

OPERATION AND MAINTENANCE AGREEMENT

This Operation and Maintenance Agreement (the "Agreement") dated as of _____, 2020, is between the City of New Richland, Minnesota, a municipal corporation (the "Owner"), whose address is City Hall, P.O. Box 57, New Richland, Minnesota 56072, and PEOPLESERVICE, INC., and its successors and assigns ("PeopleService"), whose address is 209 South 19th Street, Suite 555, Omaha, Nebraska 68102.

RECITALS:

WHEREAS, Owner is the owner of a municipal wastewater treatment plant as described in Exhibit A to this Agreement (the "Facilities"); and

WHEREAS, Owner desires to engage PeopleService to operate and maintain the Facilities on behalf of Owner and PeopleService desires to accept such engagement, all upon the terms and conditions hereafter set forth; and

WHEREAS, Owner is authorized by law to enter into this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

ARTICLE I - SCOPE OF SERVICES

1.1 Commencing on January 1, 2021, or such other date mutually acceptable in writing to PeopleService and Owner (the "Effective Date"), PeopleService will provide all routine operation and maintenance of Owner's Facilities on a 7 day per week basis within the design capacity of the Facilities as described in Exhibit A to this Agreement ("Description of Facilities"). The routine operation and maintenance services to be provided by PeopleService are further described in Exhibit B of this Agreement.

1.2 PeopleService will be responsible for expenses incurred in the routine operation and maintenance of the Facilities, including personnel services, communication services (at the treatment plant, Elm Avenue lift station, and Third Street lift station) chemicals (chlorine used the wastewater treatment plant, sulfur dioxide, and ferric chloride), materials, supplies, contracted services laboratory services), insurance, and equipment repair (subject to the limitations contained in Sections 1.3 and 2.1.b of this Agreement).

1.3 PeopleService shall provide all required maintenance to preserve the existing life of all assigned equipment and vehicles of the Facilities. PeopleService will bear the expense of maintenance and repair of all equipment, physical facilities, and vehicles assigned for PeopleService's use, except for major maintenance/repair and capital replacement expenditures as defined in section 2.1 (b), provided that such expense does not exceed a maximum annual maintenance/repair (noncapital) expenditure of \$6,150 for the twelve months ended December 31, 2021. For subsequent contract years, the maximum annual maintenance/repair expenditure will be increased by the C.P.I. adjustment contained in section 4.2 of this Agreement. In performing maintenance and repairs, PeopleService will perform in an economical manner and make all reasonable efforts to remain below the annual maintenance/repair expenditure amount while remaining in compliance with all applicable regulations. PeopleService will refund to Owner any unused monies less than the maintenance/repair expenditure amount. In the event that such expenses approach or exceed this maximum annual amount, PeopleService shall promptly notify Owner. Any repair expenses in excess of the maximum amount set forth in this provision shall be approved by Owner. PeopleService shall invoice Owner the amount of maintenance/repair expenses in excess of the maximum annual maintenance/repair limit set forth in this provision at the end of the 12-month period. Owner shall reimburse PeopleService for such excess expenditures.

1.4 PeopleService will provide properly certified employees for the staffing of Facilities. Backup services will be provided by PeopleService corporate personnel. In addition, PeopleService will be on call 24 hours per day, 7 days per week, for emergency situations.

1.5 PeopleService shall advise Owner and serve as Owner's liaison to regulatory agencies and industrial users in matters related to the operation of the Facilities. However, PeopleService will not act as, or provide, legal counsel in this capacity.

1.6 PeopleService will supervise all regulatory compliance and financial transactions pertaining to the day-to-day operation of the Facilities. Subject to the limitations of this Section 1.6, PeopleService shall operate the Facilities in compliance with state and federal regulatory requirements. PeopleService will pay all fines imposed for process upsets and violation of discharge limits unless the process upsets or violations are attributable to:

- (a) Flows or pollutants which are not within the Design Capabilities of the Facilities; pollutants include, but are not limited to soluble oil, heavy metals, excessive suspended solids and excessive organic loadings;
- (b) The malfunction or failure of equipment which is not solely due to the negligent acts, errors, or omissions of PeopleService;
- (c) Construction activities which are undertaken to improve the wastewater treatment process but which are beyond the operating scope of services of PeopleService as delineated in this Article I; or
- (d) Discharges from industrial facilities in violation of any pretreatment standards applicable to those discharges.

