

Agreement For Operations, Maintenance and Management Services

THIS AGREEMENT is entered into this 18th day of March, 2019 ("Effective Date"), by and between

The City of Lincoln, Illinois, a municipal corporation in the County of Logan, State of Illinois (hereinafter "OWNER")

and

Veolia Water Contract Services USA, LLC (f/k/a Contract Services, LLC) with offices at 700 E. Butterfield Road, Suite 201, Lombard, IL 60148 (hereinafter "VEOLIA").

WHEREAS, OWNER and VEOLIA are parties to Agreement for Contract Operation and Maintenance Wastewater Treatment Facilities and Management of Engineering Services by and between The City of Lincoln, Illinois and Environmental Management Corporation dated February 7, 2005, as amended by Amendment No. 1 dated February 5, 2007, Amendment No 2 dated April 19, 2010, Amendment No 3 dated August 5, 2012, Amendment No 4 dated April 10, 2015, Amendment No 5 dated May 18, 2015, and assigned to VEOLIA by the Bill of Sale, Assignment and Assumption Agreement dated July 13, 2018 (collectively the "Existing O&M Agreement");

WHEREAS, the Existing O&M Agreement will expire on April 30, 2019 and the parties wish to amend certain terms of the Existing O&M Agreement, including consolidating the various limit budgets, and extend the term; and

WHEREAS, OWNER and VEOLIA desire to terminate and replace the Existing O&M Agreement with this Agreement for VEOLIA to continue to perform the operation, maintenance, repair under the modified terms and conditions and for the compensation provided for herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, OWNER and VEOLIA agree as follows:

1. General

- 1.1 Definitions of words and phrases used in this Agreement and the attachments are contained in Appendix A.
- 1.2 All land, buildings, facilities, easements, licenses, rights-of-way, equipment and vehicles presently or hereinafter acquired or owned by OWNER shall remain the exclusive property of OWNER unless specifically provided for otherwise in this Agreement.
- 1.3 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

- 1.4 This Agreement shall be binding upon the successors and assigns of each of the parties, but neither party shall assign this Agreement without the prior written consent of the other party. Consent shall not be unreasonably withheld.
- 1.5 All notices shall be in writing and transmitted to the party's address listed below. All notices shall be deemed given when delivered, if delivered personally or by courier mail service, i.e., Federal Express or Airborne Express, delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt requested; or received by the party for which notice is intended if given in any other manner.

Notices required to be delivered to VEOLIA shall be addressed to:

Veolia Water Contract Services USA, LLC
700 E. Butterfield Road, Suite 201
Lombard, IL 60148
Attn: Senior Vice President - Central

With a mandatory simultaneous copy sent to:

Veolia Water Contract Services USA, LLC
53 State Street, 14th Floor
Boston MA 02109
Attn: General Counsel

Notices required to be delivered to OWNER shall be addressed to:

City of Lincoln, Illinois
600 Broadway Street
Lincoln, Illinois 62656-2838
Attention: City Clerk

- 1.6 This Agreement, including Appendices A through E, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "VEOLIA" and "OWNER" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

- 1.8 It is understood that the relationship of VEOLIA to the OWNER is that of independent contractor. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services shall not be considered engineering services and nothing herein is intended to imply that VEOLIA is to supply professional engineering services to OWNER unless specifically stated in this Agreement to the contrary.
- 1.9 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees which are directly attributed to such litigation in addition to any other relief to which it may be entitled.
- 1.10 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).
- 1.11 Prior to the commencement of work under this Agreement, each party shall designate in writing an employee or other representative of the designating party who shall have full authority to approve changes in the Scope of Work and compensation therefore, execute written Change Orders reflecting such changes, render decisions promptly, and furnish information expeditiously to the other party when necessary.
- 1.12 This Agreement shall be interpreted in accordance with its plain meaning and not strictly for or against either party hereto.
- 1.13 As of the Commencement Date, the Existing O&M Agreement is terminated and no longer in force of effect. As of the Commencement Date, all rights and obligations contained in this Agreement shall begin.

2. VEOLIA' Services – General

- 2.1 VEOLIA shall provide a sufficient number of certified and qualified personnel, including management, administrative, operational, technical, laboratory and clerical, who meet relevant State of Illinois requirements and certifications regarding wastewater treatment operations, maintenance and management and are capable and demonstrate experience necessary to operate the facilities covered by this Agreement. Veolia will provide a Project Manager possessing the skills and experience to manage a Class I wastewater treatment facility, collection system, and, if necessary, related construction project. On April 1 of each year, Veolia shall provide to the City Clerk a copy of evidence of compliance with this Section 2.1.
- 2.2 VEOLIA shall provide ongoing training and education for appropriate personnel in all necessary areas of modern wastewater process control, maintenance, safety, and supervisory skills.

