



## PROFESSIONAL SERVICES AGREEMENT

### Old Digester Area Demolition Design (Project)

This Agreement is by and between:

City of Sheboygan (Owner)  
828 Center Avenue  
Sheboygan, WI 53081

and

Donohue & Associates, Inc. (Donohue)  
Donohue Address  
3311 Weeden Creek Road  
Sheboygan, WI 53081

Who agree as follows:

Owner hereby engages Donohue to perform the Services set forth in Part I for the compensation set forth in Part III. Donohue will be authorized to commence the Services upon execution and receipt of this Agreement from Owner. Owner and Donohue agree that this signature page, together with Parts I through IV attached, constitute the entire agreement for this Project.

#### APPROVED FOR OWNER

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

#### APPROVED FOR DONOHUE

By: \_\_\_\_\_

Printed Name: Michael Gerbitz

Title: Senior Vice President

Date: \_\_\_\_\_

**PART I**  
**PROJECT DESCRIPTION/SCOPE OF SERVICES/TIMING**

**A. PROJECT DESCRIPTION**

The project includes engineering services for the planned demolition of an obsolete digester area at the Owner's WWTP. The project will focus on the safe removal of four inactive digester structures, an enclosed concrete access room, and unused incinerator-related equipment, while maintaining uninterrupted operation of adjacent treatment processes. Active primary sludge piping within the area will require evaluation and rerouting to support demolition activities.

Services include site evaluation, identification of structural and environmental risks, and development of a conceptual demolition approach. Donohue will define environmental controls for managing residual organic materials and asbestos-containing components, and prepare conceptual drawings, cost estimates, and construction bidding documents suitable for public bidding.

**B. SCOPE OF SERVICES**

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

1. Demolition Conceptual Design
  - a. Prepare a request for information necessary to understand the existing facilities and conditions.
  - b. Discuss demolition objectives, preferences, and curiosities; and brainstorm demolition strategies, including a workshop.
  - c. Develop and submit Design Basis Memorandum to document limits of demolition, below-grade tunnel modification approach, and utility relocations and removals.
  - d. Develop and submit Conceptual Drawings and a capital cost opinion.
2. Decision Making
  - a. Conduct a workshop to review and refine the preceding deliverables to accommodate Owner direction, objectives, and preferences, and define the scope of improvements to be incorporated in the Bidding Documents.
3. Bidding Documents
  - a. Develop and submit 60%-complete Bidding Documents with an updated cost opinion, including a document review workshop.
  - b. Develop and submit 90%-complete Bidding Documents with an updated cost opinion, including a document review workshop.
  - c. Develop and submit final Bidding Documents with an updated cost opinion.

**C. PROJECT TIMING**

1. Donohue shall be authorized to commence the Services set forth herein upon execution of this Agreement and submit 90%-complete Bidding Documents to the Owner for the Work to demolish the old digester area by July 1, 2026.

2. Donohue's Services under this Agreement will be considered complete when Donohue has delivered to Owner the final Bidding Documents.

