

Ordinance No. 10- 16

**AN ORDINANCE APPROVING AN ENGINEERING SERVICES
AGREEMENT WITH DONOHUE & ASSOCIATES, INC.**

*BE IT ORDAINED BY THE SOUTH SANGAMON WATER COMMISSION, AS
FOLLOWS:*

SECTION 1: That Engineering Services Agreement between Donohue & Associates, Inc. and the South Sangamon Water Commission, a copy of which is attached hereto, is hereby approved.

SECTION 2: The Chairman of the Commission is authorized and directed to approve said agreement on behalf of the Commission, and the proper officers of the Commission are authorized and directed to carry out the agreement by its terms.

SECTION 3: This Ordinance is effective immediately.

PASSED this 17th day of May, 2010.


CHAIRMAN

ATTEST:


Village Clerk

AYES: MCCORD, PFEFFER

NAYS: -

PASSED: 5/18/10

APPROVED: 5/18/10

ABSENT: HALL

SSWC
 ORIGINAL



ENGINEERING SERVICES AGREEMENT

Project: New Water Treatment System – Construction Related Services

This Agreement is by and between:

South Sangamon Water Commission (Owner)
P. O. Box 83
New Berlin, IL 62670

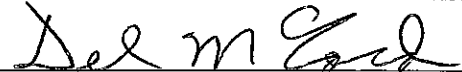
and

Donohue & Associates, Inc. (Donohue)
2919 Crossing Court, Suite 12
Champaign, IL 61822

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:
SOUTH SANGAMON WATER COMMISSION

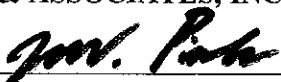
By: 

Printed Name: Del McCord

Title: Chairman

Date: May 17, 2010

APPROVED FOR:
DONOHUE & ASSOCIATES, INC.

By: 

Printed Name: Joseph V. Pisula, P.E.

Title: Vice President

Date: 5-17-2010

PART I
PROJECT DESCRIPTION/SCOPE OF SERVICES/TIMING

A. PROJECT DESCRIPTION

The Owner has recently accepted construction contract bids for a new 3.3 MGD potable water treatment plant and its related well field and raw water main. Said project was bid as follows: Contract "A" was for the well field, Contract "B" for the raw water main and lagoon effluent force main, and Contract "C" is for the Water Treatment Facilities. The bid for Contract "B" was rejected by the Owner and the Owner intends to construct that project with its own forces. Therefore no construction observation services are needed for that work. The Owner wishes to retain Donohue & Associates, Inc. to provide Construction-Related Services for said project.

B. SCOPE OF SERVICES

1. Construction Related Engineering Services

Upon successful completion of the Bidding Phase, and upon award of the construction contracts by the Owner, Donohue shall provide the following construction phase contract administration and observation services for the Project:

- 1.1 General Administration of Construction Contracts.* Consult with Owner and act as Owner's representative as provided in the General Conditions of the Contract Documents as included in the Project Manual.
- 1.2 Pre-Construction Conference and Progress Meetings.* Conduct two Pre-Construction Conferences (one for Contract "A" and one for Contract "C") prior to commencement of the Work at the Project sites and prepare and distribute minutes. Donohue's project manager shall also attend one monthly construction progress meeting over the course of the 18- month construction duration from Notice-To-Proceed to Substantial Completion. The fees stated herein are predicated on the assumption that said meetings are to be held on the third Tuesday of each month, so that they correspond with the South Sangamon Water Commission's regular month meeting.
- 1.3 Visits to Site and Observation of Construction.* The Owner will provide to the project a Resident Project Representative (RPR) who will make visits to the Contract "C" site and the Contract "A" site at intervals and frequencies as described herein, as appropriate for the various stages of construction, as Owner deems as being necessary, in order to observe the progress and quality of the Work. *The Contract "B" construction work will not be observed by Donohue during construction since the Owner will construct that work with its own forces or contractors working directly for Owner.*

To assist the Owner in the observation of Construction, Donohue's Project Manager will provide a limited level of construction observation efforts, and he will work in conjunction with the Owner's observer. To this end, Donohue will provide up to 624 hours of observation work, including travel time and vehicle expense to and from the site. This equates to approximately 2 days/week of Donohue observation for a 6 month period of time and 1 day every other week for the remaining 12 months of the 18 months of construction. Based on the information obtained during such visits and such observations, Donohue will determine in general if the Contractors' work is proceeding in accordance with the Contract Documents, and Donohue will keep Owner informed of the progress of the Work.