- 2.3 VEOLIA shall develop and/or supply and utilize computerized programs for maintenance, process control, cost accounting, and laboratory Quality Assurance/Quality Control. Such programs shall be capable of readily providing historical data and trends.
- 2.4 Within fifteen (15) days after VEOLIA begins service under this Agreement, VEOLIA will provide a physical inventory of the OWNER's vehicles and equipment valued equal to or greater than one thousand dollars (\$1,000) in use at the Project and a general statement as to the condition of each vehicle or piece of equipment.
- 2.5 VEOLIA will provide OWNER with a physical inventory of chemicals currently at use as of the Commencement Date (polymer and sodium hypochlorite) and other consumables on hand when VEOLIA begins services under this Agreement. VEOLIA will provide OWNER with the same quantity of chemicals or equivalent upon termination of this Agreement.
- 2.6 VEOLIA shall be responsible for maintaining all manufacturers' warranties on new equipment purchased by OWNER and assist OWNER in enforcing existing equipment warranties and guarantees.
- 2.7 At OWNER's request, VEOLIA shall provide the OWNER with a monthly report from the Computer Management Maintenance System (CMMS) that preventive maintenance is being performed on OWNER's owned equipment in accordance with manufacturer's recommendations at intervals and in sufficient detail as may be determined by the OWNER. Such a maintenance program must include documentation of corrective and preventive maintenance and a spare parts list.
- 2.8 VEOLIA shall operate, maintain and/or monitor the Project on a 24-hour per day, seven day per week schedule, but the facilities will only be fully staffed Monday through Friday for eight (8) hours a day. VEOLIA shall staff Saturday and Sunday on a part-time as-needed basis.
- 2.9 Visits may be made at a reasonable time by OWNER's officers so designated by the OWNER's representative. Keys for the Project shall be provided to OWNER by VEOLIA for such visits. All visitors to the Project shall comply with VEOLIA's operating and safety procedures.
- 2.10 VEOLIA will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to OWNER regarding the need, if any, for OWNER to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to VEOLIA's operations hereunder and federal regulations promulgated pursuant to the Americans With Disability Act ("ADA"). Nothing herein shall be construed to place upon VEOLIA

a duty to find and report violations of either the safety laws or the ADA at the Facility.

- 2.11 VEOLIA may modify the process and/or facilities to achieve the objectives of this Agreement and charge the Costs to the Maintenance and Repair Limit; provided, however, no modification shall be without OWNER's prior written approval if the complete modification Cost shall be in excess of Five Thousand Dollars (\$5,000).
- 2.12 In any emergency affecting the safety of persons or property, VEOLIA may act without written amendment or change order, at VEOLIA' discretion, to prevent threatened damage, injury or loss. VEOLIA shall be compensated by OWNER for the itemized Direct Costs and expenses plus ten 10% of any such emergency work notwithstanding the lack of prior written authorization by OWNER. Such reimbursement shall include, but is not limited to, VEOLIA's non-labor Direct Costs for the emergency work. VEOLIA shall provide OWNER'S representative verbal notice within one (1) hour of VEOLIA's determination that an emergency exists, and the nature of the emergency; and provide written notice to OWNER'S representative within twenty-four (24) hours of determining that an emergency exists, and the nature of the emergency. Nothing contained in this Section shall impose upon VEOLIA a duty to perform any emergency work absent a change order and failure to perform any such emergency work shall not impose upon VEOLIA any liability for errors and omissions.
- 2.13 As required by law, permit or court order, VEOLIA will prepare plant performance reports and submit them to OWNER for signature and transmittal to appropriate authorities. These reports will include the quarterly reports and system evaluations identified in the Agreed Orders for the sewer system.
- 2.14 VEOLIA will provide laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees. VEOLIA shall additionally provide technical and analytical services to OWNER to assist OWNER in managing OWNER's Industrial Pretreatment Program including sampling, monitoring and preparation of the required reports.
- 2.15 VEOLIA will provide for the collection and hauling of solid waste, screenings, grit, sludge and scum ("Waste") to OWNER's existing or approved disposal sites. It shall be the sole right and responsibility of OWNER to designate, approve or select disposal sites to be used by VEOLIA for OWNER's waste materials. All Waste and/or byproduct treated and/or generated during VEOLIA' performance of services is and shall remain the sole and exclusive property of OWNER. All manifests or other documentation required for disposal of Waste shall be signed by or in the name of the OWNER. Upon OWNER's reasonable request, VEOLIA assist OWNER with recommendations of disposal sites.

- 2.16 On an annual basis no later than March 15th of each calendar year, VEOLIA shall provide OWNER with a listing of recommended capital improvements that VEOLIA believes will be required for any of the facilities covered by the Agreement. Subject to the terms of this Agreement, VEOLIA shall not be relieved of its responsibilities to perform the services required hereunder if the recommendations are not implemented.
- 2.17 RESERVED.
- 2.18 VEOLIA shall use reasonable efforts consistent with best industry practices and the Agreement to control odors from the Facility so that no disruption of adjacent facilities occurs. VEOLIA, in conjunction with OWNER, shall develop a program that identifies procedures for certifying and documenting odor complaints, and shall establish procedures to address recurrent failures of the odor control program.
- 2.19 VEOLIA shall comply with the requirements of OWNER regarding affirmative action and provisions for minority hiring.
- 2.20 VEOLIA shall provide OWNER with an accounting of all reconcilable expenditures at intervals and in sufficient detail as may be reasonably determined by OWNER, and assist OWNER in the preparation of annual operating budgets.