## **PART II OWNER RESPONSIBILITIES**

A. In addition to other responsibilities of Owner set forth in this Agreement, Owner shall:

1. Identify a person authorized to act as the Owner's representative to respond to questions and make decisions on behalf of Owner, accept completed documents, approve payments to Donohue, and serve as liaison with Donohue as necessary for Donohue to complete its Services.
2. Furnish to Donohue copies of existing documents and data pertinent to Donohue's Scope of Services, including but not limited to and where applicable: design and record drawings for existing facilities; property descriptions, land use restrictions, surveys, geotechnical and environmental studies, or assessments.
3. Owner shall be responsible for all requirements and instructions that it furnishes to Donohue pursuant to this Agreement, and for the accuracy and completeness of all reports, data, programs, and other information furnished by Owner to Donohue pursuant to this Agreement. Donohue may use and rely upon such requirements, instructions, reports, data, programs, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations provided by Owner applicable to the furnished items.  
Owner acknowledges and agrees that Donohue may rely, without independent verification, on the accuracy and completeness of data, specifications, certifications, performance claims, and other information or documentation furnished by, or published by, equipment and material manufacturers, suppliers, or vendors, provided such reliance is consistent with the applicable standard of care. Donohue shall not be responsible for errors, omissions, or inaccuracies in such third-party information unless Donohue had actual knowledge of such error, omission, or inaccuracy, or such reliance would not be reasonable under the circumstances. This provision applies to information provided directly to Donohue as well as information incorporated into product submittals, shop drawings, and O&M manuals.
4. Provide to Donohue existing information regarding the existence and locations of utilities and underground facilities.
5. Provide Donohue safe access to premises necessary for Donohue to provide the Services.
6. Inform Donohue whenever Owner observes or becomes aware of a Hazardous Environmental Conditions, as defined in Part IV.3. of this Agreement, that may affect Donohue's Scope of Services or time for performance.

**PART III**  
**COMPENSATION, BILLING AND PAYMENT**

- A. Compensation for the work as defined in the Scope of Services (Part I) of this Agreement shall be a lump sum of \$128,625.
- B. Donohue will bill Owner monthly, with net payment due in 30 days. The invoice will contain a calculation of the amount of lump sum due based on a percentage of lump sum Services completed during the billing period. Compensation for time and materials Services will be in accordance with Donohue's standard chargeout rates in effect at the time the Services are performed. Routine expenses will be billed at cost and subconsultant costs will include a 10% markup
- C. Donohue will notify Owner if Project scope changes require modifications to the above-stated contract value. Services relative to scope changes will not be initiated without written authorization from Owner.

**PART IV**  
**CITY OF SHEBOYGAN STANDARD CONTRACT TERMS**  
**GENERAL SERVICE AGREEMENT**  
**(NON-CONSTRUCTION)**

1. **STANDARD OF CARE.** Contracting Party agrees that the performance of services pursuant to the terms and conditions of this Agreement shall be performed in a manner consistent with the degree and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances providing like services. Upon notice to Contracting Party, Contracting Party will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care. Contracting Party agrees to follow all applicable federal, state, and local laws, regulations, and ordinances, and all provisions of this Agreement.
2. **FULLY QUALIFIED.** Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform the services.
3. **SCOPE OF WORK.** Contracting Party agrees to provide all labor, materials, equipment, transportation, appliances, and services necessary to complete all work identified or reasonably inferred from the Scope of Work document attached and/or incorporated into the Agreement. Contracting Party shall be responsible for obtaining all applicable permits and paying applicable permit fees prior to commencement. The scope of work set forth in this Agreement is based on facts known at the time of Agreement execution. As the project progresses, if facts are discovered that suggest a change of scope is warranted, the parties shall provide a written amendment to the Agreement before such change is recognized.
4. **MEANS AND METHODS.** Contracting Party shall be solely responsible for all means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under this Agreement. Contracting Party must employ, as much as possible, such methods and means in carrying out the work as will minimize disruption to City operations. Unless specifically included as a service to be provided under this Agreement, the City specifically disclaims any authority or responsibility for general job site safety, or the safety of persons or property.
5. **APPROPRIATION OF FUNDS.** Notwithstanding any other provision of the Agreement and pursuant to Wis. Stat. § 65.06(1), if funds for the continued fulfillment of this Agreement by the City are at any time not forthcoming or are insufficient, through failure of any entity, including the City itself, to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty. The City agrees that it will make its best effort to obtain sufficient funds for the Agreement to meet its obligations hereunder in full.
6. **SCHEDULE OF PAYMENTS.** The City shall remit payment to Contractor within not less than thirty (30) days of itemized invoice receipt. Such itemization shall include labor costs, the Contracting Party's direct expenses, including subcontractor costs, the hours worked by Contracting Party's staff and the amount of work completed as a percentage of the work to be performed. The City shall not make payment for any unauthorized work or expenses. The City may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of defective work; evidence indicating the probable filing of claims by other parties against Contract that may adversely affect the City; failure of Contractor to make payments due to subcontractors, material supplies, or employees; damage to the City or a third party from acts arising out of this Contract. The submission of any request for payment shall be deemed a waiver and release by Contractor of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.  
  
