



**ENGINEERING SERVICES AGREEMENT**

**Eagle Lake Collection System Capital Planning (Project)**

This Agreement is by and between:

Kandiyohi County (Owner)  
1801 East Highway 12  
Willmar, MN 56201

and

Donohue & Associates, Inc. (Donohue)  
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 W. Gerbitz

Title: Senior Vice President

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

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

**A. PROJECT DESCRIPTION**

The Eagle Lake collection system is owned by the County (Owner). The City of Willmar has operated the system in accordance with the terms of the County-City Agreement originally executed in August 1971. Major system components are 45 years old and some components are nearing their statistical reliable service lives. The probability of necessary capital expenditures to address condition- and/or performance-related concerns is increasing. Moreover, failed components can produce expensive and/or undesirable outcomes – e.g., property damage, personal injury, and environmental damage. The purpose of this Project is to produce a prioritized capital improvement plan aimed at providing reliable service to the Eagle Lake Sanitary District, allowing the County to proactively plan for and address condition- and/or performance-related concerns and avoid costly surprises.

**B. SCOPE OF SERVICES**

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

**Scope Item 1 – Perform Assessments**

- Collaborate with the Owner and the City of Willmar to assess the condition of the Eagle Lake pumping stations, conveyance piping, manholes, and appurtenances.
- Use record drawings, equipment literature, and, where appropriate, field test results to assess the capacity of the Eagle Lake pumping stations and conveyance piping. Collaborate with the Owner and the City of Willmar to establish estimated present-day and projected future (attributed to growth and expansion) flows. Compare the estimated capacity of each major component (e.g., pumping station or pipe reach) with estimated present-day and projected future flows.
- Identify collection system vulnerabilities and assess the risks (likelihood and consequence of failure) associated with those vulnerabilities.

**Scope Item 2 – Evaluate Alternatives**

- Collaborate with the Owner to develop and evaluate alternatives that cost-effectively address present-day and estimated future condition and capacity concerns for the existing and expected future Eagle Lake service area. The evaluations will produce capital cost opinions, annual operating cost opinions, periodic maintenance cost opinions, and non-economic advantages/disadvantages.
- Develop and evaluate alternatives that leverage present-day technologies and/or collection system design philosophies to improve the performance, robustness, and/or life-cycle cost-effectiveness of the Eagle Lake collections system. The evaluations will produce capital cost opinions, annual operating cost opinions, periodic maintenance cost opinions, and non-economic advantages/disadvantages.
- Review the present-day Eagle Lake rate structure and Agreement with the City of Willmar. Develop rate structure and Agreement alternatives aimed at preserving or enhancing the financial fairness to the Eagle Lake collection system users as well as the long-term financial viability of the Eagle Lake collection system. Evaluate the capital and user cost implications of

diverting Eagle Lake flows and loadings to the Owner wastewater treatment facility. Evaluate alternatives and mechanisms to transition “ownership” from the County to the City of Willmar.

**Scope Item 3 – Develop Prioritized Capital Improvement Plan**

- Collaborate with the Owner to develop a prioritized capital improvement plan. This plan will outline a 20-year strategy to provide reliable and cost-effective wastewater conveyance. It will include a schedule of planned capital projects and associated Eagle Lake user rates.

**Scope Item 4 – Conduct Meetings**

- Conduct a Project Initiation Meeting. The purpose of this meeting is to discuss Owner objectives, preferences, and concerns; exchange information; provide a forum to discuss and consider the future situation (growth and expansion); and start collaboration related to alternatives. We expect this meeting will be attended by Kandiyohi County, the Owner, and the City of Willmar.
- Conduct periodic conference calls to review project status, exchange information, request additional information, and review preliminary analyses.
- Conduct a DRAFT Report Review Meeting. The purpose of this meeting is to review and discuss the DRAFT Report. Expected attendees include representatives from Kandiyohi County, the Owner, and the City of Willmar.

**Scope Item 5 – Provide Documentation**

- Submit a DRAFT Report that documents the assessments, evaluations, and prioritized capital improvement plan.
- Submit a FINAL Report that incorporates mutually-agreed-to revisions to the DRAFT Report.

**C. PROJECT TIMING**

1. Donohue shall be authorized to commence the Services set forth herein upon execution of this Agreement. The DRAFT Report will be delivered within six months of receiving authorization to proceed with the Scope of Services.
2. Donohue’s services under this Agreement will be considered complete when Donohue has delivered to Owner the FINAL Report.

**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.
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 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 total cost for these Services and expenses will not exceed \$29,890.
- B. Donohue will bill Owner monthly, with net payment due in 30 days.
- 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 - 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. Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified.

**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.

**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, mold, 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. Performance of construction-related professional services by a third party or the Owner risks misinterpretation or alternate interpretation of the design intent. Owner agrees to hold Donohue harmless from any claims resulting from performance of construction-related professional services by persons other than Donohue.

**10. BETTERMENT.** If any item or component of the Project is required due to omission from the construction documents, Donohue's liability shall be limited to the reasonable costs of correction of the construction, less the cost to the Owner if the omitted item or component had been initially included in the construction contract documents. It is intended by this provision that Donohue will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

**11. 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.

**12. INDEMNIFICATION.** To the fullest extent permitted by law, Owner and Donohue each agree to indemnify the other party and the other party's officers, directors, partners, employees, and representatives, but not defend, from and against losses, damages, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to be

caused by a negligent act, error, or omission of the indemnifying party or any of the indemnifying party's officers, directors, members, partners, agents, employees, or subconsultants in the performance of services under this Agreement. If claims, losses, damages, and judgments are found to be caused by the joint or concurrent negligence of Owner and Donohue, they shall be borne by each party in proportion to its negligence.

To the fullest extent permitted by law, Owner shall indemnify 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, mold, 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.

**13. 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.

Neither Donohue, Donohue's subconsultants, nor their agents or employees shall be jointly, severally or individually liable to the Owner in excess of the compensation to be paid pursuant to this Agreement or two hundred fifty thousand dollars (\$250,000), whichever is greater, by reason of any act or omission, in tort or contract, including breach of contract, breach of warranty or negligence. To the fullest extent permitted by Laws and Regulations, Owner and Donohue waive against each other, and the other's employees, officers, directors, members, insurers, partners, and consultants, 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 this Agreement or the Project, from any cause or causes.

**14. 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. Upon payment for services rendered, Donohue grants Owner a license to use instruments of Donohue's services for the purpose of constructing, occupying or maintaining the Project. 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 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.

**15. 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. 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.

**16. RECORDS RETENTION.** Donohue shall retain on file, for a period of five years following completion or termination of its services, copies of contract documents, final deliverables, and accounting records related to Engineer's services under this Agreement. Upon Owner's request, Donohue shall provide a copy of maintained item to Owner at cost.

**17. AMENDMENT.** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

**18. 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.

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

**20. 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 Substantial Completion, as defined by the construction documents prepared by Donohue, or, if no construction documents are prepared, one year after the submittal date of Donohue's most recent invoice for this Agreement. Any action not brought within that one-year time period shall be barred, without regard to any other limitations period set forth by law or statute.

**21. 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 mutually 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.

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

**23. 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.

**24. 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.

**25. 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.

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