3. VEOLIA' Scope of Services – Wastewater Treatment

- 3.1 This Article shall apply to VEOLIA' OM&M services for the OWNER's wastewater treatment system.
- 3.2 Within the design capacity and capabilities of the Wastewater Treatment Facility described in detail in Appendix B, VEOLIA will manage, operate and maintain the Wastewater Treatment Facility designed to treat 4.19 million gallons a day so that effluent discharged from the Plant's outfalls meets the requirements specified in Appendix C-1. VEOLIA shall monitor all wastewater entering the Wastewater Treatment Facility and treat all such wastewater in accordance with the terms of this Agreement and applicable law.
- 3.3 Subject to the availability of funds within the Maintenance and Repair Limit, VEOLIA will perform all Maintenance and Repairs for the Wastewater portion of the Project for those Events that are equal to or greater than five thousand dollars (\$5,000) per Event in the Wastewater Treatment Facility and equal to or greater than five thousand dollars (\$5,000) per Event in the Wastewater Collection System. VEOLIA shall submit a monthly accounting to OWNER, along with a detailed invoice, if Maintenance and Repair expenditures for the Project exceed the Maintenance and Repair Limit specified in Section 7.1.

- 3.4 VEOLIA will pay Costs as provided for in this Agreement incurred in normal Wastewater operations.
- 3.5 VEOLIA will ensure sludge levels at the termination of this Agreement will be no greater quantity than at the commencement of this Agreement.

4. VEOLIA' Scope of Services - Wastewater Collection System

- 4.1 This Article shall apply to VEOLIA' maintenance and repair services for the OWNER's Wastewater Collection System serving the OWNER. The Wastewater Collection System is described in Appendix B. Any additional services or lines will constitute a change of scope. VEOLIA shall not be responsible for completing any new service connections unless OWNER agrees to pay for such service as a Change in Scope hereunder.
- 4.2 VEOLIA will maintain and repair the Wastewater Collection System pursuant to the terms of this Agreement, including but not limited to Section 3.3. VEOLIA' responsibility for the Wastewater Collection System shall end at the earlier of: (a) customer's property line, (b) point of delivery to Customer or (c) point of change in ownership from OWNER's Wastewater Collection System to OWNER's customer's lateral. Veolia will annually inspect and perform Light Cleaning on 10% of the Wastewater Collection System pipe sizes 6 to 36 inches. "Light cleaning" is defined as cleaning up to 3 passes per pipe. Any other cleaning on Small Pipes, including but not limited to cleaning more than ten percent (10%) of the Small Pipes annually, or cleaning that is not within the definition of Light cleaning listed above, or cleaning on other than Small Pipes (pipe sizes larger than 36") will be performed as a Cost plus ten 10% to OWNER. VEOLIA shall annually inspect ten percent (10%) of the manholes documented and evidenced as existing as of the Commencement Date of this Agreement in the Wastewater Collection System. VEOLIA shall document the results and prioritize any needed repairs. Inspections shall include cleaning and removal of debris as required.
- 4.3 Costs associated with the services described in this Article shall be charged to the Maintenance and Repair Limit specified in Section 7.1.
- 4.4 Sewer Back-Up Procedure. From and after the inception of the Term of this Agreement, VEOLIA shall establish (i) a routine, normal sewer line preventative maintenance program, and (ii) corrective procedures to be implemented in the event of any personal injury or property damage resulting from a sewer back-up which will consist of the following:
 - 4.4.1 Upon receipt of a citizen notice, VEOLIA will determine whether the cause of the sewer back-up was an obstruction in OWNER's main sewer line or the citizen's house lateral line;

- 4.4.2 If the obstruction is in OWNER's main sewer line (not citizen's lateral line), VEOLIA will (i) remove the cause of the sewer line obstruction by implementation of its corrective procedures; (ii) document the approximate date and time of the obstruction; (iii) determine the extent of the personal injury or property damage, if any; (iv) contact a predetermined remediation company to clean up the sewer back up and to minimize any damage, the cost of which will be paid by OWNER; and (v) provide notice to OWNER's insurance carrier of potential loss claim;
- 4.4.3 If the sewer line back up is within the citizen's lateral line, VEOLIA will advise the citizen to contact a remediation service company and citizen's homeowner's insurance carrier, and
- 4.4.4 If the citizen files a claim against OWNER or VEOLIA, VEOLIA will notify OWNER and OWNER shall be responsible for all liability except for liability solely caused by Veolia's negligence or willful actions. .

After completing the procedure set forth in Subsections 4.4.1 through 4.4.3 above, VEOLIA shall have no further responsibility or liability to OWNER or the citizen(s) for the personal injury or property damage caused by the sewer back-up or the consequences thereof.