In no event shall PeopleService be responsible for the payment of state or federal fines imposed or damages, attorney fees, and court costs awarded as a result of actions, inactions, process upsets or violations which occurred prior to or existed on the Effective Date of this Agreement, and which are not due solely to the negligence of PeopleService, nor shall PeopleService be responsible for payment of any fines, penalties, damages or attorney's fees resulting from requirements not expressly assumed by PeopleService herein, including any reporting requirements.

1.8 PeopleService shall exercise the due care in performing its obligations and duties under this Agreement which is normally and reasonably provided with respect to similar contract services.

1.9 PeopleService will provide and maintain at all times during the term of this Agreement the following minimum insurance coverage:

- (a) Statutory Workers' Compensation Insurance in compliance with the laws of the state of Minnesota which has jurisdiction of PeopleService employees engaged in the performance of services hereunder; together with Employers Liability coverage in the amount of \$500,000 for each incident;
- (b) General liability coverage of at least \$1,000,000 combined single limit, each occurrence, for bodily injury and property damage with Owner named as additional insured;
- (c) Comprehensive auto liability insurance which shall include \$500,000 combined single limit coverage for bodily injury and property damage; and
- (d) Umbrella liability insurance which shall provide for \$4,000,000 of coverage in addition to the above coverage.

PeopleService will furnish Owner with Certificates of Insurance as evidence that policies providing the required coverage and limits are in full force and effect. Such policies shall provide that no less than thirty (30) days' advance notice of cancellation, termination or alteration shall be sent directly to PeopleService and Owner.

ARTICLE II - RESPONSIBILITIES OF OWNER

2.1 As part of this Agreement Owner agrees to assume the following responsibilities:

(a) Owner shall maintain in full force and effect, in accordance with their respective terms, all guarantees, warranties, easements, permits, licenses and other similar approvals and consents received or granted to Owner as owner of all Facilities and component parts thereof;

(b) Owner shall be responsible for all capital replacement and major maintenance/repair expenditures which are defined as nonrecurring expenditures greater than \$1,000, that Owner determines necessary and required, provided that PeopleService will first be consulted for justification and need;

(c) Owner shall be responsible for filing, obtaining, maintaining and paying for the NPDES permit for discharge of wastewater; and for filing all required reports under the Emergency Planning and Community Right-To-Know Act or any other statute or authority; provided, however, PeopleService shall assist Owner with preparing these filings and shall provide ongoing assistance regarding the maintenance of these permits;

(d) Owner shall at all times provide access to the Facilities for PeopleService, its agents and employees;

(e) Owner shall provide PeopleService the use of all existing equipment owned by Owner, necessary for the operation and maintenance of the Facilities and warrants that such operating equipment is in good condition;

(f) Owner shall be responsible for all damage to the Facilities, components thereof, PeopleService equipment on site, and all resulting liability to any and all third parties, when such damage and/or liability are caused by flood, fire, acts of God or other force majeure events, civil disturbance, extreme cold temperatures, excessive subsoil moisture, or misuse of property to the extent Owner was negligent regarding the misuse of such property;

(g) Owner shall be responsible for all fines imposed for process upsets and violations of discharge limits attributable to the operation and maintenance of the Facilities to the extent set forth in Section 1.6 as well as fines imposed for failure to report as required by Section 2.1(c).

(h) Owner shall designate an individual to act as liaison with PeopleService in connection with the performance of services by PeopleService under this Agreement;

(i) Owner shall be responsible for all property, excise and other taxes assessed on the Facilities; and

(j) Owner shall bear all costs incurred as a result of regulatory requirements not in effect on the Effective Date of this Agreement.

2.2 Owner shall maintain in full force and effect all existing policies of property and general liability insurance pertaining to the Facilities. Owner shall furnish PeopleService with Certificates of Insurance as evidence that such policies are in full force and effect under such policies. Such policies shall provide that no less than thirty (30) days' advance notice of cancellation, termination or alteration shall be sent directly to PeopleService and Owner.

