



Wastewater Treatment Plant Operations and Services Agreement City of Tenino

This agreement is made and entered into as of June, 1 2019, by and between **Water & Wastewater Services (WWS)**, a Washington company and the **City of Tenino**, hereinafter referred to as the "Customer". In consideration of the mutual covenants and representations contained in this Agreement, the parties hereby agree as follows:

- I. **Agreement Period.** The term of this Agreement is for a period of five years from June 1, 2019 through May 31, 2024, which will automatically be renewed unless terminated by either party as set out in paragraph VII. The contract price outlined in Exhibit B shall be increased annually by the annual average CPI-U (Seattle) as of February of the same year or 3% whichever is higher. There shall also be an annual review of fees.
- II. **Purpose.** The purpose of this Agreement is to set out the intent of WWS and Customer to enter into a relationship whereby WWS provides wastewater system management, or other services, to Customer.
- III. **Scope of Work.** The work to be performed by WWS under this Agreement is described in Exhibit A.
- IV. **Changes/Modifications to Agreement.** WWS shall make a good faith effort to implement any changes or modification to this Agreement that may be requested by Customer. Customer recognizes, however, that any changes or modifications to the Agreement may cause WWS difficulties and delays in the fulfillment of its obligations pursuant to this Agreement. WWS reserves the right, therefore, in its sole discretion, to refuse to incorporate such changes and modifications, or to charge Customer at the current hourly rate published for such services.
- V. **Acceptance of Work.** WWS shall deliver certain portions of the work in accordance with the schedules attached as Exhibits, and hereby incorporated into this Agreement, or as required by Washington State Department of Health regulations.
- VI. **Payment.** In consideration for the services and work described above Customer shall pay to WWS an amount in U.S. funds as set out in Exhibit B. The monthly contract amount will be due the 10th day of the month following the month of service. For example, for services provided in May, the payment is due June 10th. Payment for services provided outside the scope of the contract is due within 10 days of receipt of invoice. A late charge of eighteen percent (18%) per annum will be applied to past due amounts.
- VII. **Termination.** At the end of the three year term the contract will automatically renew. The contract may be terminated by either party at the end of the three year term with sixty (60) days prior written notice. Upon termination, each party shall be fully and forever released and discharged from any and all obligations, covenants or liabilities of whatsoever kind or nature in law, or equity, or otherwise, arising out of, or in connection with, the Agreement, or any other agreements by and



between WWS and Customer, except for any obligation or liability accrued before the date of termination.

- VIII. **Warranties and Representations.** Each party hereby represents and warrants as follows:
- a. **Corporate Power.** Each party is duly organized and validly existing under the laws of the state of its incorporation and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof.
 - b. **Due Authorization.** Such party is duly authorized to execute and deliver this Agreement and to perform its obligation hereunder.

The representations and warranties and covenants in this Section are continuous in nature and shall be deemed to have been given by each party at execution of this Agreement and at each stage of performance hereunder.

- IX. **Binding Agreement.** This Agreement is a legal and valid obligation binding upon it and enforceable with its terms. The execution, delivery and performance of this Agreement by such party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.
- X. **Compliance with Law.** Each party's operations will be conducted in compliance with all applicable laws and regulations of the State of Washington.
- XI. **Hold Harmless and Indemnification.** Both WWS and Customer shall mutually save, keep and hold harmless the other's officers, agents, employees and volunteers from all damages, costs or expenses in law or equity, including attorney's fees, costs and expenses, that may at any time, arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work, which may be occasioned by any willful or negligent act or omissions.
- XII. **Applicable Law; Jurisdiction; Venue.** The Agreement shall be governed and construed in accordance with the laws of the State of Washington. The parties agree that Skagit County in the State of Washington shall be the proper venue for any action brought under the Agreement.
- XIII. **Modifications, Amendments or Waivers.** No modifications or amendments to the Agreement, and no waiver of any provisions hereof shall be valid unless in writing signed by duly authorized representative of the parties. The failure of either party to this Agreement to insist upon performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- XIV. **Force Majeure.** WWS shall not be responsible for any failure to perform due to unforeseen circumstances or due to a cause beyond WWS' control, including but not limited to acts of God, war,



riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation facilities, fuel, energy, labor or materials.