5. RESERVED.

6. OWNER's Duties

- 6.1 The OWNER shall fund all necessary Capital Expenditures, which shall be performed by VEOLIA under an appropriate Change in Scope amendment to this Agreement. Priority shall be given to safety and the ADA related expenses described in Section 2.10. Any loss, damage, or injury resulting from OWNER's failure to provide capital improvements and/or funds in excess of the Maintenance and Repair Limit when reasonably requested by VEOLIA shall be the sole responsibility of OWNER.
- 6.2 The OWNER shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to OWNER and are not transferred to VEOLIA under this Agreement.
- 6.3 The OWNER shall pay all sales, excise, *ad valorem*, property, franchise, occupational and disposal taxes, or other taxes associated with the Project other than taxes imposed upon VEOLIA' net income and/or payroll taxes for VEOLIA employees. In the event VEOLIA is required to pay any sales tax or use taxes on the value of the services provided by VEOLIA hereunder or the services provided by any subcontractor of VEOLIA, such payments shall be reimbursed by the OWNER

unless the OWNER furnishes a valid and properly executed exemption certificate relieving the OWNER and VEOLIA of the obligation for such taxes. In the event the OWNER furnishes an exemption certificate which is invalid or not applicable to services by VEOLIA, the OWNER shall indemnify VEOLIA for any taxes, interest, penalties, and increment costs, expenses or fees which it may incur as a result of VEOLIA' reliance on such certificate.

- 6.4 The OWNER shall provide VEOLIA, within a reasonable time after request and on an "as available" basis, with the temporary use of any piece of OWNER's heavy equipment that is available so that VEOLIA may discharge its obligations under this Agreement in the most cost-effective manner.
- 6.5 OWNER shall provide all registrations and licenses for OWNER's vehicles used in connection with the Project.
- 6.6 OWNER shall provide for VEOLIA' exclusive use of all vehicles and equipment presently in full-time use at the Project.
- 6.7 OWNER shall provide for VEOLIA' entry into existing disposal sites for disposal of garbage, screenings, grit, sludge and scum.
- 6.8 OWNER shall provide the Project with appropriate security personnel and/or devices to protect against any losses resulting from the theft, damage, or unauthorized use of property owned by OWNER and shall accept liability for such losses except to the extent such losses are directly caused by the negligent acts or omissions of VEOLIA.
- 6.9 OWNER is responsible for Maintenance and Repair Costs and expenditures equal to or greater than five thousand dollars (\$5,000) per Event in the Wastewater Treatment Facility and equal to or greater than five thousand dollars (\$5,000) per Event in the Wastewater Collection System.
- 6.10 RESERVED.
- 6.12 The OWNER shall keep in force any project warranties, guarantees, easements and licenses that have been granted to OWNER and are not transferred to VEOLIA under this Agreement.
- 6.13 The OWNER shall continue to be responsible and pay for the general administration and enforcement of (i) the Wastewater and Collection System, (ii) OWNER's Industrial Pretreatment Program, (iii) new sewer connections unless VEOLIA is retained to perform such functions as a Change in Scope hereunder, and (iv) long-term System and Service Area planning. Typical administration costs associated with the above activities include costs such as the services of the auditor, lawyer, and liability insurance.

6.14 OWNER shall be responsible for the following sewer maintenance work items:

6.14.1 Remove debris from inlet grates after rain storms;

6.14.2 Cleaning ditches;

6.14.3 Minor curb repairs;

6.14.4 Installation and maintenance of culvert, except cleaning of the culvert;

6.14.5 Mowing, except around the lift stations and at the Wastewater Treatment Plant; and

6.14.6 Permanent pavement patches for Wastewater Collection System performed by OWNER prior to the effective date of this Agreement.

6.15 OWNER will pay for all electricity for the Facilities directly to the utility provider. OWNER shall provide copies of all invoices to VEOLIA.

6.16 OWNER shall complete and return work orders with information required to continue the operation of the Computerized Maintenance Management System.

7. Compensation

7.1 VEOLIA' compensation under this Agreement shall consist of an Annual Fee. The Annual Fee for the period May 1, 2019 through April 30, 2020 shall be one million two hundred forty thousand eight hundred thirty dollars and zero cents (\$1,240,830). The Maintenance and Repair Limit included in the Annual Fee is seventy-five thousand three hundred dollars (\$75,300).

7.2 RESERVED

7.3 If actual Maintenance and Repair expenditures are less than the Maintenance and Repair Limit for any Agreement year, VEOLIA will rebate the entire difference to OWNER in accordance with Section 8.3. If actual Maintenance and Repair expenditures exceed the Maintenance and Repair Limit, OWNER will pay the excess to VEOLIA in accordance with Section 8.3. VEOLIA will notify OWNER when actual Maintenance and Repair expenditures equal eighty percent (80%) of Maintenance and Repair Limit.

7.4 The services being provided under this Agreement are based on reasonably expected overtime for normal breakdowns or services required after hours. Any additional expenses including straight or overtime wages, including those caused by severe weather, a disaster or unplanned event that may be recovered through billing any third party including the State or Federal Government FEMA funds, shall be billed to the OWNER for reimbursement and OWNER shall reimburse these Costs to VEOLIA.

7.5 The Annual Fee will be increased annually by multiplying the existing Annual Fee by the percentage increase using an index procedure as detailed in Appendix E.

8. Payment of Compensation

8.1 One-twelfth (1/12) of the Annual Fee for the current year shall be due and payable on the first of the month for each month that services are provided.

