

AGENDA REPORT

DATE August 17, 2004

ITEM AMENDMENT #5 TO WASTEWATER PLANT O&M CONTRACT (O.F. 1010)

INITIATED BY PUBLIC WORKS DEPARTMENT/UTILITIES BRANCH

ACTION REQUESTED APPROVE CONTRACT AMENDMENT

PRESENTED BY JIM REARDEN, PUBLIC WORKS DIRECTOR

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RECOMMENDATION: Staff recommends that the City Commission approve an amendment to the Scope of Work of the Operation and Maintenance contract with Veolia Water North America Operating Services (VWNAOS) to include extension of the term of the contract, installation of minor capital improvements and a financial package to be used for investment in the community.

MOTION: "I move that the City Commission approve Amendment #5 to the Operation and Maintenance contract with Veolia Water North America Operating Services."

SYNOPSIS: The proposed amendment performs five functions: 1) It extends the term of the contract until March 31, 2015; 2) It renews the Community Investment provision of the original contract, requiring a \$400,000 grant/loan package to provide investment in the community; 3) It continues a program to install certain capital improvements at the plant and lift stations; 4) It increases the Repair and Maintenance budget to allow maintenance on the instrumentation improvements, and; 5) It makes a number of clarifications and updates to the contract language.

The current contract expires March 31st, 2005. Staff feels that it is in the City's interest to continue using VWNAOS' services. Staff also feels that it is beneficial to continue to use VWNAOS' expertise and familiarity with our plant in performing capital improvements. The improvements addressed by this amendment are continued improvements to the Instrumentation system and minor capital projects under \$20,000. Funding will come from the Sewer Division and the capital projects performed by VWNAOS will be contingent on the availability of funding from the Sewer Division Capital Improvement budget.

BACKGROUND: VWNAOS has operated the Wastewater Treatment Plant under contract for the City since 1977. Under the contract, VWNAOS first provided only operation and maintenance services. Amendments to the current contract added responsibility for minor capital improvements and installation of a comprehensive instrumentation and control system.

This is Amendment #5 to the contract. Amendment #4 included a detailed study of alternative energy at the WWTP. Amendment #3 extended the term of the contract until March 31, 2005 and added installation of capital improvements and instrumentation systems. Amendment #2 had VWNAOS provide the foundation of Supervisory Control system (completed with Amendment #3). Amendment #1 reduced the contract cost in exchange for exercising the option to extend the contract until March 31, 2000.

AMENDMENT #5 TO OPERATIONS AND MAINTENANCE AGREEMENT

This Amendment is made and entered into this _____ day of August 2004 by and between the City of Great Falls, Montana herein referred to as "CITY", and Veolia Water North America Operating Services, herein referred to as "VWNAOS".

The Operations and Maintenance Agreement between the CITY and VWNAOS dated February 18, 1992 (the "Agreement"), is hereby amended as follows:

- I. Term: The term of the contract shall be extended from March 31, 2005, until March 31, 2015 (the "Extended Term"). In addition, the City may, at its sole discretion, further extend the contract in accordance with MCA 7-5-4301(2)(b)(ii). The terms of Article XII of this Amendment shall become effective immediately but the scope and pricing terms contained herein shall not take effect until April 1, 2005 (i.e., the start of the Extended Term). Amendment #3 to Scope of Work shall end by its own terms on March 31, 2005 and shall not apply on or after April 1, 2005.
- II. Incentive Target Price Increases: The second paragraph of page SC-II-2 of the current Contract is modified to read as follows:

Total ITP payments to VWNAOS during a contract year shall not increase by more than the Consumer Price Index or 7%, whichever is less, over the previous contract year's total ITP payments, unless such cost increases are attributable to:

- Change in scope of work;
- Increased loading to the WWTP of at least 10% from the previous year;
- Expenses due to emergency responses;
- Increases in utility costs;
- Health insurance cost increases as allowed by the terms detailed in part III below of this Amendment;
- Other changes in operation approved by the city.

In these cases, the only payments in excess of the previous year's total payments plus the allowable increase shall be due to the listed expenses and shall be properly documented. The contractor shall be entitled to overhead and profit for these expenses (except utility costs).

- III. Health Insurance Cost Increases: It is recognized by both the City and VWNAOS that Health Insurance costs have and will continue to rise independent of CPI and other common indices. It is the goal of this agreement that neither the City nor VWNAOS be financially impacted unduly by these changes. Therefore, Health Insurance Cost Increases referenced in part II above shall be calculated in accordance to Exhibit A (see attached) of this Amendment. As shown in Exhibit A, the actual total from the April 1, 2004 to March 31, 2005 Incentive Target Price Year for VWNAOS' Health Insurance shall become the Base Year health insurance costs for the calculation of each succeeding year of the ten (10) year contract extension. And, the calculation of each succeeding year's allowable health insurance costs will be VWNAOS' Base Year health

insurance costs multiplied by the ratio of the City's most recently completed Fiscal Year actual cost divided by the City's Base Year cost, or VWNAOS' actual cost, whichever is less. The City's Base Year shall be the City's most recently completed City Fiscal Year prior to VWNAOS' Base Year.

Health Insurance costs shall include medical, dental, vision & mental health and shall mean the total of these costs.

IV. Terms of Payment For Utilities Costs: Page SCII-3, Section 9 - "Utilities", is changed to read as follows:

9, Utilities : At the beginning of each Incentive Target Price Year, the Utilities costs for purposes of payment to the contractor shall be equal to the prior ITP Year's total actual utility costs. At the end of the ITP Year, the Utilities costs shall be changed to reflect the actual total Utilities costs incurred in the ITP Year. And the ITP for that Year shall be modified to reflect the change in the prior year's Utilities costs and the actual Utilities costs incurred. This means the true Incentive Target Price for any given ITP Year cannot be known until the ITP year is ended. Utilities shall include electricity, natural gas, water and telephone services.