The purpose of Donohue's visits to the Site will be to enable Donohue to provide the Owner a greater degree of confidence that the completed work is in general conformance with the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole. Donohue's project manager will not have authority over or responsibility for supervising the Owner's construction observer. Donohue's project manager will not, during such visits or as result of such observations of the work supervise, direct, or have control over any Contractor's work, nor shall Donohue have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by any Contractor, for safety precautions and programs incident to the Contractor's work or for any failure of any Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the work. Accordingly, Donohue does not guarantee the performance of any Contractor nor assume the responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

- 1.4 *Defective Work.* Donohue will, based on the Owner's observations, recommend to Owner whether a Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, Donohue believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
- 1.5 *Clarifications and Interpretations and Field Orders.* Donohue will issue within a reasonable time period, upon Contractor's written Request for Information (RFI) for Contracts "A" and "C", the necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of each Contractor's work. Such clarifications and interpretations will be consistent with the intent of and interpretations reasonably inferable from the Contract Documents. Donohue may also issue Field Orders authorizing minor variations from the requirements of the Contract Documents, which the Owner and Contractor agree do not affect contract time of completion or the value of work. Donohue will issue RFI's and Field Orders to the Owner's construction observer at the same time that said documents are issued to the construction contractors.
- 1.6 *Change Orders and Work Change Directives.* For Contracts "A" and "C", Donohue will recommend Change Orders and Work Change Directives to the Owner, as appropriate, and prepare Change Orders and Work Change Directives as required. Donohue will prepare support documentation related to said Change Orders and Work Change Directives and furnish change order documents to the South Sangamon Water Commission during its regular month meetings.
- 1.7 *Shop Drawings and Samples.* For Contracts "A", "B", "C", "E", and "E-2", Donohue will review shop drawings, product literature, and other submittals for the project's structural systems, HVAC, electrical, process equipment, SCADA system components, piping systems, and other items.
- 1.8 *Substitutes and "or-equal."* For Contracts "A" and "C", Donohue will evaluate Contractor's substitution requests for determination of acceptability. Donohue will forward its evaluation of acceptability to Owner for action and Donohue will forward Owner's determination of acceptability to Contractor.
- 1.9 *Applications for Payment.* For Contracts "A", "C", "E" and "E-2", Donohue will review Contractors' Applications for Payment and accompanying supporting documentation. Such recommendations of payment will be in writing and will constitute Donohue's representation to Owner, based on the Owner's construction observations and review that, to the best of Donohue's knowledge, information and belief that Contractors' work has progressed to the point indicated and the quality of such work is generally in accordance with the Contract Documents.

- 1.10 *Startup Services.* Provide up to start-up assistance to Owner, for assistance with initial start-up of the major treatment processes and mechanical equipment items relevant to the Contract "C" project component. Start-Up assistance is limited to 60 hours including trips to the site, to be provided by either Donohue's project manager or lead process engineer.
- 1.11 *Substantial Completion.* Promptly after notice from Contractor that that Contractor considers the entire work ready for its intended use, in company with the Owner and Contractor, Donohue shall conduct an inspection to determine if the work is Substantially Complete. If after considering any objections of the Owner, Donohue considers the work to be Substantially Complete; Donohue shall deliver a Certificate of Substantial Completion to the Owner and the respective Contractor.
- 1.12 *Operations & Maintenance Manual.* Prepare a brief and concise Operations and Maintenance (O&M) Manual for the process systems involved in the newly constructed facilities, including the well field. Said manual will include a review of each process, how each process interacts with the other, and it will provide the Owner with Donohue's intent on how the plant is operate within the design philosophy of the facility. The manual will include process flow schematics, process control parameters, and the Basis of Design of the facility. Manufacturer's information, such as scheduled maintenance activities, lubrication recommendations, and other information that can be found in the equipment manufacturer's O&M manuals will not be included in this O&M manual. Donohue will provide the Owner with two draft copies of the manual for review and comment. Upon receipt of said comments, Donohue will incorporate the comments and then furnish the final O&M manual as follows: Three (3) paper copies in 3-ring binders with color copy figures and drawings, plus one electronic copy in Microsoft Word or Acrobat Adobe .pdf files.
- 1.13 *Value Engineering Efforts during construction.* It is understood by Owner and Donohue that the Owner is considering the implementation of a program for performing "Value Engineering" with the Contract "C" contractor during construction -- in order to identify ways to reduce construction costs. Said Value Engineering efforts may involve the need for Value Engineering meetings, work sessions, and Donohue's evaluation of contractor cost-reduction proposals. It is understood that all activities associated with said Value Engineering work is beyond the scope of this Agreement, and that Value Engineering Services will be rendered by Donohue upon written authorization from Owner, as Additional Work, at additional cost on a time-and-materials, per diem basis.
- 1.14 *Record Documents.* Receive and review annotated record documents for Contract "C", which are to be assembled by the various Contractors in accordance with the Contract Documents to obtain final payment. Prepare Record Drawings showing appropriate record information based on the Project annotated record documents received from the Contractor. Donohue will forward to the Owner the completed Record Drawing deliverables in the form of AutoCAD files and three 11" x 17" size printed-paper sets.