8.2 All other compensation to VEOLIA is due upon receipt of VEOLIA' invoice and payable within fifteen (15) days.

8.3 Any monies payable pursuant to Section 7.3 will be paid within thirty (30) calendar days after the end of each month.

8.4 OWNER shall pay interest at an annual rate equal to the fluctuating interest rate per annum, which rate per annum shall be equal to, at any given time, the rate of interest announced publicly by the J. P. Morgan Chase & Co., New York, New York, or any of its successors in interest from time to time, as its Prime Rate as then in effect, or if J.P. Morgan Chase & Co, New York, New York is no longer in business, then the Prime Rate then in effect as published by The Wall Street Journal, and if The Wall Street Journal does not quote a Prime Rate, then most nearly comparable index published by such source, all plus one and one half percent (1.5%), said rate of interest not to exceed any limitation provided by law, on payments not paid and received within fifteen (15) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

9. Scope Changes

9.1 A Change in Scope of services shall occur when and as VEOLIA' costs of providing services under this Agreement change as a result of:

9.1.1 any change in Project operations, personnel qualifications or staffing or other cost which is a result of an Unforeseen Circumstance;

9.1.2 increases or decreases in the user base;

9.1.3 increases or decreases of not less than ten percent (10%) in the influent flow or loadings as demonstrated by a twelve month floating average compared to the twelve month period ending on the effective date of this Agreement (baseline flow and loading information is located in Appendix C-1);

- 9.1.4 increases or decreases in rates or other related charges (including taxes) imposed upon VEOLIA by a taxing authority - excluding taxes based on VEOLIA' net income; and/or
 - 9.1.5 OWNER's request of VEOLIA and VEOLIA's consent to provide additional services.
 - 9.2 For Changes in Scope described in Sections 9.1.1 through, and including, 9.1.3, the Annual Fee shall be increased (or decreased) by an amount equal to VEOLIA's additional (reduced) Cost associated with the Change in Scope plus ten percent (10%). Modifications of the Annual Fee as a result of conditions described in Section 9.1.3 shall be retroactive to the beginning of the twelve-month comparison period.
 - 9.3 For Changes in Scope described in Section 9.1.4, the Annual Fee shall be increased (or decreased) by an amount equal to VEOLIA' additional (reduced) Cost associated with such Change in Scope.
 - 9.4 OWNER and VEOLIA shall negotiate an increase in VEOLIA' Annual Fee for Changes in Scope based on Section 9.1.5.
10. Indemnity, Liability and Insurance
- 10.1 VEOLIA hereby agrees to indemnify and hold OWNER harmless from any liability or damages for bodily injury, including death, property damages and pollution damages which may arise from VEOLIA' negligence or willful misconduct under this Agreement.
 - 10.2 OWNER agrees to indemnify and hold VEOLIA harmless from any liability or damage or bodily injury, including death, property damages and pollution damages which may arise from all causes of any kind other than VEOLIA' negligence or willful misconduct, including, but not limited to, breach of a OWNER warranty.
 - 10.3 NEITHER VEOLIA NOR THE OWNER SHALL BE LIABLE TO THE OTHER IN ANY ACTION OR CLAIM FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, LOSS OF PROFITS, LOSS OF OPPORTUNITY, LOSS OF PRODUCT OR LOSS OF USE. ANY PROTECTION AGAINST LIABILITY FOR LOSSES OR DAMAGES AFFORDED ANY INDIVIDUAL OR ENTITY BY THESE TERMS SHALL APPLY WHETHER THE ACTION IN WHICH RECOVERY OF DAMAGES IS SOUGHT IS BASED ON CONTRACT, TORT (INCLUDING SOLE, CONCURRENT OR OTHER NEGLIGENCE AND STRICT LIABILITY OF ANY PROTECTED INDIVIDUAL OR ENTITY), STATUTE OR OTHERWISE. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES, WHICH ARE INCONSISTENT WITH THESE TERMS, ARE WAIVED.

- 10.4 VEOLIA shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date of this Agreement, of the effluent quality requirements provided for in Appendix C that are a result of VEOLIA' negligence. Except in the instance of a conflict of interest, OWNER will reasonably assist VEOLIA to contest any such fines in administrative proceedings and/or in court prior to any payment by VEOLIA. VEOLIA shall pay the cost of any such contest.
- 10.5 OWNER shall be liable for those fines or civil penalties imposed by any regulatory or enforcement agencies on OWNER and/or VEOLIA that are not a result of VEOLIA' negligence or are otherwise directly related to the ownership of the Project and shall indemnify and hold VEOLIA harmless from the payment of any such fines and/or penalties.
- 10.6 TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, VEOLIA'S CUMULATIVE LIABILITY FOR PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATION ARISING UNDER THE AGREEMENT (WHETHER ARISING UNDER BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY OF LAW OR EQUITY) INCLUDING, BUT NOT LIMITED TO ITS INDEMNITY OBLIGATIONS SPECIFIED IN SECTION 10.1 OF THE AGREEMENT, SHALL NOT EXCEED ONE MILLION TWO HUNDRED FORTY THOUSAND EIGHT HUNDRED THIRTY DOLLARS AND ZERO CENTS (\$1,240,830) FOR THE DURATION OF THE AGREEMENT, PROVIDED THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO ANY LOSSES RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF VEOLIA IN BREACH OF VEOLIA' OBLIGATIONS UNDER THIS AGREEMENT.
- 10.7 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix D. Each party shall provide the other party with satisfactory proof of insurance.
- 10.8 THE PROVISIONS OF SECTIONS 10.1 THROUGH 10.7 ABOVE SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.