Partial payment made under this Agreement is not evidence of the proper performance by Contractor either in whole or in part, and no payment made by the City shall be construed to be an acceptance of defective or improper work.
7. **TAXES, SOCIAL SECURITY, INSURANCE, AND GOVERNMENT REPORTING.** Personal income tax payments, social security contributions, insurance, and all other governmental reporting and contributions required as a consequence of the Contracting Party receiving payment under this Agreement shall be the Contracting Party's sole responsibility. The City is a tax-exempt entity and as such, shall not be required to pay sales tax by execution of a contract.
8. **INSURANCE.** Contracting Party shall, at its sole expense, obtain and maintain in effect at all times during this Agreement, insurance coverage, as applicable, consistent with that set forth in Exhibit A.
9. **INDEMNIFICATION & HOLD HARMLESS.** To the extent authorized by law, Contractor hereby agrees to indemnify ~~-, defend,~~ and hold harmless the City of Sheboygan, its elected and appointed officials, officers, employees, agents, representatives, and

authorized volunteers from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, ~~defense costs, reasonable attorneys' fees, and, reasonable costs,~~ and expenses ~~of whatsoever kind or nature in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed or alleged to be caused, occasioned, or contributed to in whole or in part, by reason of any~~ to the extent caused by any negligent act, omission, or fault, or negligence, whether active or passive, of Contractor or its agents or anyone acting under its direction or control or on its behalf ~~arising out of, or in connection with, or~~ relating to this Agreement. Contractor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of the City of Sheboygan, its elected and appointed officials, officers, employees, agents, representatives, or authorized volunteers. Nothing in this Agreement shall be construed as the City of Sheboygan waiving its statutory limitation and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement. To the fullest extent permitted by law, the City of Sheboygan and Contracting Party waive against each other, and the other's employees, elected and appointed officials, officers, agents, representatives, authorized volunteers, and design professionals, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Agreement.

10. **TERMINATION FOR CAUSE.** If, through any cause, the Contracting Party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contracting Party shall violate any of the covenants, agreements, or stipulations of this Agreement, the City of Sheboygan shall thereupon have the right to terminate this Agreement by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material related to the services performed by the Contracting Party under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of the City, become the property of the City. Notwithstanding the foregoing, the Contracting Party shall not be relieved of liability to the City for direct damages sustained by the City by virtue of this Agreement by the Contracting Party, and the City may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of damages due to the City from the Contracting Party is determined.
11. **TERMINATION FOR CONVENIENCE.** The City may terminate this Agreement at any time and for any reason by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. If this Agreement is terminated by the City pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Contracting Party covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by Contracting Party will be determined by the City.
12. **USE OF CITY PROPERTY.** Any property belonging to the City being provided for use by the Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement. No changes, alterations, or additions shall be made to the property unless otherwise authorized by this Agreement.
13. **INDEPENDENT CONTRACTOR.** The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint ventures, or partners.
14. **JURY TRIAL WAIVER.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.
15. **SEVERABILITY.** The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.
16. **ASSIGNMENT, SUBLET, AND TRANSFER.** Contracting Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of the City. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Contracting Party shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.