C. PROJECT TIMING

Donohue shall be authorized to commence the Services set forth herein upon execution of this Agreement. Construction related services will be rendered as dictated by the construction activities as they progress.

**PART II
OWNER RESPONSIBILITIES**

- A. In addition to other responsibilities of Owner set forth in this Agreement, Owner shall:
1. Identify a person (Del McCord) 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.

**PART III
COMPENSATION, BILLING AND PAYMENT**

- A. Compensation as defined in the Scope of Services (Part I) of this Agreement shall 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. The cost for these Basic Services will not exceed **\$423,600.00** without written approval from Owner.
- B. Donohue will bill Owner monthly, with net payment due in 30 days. When requested, Donohue will list the Owner's purchase order number on each invoice.
- 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 authorization from Owner.

PART IV STANDARD TERMS AND CONDITIONS

1. **STANDARD OF CARE.** Donohue's Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession under similar circumstances at the same time and in the locality where the Services are performed. Professional services are not subject to, and Donohue does not provide, any warranty or guarantee, express or implied. Any warranties or guarantees contained in any purchase orders, requisitions, or notices to proceed issued by Owner are void and not binding upon Donohue.

2. **CHANGE OF SCOPE.** The Scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by Owner. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the project progresses, facts discovered may indicate that the scope must be redefined. Donohue will promptly provide Owner with a written amendment to this Agreement to recognize such change, which shall be deemed accepted if not objected to within 15 days of receipt by Owner.

3. **HAZARDOUS ENVIRONMENTAL CONDITIONS.** Unless expressly stated otherwise in the Scope of Services (Part I) of this Agreement, Donohue's scope of services does not include any services relating to a Hazardous Environmental Condition, including but not limited to the presence at the Project site of asbestos, PCBs, petroleum, hazardous substances or any other pollutant or contaminant, as those terms are defined in pertinent federal, state, and local laws. In the event Donohue or any other party encounters a Hazardous Environmental Condition, Donohue may at its option suspend performance of services until Owner: a) retains appropriate consultants or contractors to identify and remediate or remove the Hazardous Environmental Condition; and b) warrants that the Project site is in full compliance with all applicable environmental laws.

4. **SAFETY.** Unless specifically included as a service to be provided under this Agreement, Donohue specifically disclaims any authority or responsibility for general job site safety, or the safety of persons (other than Donohue employees) or property.

5. **DELAYS.** If performance of Donohue's Services is delayed through no fault of Donohue, Donohue shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.

6. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party. Owner shall pay Donohue for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination.

If either party defaults in its obligations under this Agreement (including Owner's obligation to make required payments), the non-defaulting party may, after giving seven days written notice, suspend performance under this Agreement. The non-defaulting party may not suspend performance if the defaulting party commences to cure such default within the seven-day notice period and completes such cure within a reasonable period of time.

Donohue may terminate this Agreement upon seven days written notice if: a) Donohue believes that Donohue is being requested by Owner to perform services contrary to law or Donohue's responsibilities as a licensed professional; or b) Donohue's Services for the Project are delayed, suspended, or interrupted for a period of at least 90 days for reasons not attributable to Donohue's performance of Services; or c) Owner has failed to pay any amount due and owing to Donohue for a period of at least 60 days. Donohue shall have no liability to Owner on account of such termination.

7. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by Donohue is supplied for the general guidance of the Owner only. Since Donohue has no control over competitive bidding or market conditions, Donohue cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to Owner.