11. Term, Termination and Default

- 11.1 The initial term of this Agreement shall be for three (3) years commencing May 1, 2019 ("Initial Term"). Thereafter, this Agreement shall be renewed for successive terms of five (5) years each if agreed-to in writing by the parties. Either Party may give notice of intent to renew at least 120 days prior to the expiration of the Initial Term. However delays in providing notice is not a breach.

- 11.2 A party may terminate this Agreement only for a material breach of the Agreement by the other party; only after giving written notice of breach; and, except in case of a breach by OWNER for non-payment of VEOLIA' invoices, in which case termination may be immediate by VEOLIA, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach.
- 11.3 In the event that this Agreement is terminated for any reason prior to the ending date of the Initial Term, OWNER shall pay to VEOLIA any funds identified in Section 8.2 that have not been paid to VEOLIA through the date of termination.
- 11.4 Upon notice of termination by OWNER, VEOLIA shall assist OWNER in assuming operation of the Project. If additional Cost is incurred by VEOLIA at request of OWNER, OWNER shall pay VEOLIA such Cost within 15 days of invoice receipt.
- 11.5 Upon termination of this Agreement and all renewals and extensions of it, VEOLIA will return the Project to OWNER in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by VEOLIA for use in the operation or maintenance of the Project shall remain the property of VEOLIA upon termination of this Agreement unless the property was directly paid for by OWNER or OWNER specifically reimbursed VEOLIA for the cost incurred to purchase the property or this Agreement provides to the contrary.

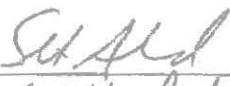
12. Disputes and Force Majeure

- 12.1 In the event activities by employee groups or unions cause a disruption in VEOLIA' ability to perform at the Project, OWNER, with VEOLIA' assistance or VEOLIA at its own option, may seek appropriate injunctive court orders. During any such disruption, VEOLIA shall operate the facilities on a reasonably prudent commercial basis until any such disruptions cease.
- 12.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances beyond its reasonable control or force majeure. However, this Section may not be used by either party to avoid, delay or otherwise affect any payments due to the other party.


[Signature Page Follows]

Both parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental actions, approvals and consents necessary to bind the parties to the terms of this Agreement have been taken.

CITY OF LINCOLN, ILLINOIS

By: 
Name: SETH A Gooch
Title: _____
Date: 3-18-19

**VEOLIA WATER CONTRACT SERVICES
USA, LLC**

By: 
Name: Keith Oldewurtel
Title: Sr. Vice President
Date: APRIL 1, 2019

CERTIFICATE OF COUNSEL

The undersigned, as counsel for the City of Lincoln, Illinois ("OWNER") in this transaction, hereby certifies that (s)he has examined the facts and circumstances surrounding the selection of Veolia Water Contract Services USA, LLC ("VEOLIA") and the award and letting of the foregoing contract to VEOLIA by OWNER, and has found that said selection, award and contracting process comply with the procurement laws of the State of Illinois and OWNER and that the foregoing Agreement, once executed by OWNER, is a valid, legal and binding agreement of the OWNER.


Counsel for OWNER

Date: 3-18-19

APPENDIX A

DEFINITIONS

"Adequate Nutrients" means plant influent nitrogen, phosphorus and iron contents proportional to BOD₅ in the ratio of five (5) parts nitrogen, one (1) part phosphorus, and one-half (0.5) part iron for each one hundred (100) parts BOD₅.

"Annual Fee" means a predetermined, fixed sum for VEOLIA' services. The Annual Fee includes Cost and profit.

"Biologically Toxic Substances" means any substance or combination of substances contained in the plant influent in sufficiently high concentration 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 OWNER's Certificate of Approval. Biologically toxic substances include, but are not limited to, heavy metals, phenols, cyanides, pesticides and herbicides. The rebuttable presumption shall be that any Biologically Toxic Substances present in the Facility entered with the influent.

"Capital Expenditures" means any expenditures for (1) the purchase of new equipment or facility items that cost more than Five Thousand Dollars (\$5,000); or (2) major repairs which significantly extend equipment or facility service life and cost more than Five Thousand Dollars (\$5,000) or (3) expenditures that are planned, non-routine and budgeted by OWNER.

"Commencement Date" shall mean May 1, 2019.

"Cost" means all Direct Cost and indirect cost determined on an accrual basis in accordance with generally accepted accounting principles.

"Direct Cost" means the actual cost incurred for the direct benefit of the Project including, but not limited to, expenditures for project management and labor, employee benefits, chemicals, lab supplies, repairs, repair parts, maintenance parts, safety supplies, gasoline, oil, equipment rental, legal and professional services, quality assurance, travel, office supplies, other supplies, uniforms, telephone, postage, utilities (except diesel fuel and electricity), tools, memberships and training supplies.