17. NO WAIVER. The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.
18. GOOD STANDING. Contracting Party affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Contracting Party is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.
19. CONFLICTS OF INTEREST. Contracting Party covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contracting Party further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Contracting Party or its employee must be disclosed to the City.
20. IMPLEMENTATION SCHEDULE AND TIME OF THE ESSENCE. Subject to the Standard of Care, Any and all phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedules shall occur only upon approval of the City. The City Administrator, or in their absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum of ninety (90) days. Should schedule delays occur beyond the Contracting Party's control, the project schedule shall be extended accordingly.
21. ACCESS TO RECORDS & OPEN RECORDS LAWS. Contracting Party, at its sole expense, shall maintain books, records, documents and other evidence pertinent to this Agreement in accordance with accepted applicable professional practices. The City, or any of its duly authorized representatives, shall have access, at no cost to the City, to such books, records, documents, papers or any records, including electronic records, of Contracting Party which are pertinent to this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions. Contracting Party understands that the City is bound by the Wisconsin Public Records Law and, as such, this Agreement is subject to that law. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the contract, and that Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of Final Payment under the Agreement.
22. COUNTERPARTS. This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.
23. SURVIVAL. All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

## EXHIBIT A General Insurance Requirements

### **CITY OF SHEBOYGAN INSURANCE REQUIREMENTS GENERAL SERVICE AGREEMENT (NON-CONSTRUCTION)**

The Service Provider shall not commence work until proof of insurance required has been provided in writing to the applicable department before the contract or purchase order is considered for approval by the City of Sheboygan.

It is hereby agreed and understood that the insurance required by the City of Sheboygan is primary and non-contributing coverage and that any insurance or self-insurance maintained by the City of Sheboygan, its officers, council members, agents, employees or authorized volunteers will not contribute to coverage of any loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed and the length of time that is specified, if any, in the contract or listed below whichever is longer.

#### **1. COMMERCIAL GENERAL LIABILITY INSURANCE**

Commercial General Liability coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01, including coverage for Products Liability, Completed Operations, Contractual Liability, and Explosion, Collapse, Underground coverage with the following minimum limits and coverage:

|   |             |
|---|-------------|
| Each Occurrence limit   |             |
| \$1,000,000   |             |
| Personal and Advertising Injury limit   | \$1,000,000 |
| General aggregate limit (other than Products–Completed Operations) <b>per project</b> |             |
| \$2,000,000   |             |
| Products–Completed Operations aggregate   | \$2,000,000 |
| Fire Damage limit — any one fire  | \$50,000    |
| Medical Expense limit — any one person  | \$5,000     |

#### **2. BUSINESS AUTOMOBILE COVERAGE.** Automobile Liability coverage at least as broad as Insurance Services Office Business Automobile Form, with minimum limits of \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage, provided on a Symbol #1– “Any Auto” basis.

#### **3. WORKERS COMPENSATION AND EMPLOYERS LIABILITY** – as required by Wisconsin State Statute or any Workers Compensation Statutes of a different state. Also, if applicable to the work coverage must include Maritime (Jones Act) or Longshore & Harbor Worker’s Compensation Act coverage.

Must carry coverage for Statutory Workers Compensation and an Employers Liability with limits of:

\$100,000 Each Accident  
\$500,000 Disease Policy Limit  
\$100,000 Disease – Each Employee

Employer’s Liability limits must be sufficient to meet umbrella liability insurance requirements

#### **4. UMBRELLA LIABILITY** providing coverage at least as broad as all the underlying liability policies with a minimum limit of \$2,000,000 each occurrence and \$2,000,000 aggregate, and a maximum self-insured retention of \$25,000. The umbrella must be primary and non-contributory to any insurance or self-insurance carried by City of Sheboygan.