8. **RELATIONSHIP TO CONTRACTORS.** Donohue shall serve as Owner's professional representative for the Services, and may make recommendations to Owner concerning actions relating to Owner's contractors. Donohue specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected or used by Owner's contractors. Donohue neither guarantees the performance of any construction contractor nor assumes responsibility for any contractor's failure to perform in accordance with the construction contract documents.

9. **CONSTRUCTION REVIEW.** For projects involving construction, Owner acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost. Owner agrees to hold Donohue harmless from any claims resulting from performance of construction-related professional services by persons other than Donohue.

10. **INSURANCE.** Donohue will maintain Professional Liability, Commercial General Liability, Automobile, Worker's Compensation, and Employer's Liability insurance coverage in amounts in accordance with legal and Donohue's business requirements. Donohue shall provide to Owner certificates demonstrating such coverage upon request. For projects involving construction, Owner agrees to protect Donohue's interests through appropriate property and liability insurance, and to require its construction contractor, if any, to include Donohue as an additional insured on Contractor's policies relating to the Project. Donohue's coverages referenced above shall, in such case, be excess over contractor's primary coverage.

11. **INDEMNIFICATION.** Donohue shall indemnify and save harmless Owner from and against loss, liability, claims, and damages sustained by Owner due to bodily injury or death to persons or damage to tangible property to the extent caused by the willful misconduct or negligence of Donohue, its agents, or employees.

To the fullest extent permitted by law, Owner shall defend, indemnify and save harmless Donohue, its agents, employees, and representatives from and against loss, liability, claims, and damages (including reasonable attorneys' and consultants' fees) arising from or relating to the Project in any way, except to the extent that such loss, liability, claims or damages are caused by the willful misconduct or negligence of Donohue, its agents or employees. Owner also agrees to require its construction contractor, if any, to include Donohue as an: a) indemnitee under any indemnification obligation to Owner; and b) additional insured under its Commercial General Liability policy.

To the fullest extent permitted by law, Owner shall indemnify, defend, and hold harmless Donohue, its employees, agents, and representatives, and Donohue's subconsultants, from and against any loss, liability, claims and damages caused by, arising out of, or resulting from the presence at the Project site of asbestos, PCBs, petroleum, hazardous substances, or any other pollutant or contaminant, as those terms are defined in pertinent federal, state, and local laws, except to the extent that the loss, liability, or damages are caused solely by the willful misconduct or negligence of Donohue, its agents or employees.

12. **LIMITATIONS OF LIABILITY.** No owner, shareholder, principal, employee or agent of Donohue shall have individual liability to Owner; and Owner covenants and agrees not to sue any such individual in connection with the Services under this Agreement.

Owner agrees that, to the fullest extent permitted by law, Donohue's total liability to Owner for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, Donohue's negligence, errors, omissions, strict liability, or breach of contract, shall not exceed the proceeds available from Donohue's professional liability insurance policy for a maximum of \$5,000,000 per occurrence and \$5,000,000 aggregate. Donohue agrees to maintain as a minimum this identified insurance limit for the duration of this Project.

IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL DONOHUE BE LIABLE TO OWNER FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES.

13. **OWNERSHIP AND REUSE OF PROJECT DOCUMENTS.** All documents and other deliverables, in all media, prepared by or on behalf of Donohue in connection with this Agreement are instruments of service, and Donohue shall hold the copyright to and all other ownership and property interests in such instruments of service. Owner shall not reuse any such documents or other deliverables pertaining to the Project for any purpose other than that for which such documents or deliverables were originally prepared. Owner shall not cause or allow the alteration of such documents or deliverables without written verification and approval by Donohue for the specific purpose intended, and any alteration by Owner shall be at the Owner's sole risk. Owner agrees to defend, indemnify, and hold harmless Donohue from all claims, damages, and expenses (including reasonable attorneys' and consultants' fees), arising out of such reuse or alteration by Owner or others acting through Owner.

14. **ELECTRONIC MEDIA.** Copies of documents that may be relied upon by Owner are limited to printed copies that are signed and sealed by Donohue. Files or information in electronic media are furnished by Donohue to Owner solely for convenience of Owner. If there is a discrepancy between electronic files and printed copies, the printed copies govern.