"Event" shall be defined as an event, incident, or piece of equipment individually or in the aggregate (if circumstances are such that the piece of equipment is a component of a system or process). For absence of doubt, the intent is to aggregate the Costs and expenditures and consider the related Costs and expenditures as one event if the equipment or facility items are components of a system or process. Repair and/or replacement expenses related to discrete failure events or separate or unrelated pieces of equipment not required to make a piece of equipment operable may not be aggregated or combined in order to constitute a single Event. Replacement of consumables used in the normal operation of the Project shall in no instance be

considered an Event. A few examples (illustrative purposes only, not an exhaustive list) of the intent is:

1. A chemical pump feeding polymer is irreparable and needs to be replaced. No specialized plumbing involved and Project staff performs the work. The pump costs \$4,500. This is for VEOLIA's account and applied toward the Maintenance and Repair Limit.
2. The motor on a large blower needs to be replaced and the work is performed by Project staff. The motor costs \$6,000. This is for OWNER's account.
3. A large influent pump fails. A subcontractor must be hired to remove the pump (\$3,500) and the pump repair (\$7,500) must be performed by a specialty pump service provider. Total cost is \$11,000. The total cost (\$11,000) is for OWNER's account.

"Maintenance" means those routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or by VEOLIA to maximize the service life of the equipment, sewer, vehicles and facilities.

"Maintenance and Repair Limit" means the total Maintenance and Repair expenditures that VEOLIA has included in the Annual Fee for the Wastewater Treatment Facility, the Wastewater Collection System and the Project. Such expenditures exclude any labor costs for VEOLIA's staff assigned to the Project. VEOLIA's specialized maintenance personnel, not assigned at the Project, who provide such specialized services such as, but not limited to, vibration, thermographic and electrical analyses, instrumentation maintenance and repair will be charged to the Maintenance and Repair Limit.

"Project" means all equipment, vehicles, grounds, rights of way, sewers and facilities described in Appendix B and, where appropriate, the management, operations and maintenance of such, including but not limited to the Wastewater Treatment Facility and the Wastewater Collection System.

"Repairs" means those non-routine/non-repetitive activities required for operational continuity, safety and performance generally due to failure or to avert a failure of the equipment, sewer, vehicles or facilities or some component thereof.

"Unforeseen Circumstances" shall mean any event or condition which has an effect on the rights or obligations of the parties under this Agreement, or upon the Project, which is beyond the reasonable control of the party relying thereon and constitutes a justification for a delay in or non-performance of action required by this Agreement, including but not limited to (i) an act of God, landslide, lightning, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of the public enemy, war, blockade, terrorist acts, sabotage, insurrection, riot or civil disturbance, (ii) preliminary or final order of any local, province, administrative agency or governmental body of competent jurisdiction, (iii) any change in law, regulation, rule, requirement,

interpretation or statute adopted, promulgated, issued or otherwise specifically modified or changed by any local, province or governmental body, (iv) labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strikes, work slowdowns or work stoppages by employees of VEOLIA; (v) loss of or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Project; (vi) the presence of Biologically Toxic Substances or Hazardous Wastes in the influent to the Treatment Facility; and (vi) violations of the City's Industrial Pretreatment Program discharge limits (if applicable) which are of such a quantity and quality so as to cause substantial disruption in the operations or biological activity of the Facility.

APPENDIX B

DESCRIPTION OF PROJECT

VEOLIA agrees to provide the services necessary for the management, operation and maintenance of the following:

- a. All equipment, vehicles, grounds and facilities now existing within the present property boundaries of or being used to operate the Wastewater Treatment Plant located at 150 West Kickapoo, including sludge lagoons, and lift stations located at:

#	Lift Station	Location
1	Pulaski	1907 Pulaski Street
2	Mayfair	2002 Kickapoo
3	Lincolnwood	2338 N, Kickapoo
4	Union	823 N. Union
5	Palmer	315 Palmer Ave
6	Singleton	709 Feldman Ave
7	Jefferson	1795 Jefferson
8	Zion	1500 Woodlawn
9	Burwells	2821 Woodlawn
10	South Plant	1470 Business Loop 55, Lincoln Pkwy

- b. Combined sewer overflow treatment facilities, pumping stations and appurtenances to those stations, force mains from the pumping stations to the point of discharge into the gravity sewer or gravity outlet, and the sewer collection system (excluding customer laterals) consisting of approximately 545,000 feet of sewer pipe within the City of Lincoln, IL. The existing sewer system consists of three sections, approximately 185,000 feet of sanitary sewer, approximately 204,000 feet of storm sewer and approximately 156,000 of combined sewer. There are a total of 3933 sewer structures that include manholes, inlets and outfalls in service as of the Commencement Date (collectively the "Wastewater Collection System").

