcontracts directly related to project performance which are in excess of \$25,000.

9.1.2. The ENGINEER shall maintain books, records, documents, and other evidence directly pertinent to performance of Agency grant work under this agreement consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards (666 Fifth Avenue, New York, New York 10019; June 1, 1987). The local agency shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit and copying. The ENGINEER will provide facilities for such access and inspection.

9.1.3. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.

9.1.4. The ENGINEER agrees to the disclosure of all information and reports resulting from access to records pursuant to subsection 9.1.2 above, to the Agency. Where the audit concerns the ENGINEER, the auditing agency will afford the ENGINEER an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

9.1.5. Records under subsection 9.1.2 above shall be maintained and made available during performance on Agency loan work under this agreement and until three years from date of final Agency loan audit for the project. In addition, those records which relate to any "dispute" appeal under an Agency loan agreement, or litigation, or the settlement of claims arising out of such performance, costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

9.2 Covenant Against Contingent Fees

9.2.1. The ENGINEER warrants that no person or sealing agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

9.3 USEPA NONDISCRIMINATION CLAUSE

9.3.1 The ENGINEER shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

9.4 USEPA FAIR SHARE PERCENTAGE CLAUSE

9.4.1 Evidence that affirmative steps have been taken, such as, but not limited to, a copy of the advertisement(s) and the record of negotiation in accordance with federal Executive Order 11625 and 12138, to assure that Disadvantaged Business Enterprises are used when possible as sources of supplies, equipment, construction, and services.

9.4.2 The ENGINEER agrees to take affirmative steps to assure that Disadvantaged Business Enterprises are utilized when possible as sources of supplies, equipment, construction, and services in accordance with the Public Water Supply Loan Program rules. As required by the award conditions of USEPA's Assistance Agreement with IEPA, the ENGINEER acknowledges that the fair share percentages are 5% for MBE's and 12% for WBE's.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement below.

OWNER:

CITY OF ROCHELLE, ILLINOIS

BY: _____

Title: CITY MANAGER

Date: _____

ATTEST:

BY: _____

Title: CITY CLERK

(SEAL)

ENGINEER:

WILLET, HOFMANN & ASSOCIATES, INC.

BY: Bruce K. Cannon

Title: PRESIDENT

ATTEST:

BY: _____

Title: SECRETARY

(SEAL)