2.3 Owner shall indemnify and hold PeopleService, its officers, employees and agents, harmless under this Agreement for any and all claims, damages, costs or expenses caused by malfunction or failure of the Facilities or any components thereof or other liability or loss including injury, death, or damages to any person or property related in any way to the performance of this Agreement to the extent such claims, damages, costs, expenses, liability or loss are caused by the negligent acts, errors or omissions of Owner. Additionally, Owner shall indemnify PeopleService, its officers, employees and agents harmless for any and all fines, penalties, attorney's fees and damages resulting from Owner's failure to comply with permitting, reporting or other statutory or regulatory requirements which are the responsibility of the Owner. This provision shall survive the termination of this Agreement.

ARTICLE III - RESPONSIBILITIES OF PEOPLESERVICE

3.1 PeopleService shall indemnify and hold Owner, its employees and agents, harmless under this Agreement for all claims, damages, costs or expenses caused by malfunction or failure of the Facilities or any components thereof or other liability or loss including injury, death, or damages to any person or property related in any way to the performance of this Agreement to the extent such claims, damages, costs, expenses, liability or loss are caused by the negligent acts, errors or omissions of PeopleService. This provision shall survive the termination of this Agreement.

ARTICLE IV - COMPENSATION

4.1 As compensation for services rendered by PeopleService pursuant to this Agreement, Owner shall pay to PeopleService the sum of \$11,267 per month during the first twelve (12) months of this Agreement, commencing with the Effective Date. The monthly payment shall be due and payable on the first day of the month in which services are to be rendered. All other compensation to PeopleService is due upon receipt of PeopleService's invoice and payable within thirty (30) days of the date of the invoice.

4.2 The monthly compensation provided in Section 4.1 shall be adjusted on January 1st of each year, beginning on January 1, 2022. The basis for the annual adjustment for January 1, 2022 shall be the change in the Consumer Price Index for All Urban Consumers (CPI-U) as regularly reported by the U.S. Bureau of Labor Statistics, between September 2020 and September 2021, plus one percent (1%). For each year thereafter, the adjustment shall be the change in the CPI-U as reported between September of the year two years preceding the year of adjustment and September of the year immediately preceding the year of adjustment, plus one percent (1%). This annual adjustment shall be done by letter acknowledging the change and will not require official action or contract amendment.

4.3 If for any ninety (90) day consecutive day period during the term of this Agreement the average quality and/or quantity of wastewater influent should significantly change (i.e. 20 percent in flow or loadings) compared to the average experienced during the twelve months

immediately preceding the Effective Date of this Agreement, resulting in increased operating costs, both parties will mutually agree to negotiate an adjustment to reflect the incremental costs. If the parties cannot agree on an adjustment within ninety (90) days following PeopleService's request for an adjustment, either party may terminate this Agreement by giving thirty (30) days written notice to the other party.

ARTICLE V - TERM OF AGREEMENT

5.1 This Agreement shall remain in full force and effect for five (5) years from the Effective Date. The Agreement shall be automatically renewed for successive terms of one (1) year each unless written notice of cancellation is given by either party to the other no less than ninety (90) days prior to the date of expiration.

ARTICLE VI - TERMINATION

6.1 This Agreement may be terminated by either party in the event of the other party's breach of a material term of the Agreement, by the first party's giving written notice of such breach and the second party's failure to correct within thirty (30) days of receipt of such notice.

6.2 PeopleService shall not be in breach under this Agreement for its failure to perform its obligations under this Agreement, to the extent that the performance of such obligations is prevented or delayed by any event which is beyond the reasonable control of PeopleService, including but not limited to Acts of God, strikes, labor disputes, and unavailability of parts. In the event PeopleService claims that its performance is prevented or delayed by any such event, PeopleService will promptly notify Owner of that fact and the circumstances preventing or delaying its performance.

ARTICLE VII - MISCELLANEOUS

7.1 Any temporary or portable equipment which is provided by PeopleService during the term of this Agreement and which is not deemed part of the Facilities shall remain the property of PeopleService upon termination of this Agreement. PeopleService shall not make any expenditures for capital replacements of the Facilities or any component thereof without the prior approval of Owner unless there is an emergency. An emergency exists when such

expenditures are necessary to continue operation of Owner's Facilities or to provide for public health, safety, or environmental protection. If there is an emergency, PeopleService shall provide Owner with verbal notice of the need for the capital replacement expenditure as soon as possible. Owner shall reimburse PeopleService for such emergency capital replacement expenditures in accordance with Section 4.1 of this Agreement.

7.2 This Agreement represents the entire agreement of the parties and may only be modified or amended in a writing signed by both parties.