Because data stored in electronic media format can deteriorate or be modified, the Owner agrees to perform acceptance tests within 60 days. Donohue will not be responsible to correct any errors or for maintenance of documents in electronic media format after the acceptance period.

15. **AMENDMENT.** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties, except as provided in Paragraph 2.

16. **SUCCESSORS, BENEFICIARIES AND ASSIGNEES.** This Agreement shall be binding upon and inure to the benefit of the owners, administrators, executors, successors, and legal representatives of the Owner and Donohue.

The rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assignees.

17. **NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of any particular section of this Agreement hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including Owner's construction contractors, if any.

18. **STATUTE OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

19. **DISPUTE RESOLUTION.** Owner and Donohue shall provide written notice of a dispute within a reasonable time and after the event giving rise to the dispute. Owner and Donohue agree to negotiate any dispute between them in good faith for a period of 30 days following such notice. Owner and Donohue may agree to submit any dispute to mediation or binding arbitration, but doing so shall not be required or a prerequisite to initiating a lawsuit to enforce this Agreement.

20. **CONTROLLING LAW.** This Agreement is governed by the laws of the state in which the Project is located.

21. **NO WAIVER.** No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

22. **SEVERABILITY.** The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

23. **AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

24. **SURVIVAL.** All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

Date: March 2009

SSWC HIRES LOCAL INSPECTOR + PISULA ASSISTS FROM CHAMPAIGN FOR 1 OR 2 DAYS/WEEK

Client: South Sangamon Water Commission
Project: New Water System
Task: Engineering Fee Calculation for CRS

21-Apr-10

Phase	Description	Amount
301	Pre-Construction Mtg Attendance: Assume 8 hrs/ trip (with prep) x 1 trip x 2 people	\$2,780
301	Misc Admin by PM (corresp with RE + contractor) ... 6 hours each week until Sub. Completion	\$82,680
301	Final Walk-Thru: This is 1 trip for PM at \$180/hr in 2011+ \$300 car + per diem	\$1,800
301	Site Meetings: Assume 8 hrs/ trip x 1 trip/mo x 18 mo. X \$180/hr pisula time in 2010-11 + \$300 exp/trip	\$36,240
302	RFIs: On Monmouth water plant ...we spent well over \$14,000.	\$20,000
302	Substitute Evaluations: Assume 10 substitutions, which take 6 hours each at \$150/hr	\$9,000
303	Shop Drawings: 150 shop drawings x 4 hours each x \$150 avg per hr. Shipping costs	\$90,000 \$1,200
304	Observation 1 Sr. Engr (Pisula) from Champaign for 2 days/week x the first 6 months x \$170 avg per hr. 1 Sr. Engr (Pisula) from Champaign for 1 day every other week x the remaining 12 mo. x \$170 avg per hr. Pisula Vehicle Expense from Champaign (Assumes that SSWC will hire a local observer to provide the needed full time cons. observation)	\$70,700 \$35,300 \$21,600
N/A	O&M Manual: Similar to Rantoul O&M as per Herb's request	\$20,000
305	Start-Up Assistance: 80 hours at \$150/hr + travel	\$12,900
306	Record Drawings	\$9,000
999	Change order preparation	\$10,400
		\$423,600

Not-To-Exceed fee =

Contract "A" - Well Field =	\$1,500,000
Contract "B" - Raw Water Main =	\$952,260
Contract "C" - Plant =	\$5,479,000
Contract "E" - Equip =	\$1,917,620
Contract "G" - SCADA Work =	\$400,000
Microfiltration Equipment =	\$1,172,000
Contract E-2 - Generator =	\$416,000
Value of all Donohue designed contracts	\$11,836,880

This is an estimate. SEC's number not in yet.

Percentage of construction cost = 3.6%

ORDINANCE CERTIFICATE

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)


I, the undersigned, do hereby certify that I am the duly qualified and acting Clerk of the South Sangamon Water Commission.

I do further certify that the ordinance attached hereto is a full, true, and exact copy of Ordinance No. 10- 110, adopted by the Commission on the 18th day of May, 2010, said Ordinance being entitled:

**AN ORDINANCE APPROVING AN ENGINEERING SERVICES
AGREEMENT WITH DONOHUE & ASSOCIATES, INC.**

I do further certify that prior to the making of this certificate, the said Ordinance was spread at length upon the permanent records of said Commission, where it now appears and remains.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 18th day of May, 2010.


Clerk