5. **AIRCRAFT LIABILITY**, if the project work includes the use of, or operation of any aircraft or helicopter, then Aircraft Liability insurance must be in force with a limit of \$5,000,000 per occurrence for Bodily Injury and Property Damage including Passenger liability and including liability for any slung cargo.
6. **UNMANNED AIRCRAFT LIABILITY** – if the project work includes the use of, or operation of any unmanned aircraft then unmanned aircraft liability insurance must be carried with a limit of \$1,000,000 per occurrence for bodily injury liability, property damage liability and invasion of privacy liability.
7. **WATERCRAFT LIABILITY** – if the project work includes the use or operation of any watercraft, watercraft liability insurance must be carried with a limit of \$1,000,000 per occurrence for bodily injury liability and property damage liability.
8. **SERVICE PROVIDER'S EQUIPMENT OR PROPERTY** – The Service Provider is responsible for loss and coverage for these exposures. The City of Sheboygan will not assume responsibility for loss, including loss of use, for damage to property, materials, tools, equipment, and items of a similar nature which are being either used in the work being performed by the Service Provider or are to be built, installed, or erected by the Service Provider. This includes but not limited to property owned, leased, rented, borrowed, or otherwise in the care, custody or control of the Service Provider.
9. **PRODUCTS - COMPLETED OPERATIONS LIABILITY** - Products – Completed Operations coverage must be carried for a minimum of three years after acceptance of completed work
10. **LIQUOR LIABILITY** – If the services rendered involve providing alcohol for consumption by others, liquor liability insurance must be carried with a limit of \$1,000,000 per occurrence.

#### **INSURANCE REQUIREMENTS FOR ALL SUBSERVICE PROVIDERS**

All subservice providers shall be required to obtain the above coverages as applicable. This insurance shall be as broad and with the same limits and coverages (including waivers of subrogation) as those required per Contractor requirements.

#### **APPLICABLE REQUIREMENTS AND PROVISIONS FOR LIABILITY INSURANCE OF SERVICE PROVIDER & SUBSERVICE PROVIDERS**

- A. **Primary and Non-contributory requirement** – all insurance must be primary and non-contributory to any insurance or self-insurance carried by the City of Sheboygan.
- B. **Acceptability of Insurers** – Insurance is to be placed with insurers who have an *A.M. Best* rating of no less than A- and a Financial Size Category of no less than Class VII, and who are authorized as an admitted insurance company in the state of Wisconsin.
- C. **Additional Insured Requirements** – The following must be named as additional insureds on all Liability Policies for liability arising out of service work- the City of Sheboygan, and its officers, council members, agents, employees and authorized volunteers. On the Commercial General Liability Policy, the additional insured coverage must be as broad as ISO form CG 20 26 07 04 and also include Products – Completed Operations additional insured coverage as broad as ISO form CG 20 37 07 04 or their equivalents for a minimum of 3 years after acceptance of work. This does not apply to Workers Compensation Policies and Professional Liability Policies.
- D. **Waivers of Subrogation** - All contractor and subcontractor liability, workers compensation, and property policies, as required herein, must be endorsed with a waiver of subrogation in favor of the City of Sheboygan, its officers, council members, agents, employees, and authorized volunteers.
- E. **Deductibles and Self-Insured Retentions** – Any deductible or self-insured retention in the contractor's policy must be declared to the City of Sheboygan and satisfied by the contractor.
- F. **Evidence of Insurance** – Prior to execution of the agreement, the Service Provider shall file with the City of Sheboygan a certificate of insurance (Acord Form or equivalent for all coverages) signed by the insurer's representative evidencing the coverage required by this agreement. In addition, form CG 20 10 07 04 for ongoing work exposure and form CG 20 37 07 04 for products-completed operations exposure must also be provided or its equivalent on the Commercial General Liability coverage.

- G. Limits and Coverage- The insurance requirements under this Agreement shall be the greater of the minimum limits and coverage specified herein, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits. No representation is made that the minimum insurance requirements stated hereinabove are sufficient to cover the obligations of Contractor under this Agreement.
- H. Claims Made Coverage – If any coverage is maintained on a claims-made basis, the following shall apply:
- I. The retroactive date must be shown and must be before the date of the contract or the beginning of the contract services.
  - II. Insurance must be maintained, and evidence of insurance must be provided for a minimum of three years after completion of the contract services.
  - III. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the contract, Contractor must purchase an extended reporting period for a minimum of three years after completion of the contracted services.
- I. Cancellation/Non-Renewal – No policy of insurance required to be maintained hereunder shall be cancelled, non-renewed, or voided without 30 days prior written notice to the City of Sheboygan except where cancellation is due to the non-payment of premiums, in which event, 10-days prior written notice shall be provided.