7.3 Written notices required to be given under this Agreement shall be deemed given when mailed by first class mail to PeopleService, Attention: President, and to Owner, Attention: City Clerk, at the addresses set forth for each in the opening paragraph of this Agreement.

7.4 This Agreement shall be governed by, and construed in accordance with, the laws of the state of Minnesota.

7.5 Neither party shall assign, in whole or in part, any of the rights, obligations or benefits of this Agreement except to a parent, affiliate, or wholly-owned subsidiary, without the prior written consent of the other party, which consent shall not be unreasonably withheld. For purposes of this Section 7.5, an affiliate is defined as a company, the controlling interest in which is owned by the parent of the party.

7.6 PeopleService shall register with and utilize an electronic verification system or program for all of its new hire employees. This electronic verification system or program now known as the "E-Verify Program", but also may include an equivalent federal program designated by the Department of Homeland Security or another federal agency authorized to verify the work eligibility status of employees. PeopleService shall contractually require all subcontractors performing work under this contract to also register and utilize such electronic verification system for employees hired on or after the Effective Date of this Agreement. PeopleService and all of its subcontractors shall use such electronic verification system to determine the work eligibility status of each new employee physically performing any services under this contract. Any person whom the electronic verification system determines is ineligible or not authorized to work in the United States shall not be permitted by PeopleService or a subcontractor to perform services under this contract.

7.7 As a government contractor, PeopleService must comply with the provisions of Executive Order 11246, as amended, and other existing laws related to Equal Employment Opportunity (EEO). Part of our commitment to EEO is to take affirmative action to ensure that job seekers are recruited; job applicants are considered for employment opportunities; and employees are treated without regard to their race, gender, color, religion, national origin, age, sexual orientation, gender identity or expression, genetic information, disability or veteran status or any other status protected by law. In addition, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort and responsibility, under similar working conditions, in the same establishment.

7.8 Owner agrees not to offer employment to or to hire any current or former employee of PeopleService until twelve (12) months has lapsed since the employee's termination from PeopleService. This restriction shall not pertain to employees who worked for the Owner prior to their employment with PeopleService.

7.9 Upon the Effective Date of this Agreement, that certain Operation and Maintenance Agreement dated January 22, 2018 between the Owner and PeopleService shall automatically be terminated and shall be superseded by this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

PEOPLESERVICE, INC.

CITY OF NEW RICHLAND, MINNESOTA

President

Mayor

Attest: _____
Assistant Secretary

Attest: _____
City Clerk

OPERATION AND MAINTENANCE AGREEMENT

EXHIBIT A

Description of Facilities

For purposes of this Agreement, the following water/wastewater utility components are included:

- **WASTEWATER SYSTEM:** Wastewater collection system consisting of three lift stations (Elm Avenue, Third Street and main lift station at treatment plant) and various sewer lines and interceptors of varying sizes from 6 inches to 12 inches. Wastewater Treatment Plant consisting of bar screen, grit chamber, Parshall flume, lift station, primary settling tank, trickling filter, aeration basin, two final clarifiers, chlorine contact chamber, anaerobic digester, sludge storage tank, 2,500-gallon sludge haul wagon (Owner will allow PeopleService to use their tractor to pull the sludge wagon), administrative office with laboratory. Design capacity is 600,000 gallons per day as designated on Owner's NPDES permit.

OPERATION AND MAINTENANCE AGREEMENT

EXHIBIT B

Services to be Provided by PeopleService

Except as otherwise provided in the Operation and Maintenance Agreement, and subject to the limitations set forth therein, PeopleService shall provide the following services to Owner in connection with the Facilities:

1. Provide the professional management, operations, and maintenance of the wastewater collection and wastewater treatment systems, including certified, competent operators to perform daily O&M activities.
2. Procure communication services (for the treatment plant, Elm Avenue lift station, and Third Street lift station), consumable supplies, chemicals (chlorine, sulfur dioxide, and ferric chloride), fuels, materials and services necessary for the safe and efficient operation, as well as payment for items in the day-to-day operations.
3. Monitor, sample, analyze, and report as required by the Minnesota Pollution Control Agency (MPCA) with respect to the NPDES permit for wastewater treatment. Influent testing consisting of CBOD, TSS, total phosphorus, and total mercury testing required by the NPDES permit. Effluent testing consisting of CBOD, TSS, total phosphorus (weekly), total mercury, dissolved mercury (February & July), salty discharge (monthly), as well as the Coli form bacteria (May through October) and annual bio-solids, PeopleService will collect the samples, have them analyzed at a certified laboratory and PeopleService will be responsible for the cost of the laboratory analysis of the samples. For any additional testing required by regulatory agencies but not part of the current NPDES permit, PeopleService shall collect the samples, prepare them for delivery to the outside laboratory and ship them. The Owner will be responsible for the cost of the analysis completed by the laboratory.