APPENDIX C

NPDES PERMIT AND WASTEWATER TREATMENT CHARACTERISTICS

- C.1 VEOLIA will operate so that effluent will meet the requirement of NPDES Permit No. #IL0029564 issued April 12, 2013, a full and complete copy of which is adopted by reference herein as of the date hereof. VEOLIA shall be responsible for meeting the effluent quality requirements of the Permit unless one or more of the following occurs: (1) the wastewater influent does not contain Adequate Nutrients to support operation of Project biological processes and/or contains Biologically Toxic Substances which cannot be removed by the existing process and facilities; (2) dischargers into OWNER's sewer system violate any or all regulations as stated in OWNER's Industrial Water and Sewer Ordinance(s) or as required by law; (3) the flow or influent BOD₅ and/or suspended solids exceeds the Project design parameters which are 4.19 million gallons of flow per day with a Design Peak Flow of 10.27 million gallons of flow per day, 5,410 pounds of BOD₅ per day monthly average with a Design BOD Concentration of 155 mg/l, 7,879 pounds of suspended solids per day on a monthly average and a Design TSS Concentration of 255 mg/l and a daily peaking factor of [3x] times flow and Design Average Ammonia – Nitrogen Loading of 601 pounds per day; (4) if the wastewater treatment facility and/or associated appurtenances is inoperable or can operate only at a reduced capacity on account of construction activities, fire, flood, adverse weather conditions, labor disputes or other causes beyond VEOLIA' control.
- C.2 In the event any one of the Project influent characteristics, suspended solids, BOD₅ or flow, exceeds the design parameters stated above, VEOLIA shall return the plant effluent to the characteristics required by NPDES in accordance with the following schedule after Project influent characteristics return to within design parameters.

Characteristics Exceeding <u>Design Parameters By</u>	Recovery Period <u>Maximum</u>
10% or Less	5 days
Above 10% Less than 20%	10 days
20% and Above	30 days

Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then VEOLIA will have a thirty (30) day recovery period after the influent is free from said substances or contains Adequate Nutrients.

- C.3 VEOLIA shall not be responsible for fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate

Nutrients, contains Biologically Toxic Substances or is inoperable, and the subsequent recovery period.

C.4 The Annual Fee for services under this Agreement is based upon the following:

Project influent characteristics are:

Flow = 3.5 mgd
BOD₅ = 155 mg/l
TSS = 207 mg/l

The above characteristics are the actual twelve (12) months' average for the period ended December 31, 2018. Any change of 10 percent (10%) or more in any of these characteristics, based upon a twelve (12) month moving average, will constitute a Change in Scope (See Article 11).

APPENDIX D

INSURANCE COVERAGE

VEOLIA SHALL MAINTAIN:

1. Statutory workers compensation for all of VWNA' employees at the Project as required by the State of Illinois.
2. Commercial general liability insurance, insuring VWNA' negligence, in an amount of \$5,000,000 combined single limits for bodily injury and/or property damage.
3. Automobile liability insurance for all owned (if any), non-owned and hired automobiles in and amount of \$1,000,000.
4. Contractor's Pollution liability in an amount of \$5,000,000 combined single limits for bodily injury and/or property damage.

OWNER SHALL MAINTAIN:

1. Statutory workers compensation for all of OWNER's employees associated with the Project as required by the State of Illinois.
2. Property insurance on a "special form causes of loss" form or its equivalent for OWNER's owned, leased, rented or personal property at replacement cost with business interruption coverage.
3. Automobile liability insurance for all owned (if any), non-owned and hired automobiles in an amount of \$1,000,000.

Each party shall cause the other party to be added as additional insured on the above insurance policies (except workers compensation) and shall provide the other party at least thirty (30) days' notice of the cancellation of required policies. Each Party shall waive subrogation in favor of the other Party. Additionally, each Party's insurance policies shall waive, or be endorsed to waive, rights of recovery by subrogation in favor of the other Party.

APPENDIX E

ANNUAL FEE ADJUSTMENT FORMULA

The Annual Fee (and Maintenance and Repair Limit included therein) will be increased annually thereafter by multiplying the existing Annual Fee by the percentage increase in the Water and Sewerage Maintenance Consumer Price Index ID: CUUR0000SEHG01 for all Urban Consumers (U.S. City Average) as published by the U. S. Department of Labor Statistics pursuant to the formula and definitions listed below:

$$AFF = AFo * (1 + \left(\frac{WST}{WSTo}\right))$$

Where:

AFo = Annual Fee specified in Article 7.1.

AAF = Adjusted Annual Fee.

WST_o = Consumer Price Index for Water and Sewerage Maintenance Consumer Price Index ID: CUUR0000SEHG01 for all Urban Consumers (U.S. City Average) as published by the U. S. Department of Labor Statistics (Not Seasonally Adjusted) for the month fifteen (15) months prior to the beginning of the period for which an adjusted base fee is being calculated.

WST = Consumer Price Index for Water and Sewerage Maintenance Consumer Price Index ID: CUUR0000SEHG01 for all Urban Consumers (U.S. City Average) as published by the U. S. Department of Labor Statistics. (Not Seasonally Adjusted) for the month three (3) months prior to the beginning of the period for which an adjusted base fee is being calculated.

In no event shall the Annual Fee be reduced by application of the adjustment formula.

CITY agrees to directly pay to the provider for all electricity used at the Project.