- XV. **Independent Contractor Relationship.** Nothing contained herein shall be construed to imply a joint venture, partnership, or employer and employee relationship between the parties. Neither party shall have any right, power or authority to create any obligation, expressed or implied, on behalf of the other except as defined in the Agreement or as mutually agreed to under the terms of the Agreement. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- XVI. **Non-Compete. City of Tenino** agrees to not solicit nor offer employment to the staff of **Water & Wastewater Services LLC**, without the approval in writing from the Human Resource Department of WWS. In the event a WWS employee is offered employment without the approval of the Human Resources Department and WWS, a penalty of **\$10,000.00** will be paid to Water & Wastewater Services LLC., upon termination of the contract.
- XVII. **Vehicles.** WWS will supply a vehicle used for routine operation and maintenance during the contract period.
- XVIII. **Binding Effect.** Subject to the limitations herein before expressed, this Agreement will inure to the benefit of, and be binding on, the parties, their successors, administrators, heirs, and permitted assigns.
- XIX. **Compliance/Government Approvals.** WWS and Customer will, at its own expense, obtain and arrange for the maintenance in full force and effect of all government approval, consents, licenses, authorizations, declarations, filings and registrations as may be necessary or advisable for the performance by such party of all of the terms and conditions of the Agreement.
- XX. **Entire Agreement; Modification; No Offer.** The parties hereto agree that this Agreement constitutes the entire Agreement between the parties with the respect to the subject matter hereof. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only by a written agreement dated subsequent hereto signed on behalf of WWS and Customer by their duly authorized representatives. Neither this Agreement nor any written or oral statements related hereto constitute an offer, and this Agreement shall not be legally binding until executed by both parties hereto.
- XXI. **Insurance.** WWS agrees to obtain liability insurance in an amount not less than \$1,000,000.00 to cover all work performed under the terms of this contract. The insurance policy shall expressly include the Customer as a named insured and loss payee. Upon request, WWS shall provide the customer with evidence of such insurance.
- XXII. **Attorney Fees.** In the event that any action is filed in relation to this Agreement, the unsuccessful party shall pay to the successful party, all sums that may be called on to be paid, together with the costs and fees associated with the arbitration or legal action, including reasonable attorney fees.



XXIII. **Damages.** The Customer hereby grants to WWS a license to go onto the property, with reasonable prior notice, and to have WWS' agents go onto the property to complete any and all work under the terms of this contract. WWS hereby agrees to leave the property in the condition in which it finds it and to defend, indemnify and hold the Customer harmless from any and all liens and liability that may attach to the property by reason of WWS' activities. WWS shall be responsible for all damages resulting from any and all activities on the property performed by WWS or WWS agents.

Signed: _____

Kelly Wynn, Owner
Water & Wastewater Service
14263 Calhoun Road
Mount Vernon, WA 98273

Signed: _____

Representative
City of Tenino
PO Box 4019
Tenino, WA 98589

Date: _____

Date: _____

DRAFT

Description of Services Provided

1. Provide 24 hours, 7 days per week emergency paging service along with an emergency operator phone contact list. Supply a certified Operator to provide a presence on site and oversee current operations during all regularly scheduled shifts at the facility in compliance with regulatory agency standards as described in the NPDES permit.
2. Collaborate with City of Tenino representative, equipment provider, OVIVO (Enviroquip) in understanding the requirements for all plant and system operations.
3. Onsite familiarization with the wastewater system including MBR plant SCADA systems, component PLCs and RTUs, remote monitoring capabilities , point of contact with OVIVO (Enviroquip), review and recommendations for revising O&M manuals.
4. Review and comply with DOE permit requirements, including sampling and testing of MBR plant influent/effluent.
5. Provide emergency response, 24/7 paging service and on call operator.
6. On-site presence daily/33hrs per week at City of Tenino to ensure all components are operating as designed, and to take necessary tests. Any failures will be immediately relayed to the City of Tenino representative for correction authorization or assignment for staff to correct.
7. Provide a written monthly report to the City of Tenino designated representative.
8. Attend meetings as requested by the City of Tenino designated representative.
9. Provide service vehicle for WWTP Operations.
10. Collaborate with City of Tenino staff and equipment supplier representative to facilitate completion of all necessary O&M and repairs.
11. Fill out and submit all reports required by regulating agencies.
12. Collect, submit, and report results for samples collected from influent, effluent, as required by DOE or other regulating agencies.
13. Provide review and recommendations for operational documents including O&M manuals.

**Wastewater Treatment Plant Operations and Services Agreement
City of Tenino
Exhibit B**

Fees

Maintenance & Management Services

The contract fee for Maintenance & Management Services shall be at the annual fee of **\$110,928.00** paid in monthly installments of **\$9,244.00**. WWS reserves the right to amend this contract if the number of connections increases.

The following table is the anticipated rate based on the 3% increase stipulated in **Paragraph I**.

June 1, 2019 - May 31, 2020	\$ 110,928.00	Per Year	Monthly Installments of:	\$ 9,244.00
June 1, 2020 - May 31, 2021	\$ 114,255.84	Per Year	Monthly Installments of:	\$ 9,521.32
June 1, 2021 - May 31, 2022	\$ 117,683.52	Per Year	Monthly Installments of:	\$ 9,806.96
June 1, 2022 - May 31, 2023	\$ 121,214.03	Per Year	Monthly Installments of:	\$ 10,101.17
June 1, 2023 - May 31, 2024	\$ 124,850.45	Per Year	Monthly Installments of:	\$ 10,404.20

Labor Rates

Any additional labor charges for services performed outside of the scope of work as described in Exhibit A shall be charged at the rate of **\$68.50** per hour per person plus sales tax for work performed Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. Work done after hours or on weekends will be billed at **\$102.75** per hour. Work done on holidays will be billed at **\$137.00** per hour. There will be a minimum 1-hour charge for any call-out work.

- Clerical work will be charged at \$55.00 per hour.
- Technical writing will be charged at \$70.00 per hour.
- Project Management will be charged at \$100.00 per hour.
- Any supplies necessary for the execution of the services listed in Exhibit A and any subcontractor's/contractor's fees will be marked up and billed back.

Price increases from independent third parties, such as certified laboratories and supplies, will be passed on as and when incurred.