4. Provide monthly written report to Mayor/Council summarizing plant performance, production, flows, major projects or accomplishments, and preventive and corrective maintenance activities for the month.
5. Provide assistance to the Owner, Owner's consulting engineer and/or accountant in evaluation of rate structure, capital improvements, major replacement schedules, financial management audit, budgeting, and pretreatment requirements.
6. Act as liaison for the Owner to the MPCA and to the federal E.P.A. in matters relating to compliance with water quality and discharge requirements, and other liaison activities, as required.
7. Provide technical training to the wastewater operator on treatment process, preventive maintenance techniques, and safety awareness.
8. Implement a comprehensive preventative maintenance program in an attempt to ensure the projected life expectancy of plant equipment.
9. Be responsible for effluent quality, including liability for fines and civil penalties should permit conditions be violated, while plant loadings and flows are within the design capability of the wastewater treatment plant, but only in those situations where the permit conditions could have been met using existing in-place plant equipment (subject to the limitations in section 1.7 of this Agreement).
10. Implement and conduct a solids disposal management program that satisfies all MPCA regulatory requirements. This shall include attempts to make arrangements for and secure approved land application sites. Any cost of securing the land application sites, or additional equipment/facilities to maintain compliance with applicable regulations, shall be the responsibility of the Owner.

11. Maintain cleanliness of process equipment and buildings, and general appearance of all buildings and grounds. Conduct operations such that nuisances of sight, sound, and odor are eliminated or minimized to the extent reasonably possible.
 12. Properly secure and protect utility facilities within the limits of available security devices.
 13. Use a professional manner in dealing with community groups concerned with any facet of the operation, including tours and other public relations programs.
 14. Comply with all applicable city, state, and federal laws, regulation, and administrative rules.
 15. Provide assistance to the Owner for following Value Added Services:
 - * Five-Year Wastewater Capital Improvements Assessment and O&M Budgeting Assistance
 - * Inflow/Infiltration (I/I) Analysis of Wastewater Collection System
 - * Wastewater Operations Process Evaluation
 - * Wastewater Rates Study
 - * Industrial Pre-Treatment Investigation
 - * Laboratory Quality Assurance and Quality Control (QA/QC) Program
 - * Customer Service/Public Relations Program
- Financial responsibility for specific items are noted as PS for PeopleService and Owner for Owner.

Wastewater Collection System

Responsibility

- | | |
|---|-------|
| * Repair and/or replacement of manhole covers | Owner |
| * Repair and/or replacement of manhole structures | Owner |
| * Repair of sewer line with an estimated materials cost of under \$500 excluding excavation | PS |

- * Televising of sewer system Owner
- * Flushing of sewer lines PS
(at least 1/4 of the total system per year)
- * Contract Sewer Line Cleaning Owner

Wastewater Treatment Plant

Responsibility

- * Replacement or repair of any item with a cost of under \$500 PS
- * Replacement or repair of items with a cost of over \$500 [Capital outlay improvement] Owner
- * Replacement of any and all consumable items PS
- * Providing of a comprehensive maintenance program PS

Miscellaneous

A - PeopleService will provide the necessary information to complete all forms required through the administration of the wastewater treatment systems. PeopleService will not be required to pay any fees associated with the licenses or permits required by the state agencies. PeopleService will pay all expenses associated with the individual operator certification.

B - PeopleService will not be responsible for any additional costs associated with any construction project or upgrades involving the wastewater systems.

C - For services requested by the Owner and provided by PeopleService that are beyond the Scope of Services contained in this Exhibit B, PeopleService shall charge the Owner at the rate of \$70 per hour between the hours of 8:00 a.m and 5:00 p.m Monday through Friday (except for holidays). At all other times and during holidays, the billing rate shall be \$105 per hour. Hours billed shall include any required travel time. Owner agrees to pay invoices for said charges in compliance with the terms contained in the paragraph 4.1 of this Agreement.