V. Sharing of Cost Savings: Any savings realized from modifications or changes to the operations and maintenance of the WWTP or lift stations that are the result of actions or expenses by VWNAOS rather than the City shall be mutually shared between the two parties after VWNAOS has recovered the full cost of its investment on such modifications or changes. The actual split of the savings will be negotiated between the two parties on a project by project basis. Such savings will be calculated to reflect their current value in each ITP Year, which would include Indirect Support and Profit costs. VWNAOS shall submit a request and receive prior approval by the City for any contemplated modifications or changes to the operations and maintenance of the WWTP or lift stations before any such work commences.

VI. Chemical Costs: Page SCII-Page 2. "Chemicals", is modified to read as follows: The actual consumption of chlorine, polymer and chemicals to prevent struvite scaling during the prior year at the actual rate for the contract year, plus the dollar amount for miscellaneous chemicals during the prior year adjusted by the change in the CPI during the prior year.

VII. Scope of Services: The following modifications are made to Section 5 entitled "SCOPE OF SERVICES":

1. Page SCII- Page 5, Section 5(1), Paragraph 1: Change the date of the MPDES Permit to the date of the most recent MPDES Permit, which is February 1, 2000.
2. Page SCII- Page 5, Section 5 (1), Paragraph 3: Change the MPDES expiration date to December 31, 2004; Also, change "Part 5" to read "Part 6" in the last sentence of the paragraph.

3. Modify SCII-5, Page 5, Subsection (2) to read as follows:

Process operations that will be covered by VWNAOS under this Agreement will only include:

Raw Sewage Pumps
Mechanical Bar Screen
Primary Treatment
Activated Sludge
Secondary Settling
Gravity Thickening
Flotation Thickening
Anaerobic Digesters
Centrifuges
Disinfection (Chlorination)
Sludge Pumping Associated with Processes Above
Lift Stations throughout the sanitary and storm sewer collection systems currently on line or contracted for construction at time of contract award. The current list is as follows:

WASTEWATER LIFT STATIONS

<u>L.S. #</u>	<u>ADDRESS</u>
1	600 RIVER DR. NORTH
2	601 RIVER DR. N.
3	11 1ST AVE. N.
4	100 RIVER DRIVE SOUTH
5	1705 39TH ST. S.
6	4904 10TH AVE. SOUTH
7	3500 15TH AVE. S.
8	404 1/2 20TH AVE. S.
9	5102 1ST AVE. S.
10	4800 7TH AVE. N.
12	601 RIVER DR. S.
14	512 6TH ST. S.W.
15	810 10TH AVE. S. W.
16	1326 5TH ST. N.W.
17	4600 GIANT SPRING RD.
18	1716 3RD AVE. S.W.
19	1601 2ND AVE. S.W.
20	835 13TH STREET S.W.
21	14 ST S.W. & MARKET PLACE DR.
22	2800 TERMINAL DR.
23	3114 S. LOWER RIVER ROAD
24	704 JUNIPER AVE
25	3015 COYOTE LANE

27 4120 NORTH STAR BLVD.
28 1717 WHISPERING RIDGE DRIVE
29 3503 2nd STREET NE

4. Page SCII-6, Section 5(3): Change the entire paragraph to read only as follows: “The contractor shall supply vehicles necessary to complete routine WWTP and lift stations operations and maintenance. The cost to operate and maintain all vehicles and equipment shall be paid by the Contractor.
- VIII. Use of Employment Cost Index: On page SCII-3, replace the phrase “Employment Cost Index (ECI) All Private Non-Farm, Western Region Index” to “Consumer Price Index” as defined in Article XIII below.
- IX. Performance Bond: Page SCII-10, Section 7: Change the Performance Bond from “equal to 100 percent (100%) of the first year contract amount” to “equal to the current Incentive Target Price in each contract year.”
- X. Repair and Maintenance: It is recognized by the CITY and VWNAOS that there will be additional needs for R&M funds to maintain hardware and software for the Instrumentation & Control systems that have been installed and implemented. Therefore, The Repair and Maintenance budget shall be increased by \$8,000 for the ITP contract year beginning April 1, 2005. This increase will occur under the terms specified in CHANGE IN SERVICE SCOPE OR SERVICE TYPE as described on page SCII – 10 of the contract. The planned use for the additional funds shall be included in the annual budget of maintenance and repair activities that is submitted to the CITY as required by item 4), B), on page SCII – 6 of the contract.
- The first year’s (April 1, 2005 to March 31, 2006) total R&M Budget shall be equal to the previous (April 1, 2004 to March 31, 2005) R&M Budget increased by the Consumer Price Index, plus \$8,000 for additional R&M for the Instrumentation & Control Systems that have been developed and implemented via Contract Amendment #3.
- Each succeeding ITP year’s R&M Budget shall be the previous ITP year’s actual R&M expenditures increased by the CPI. In addition, any unexpended portion of this annual budget shall be carried over to the next year’s R&M Budget so long as the total carry over does not exceed 5% of the current annual allocation. However, any portion that is carried over shall not be subject to the CPI increase. Funds that are carried over will be tracked and reported as part of the annual ITP Reconciliation. And at the termination of the contract, any remaining portion of these funds shall be refunded to the City in full.
- XI. Miscellaneous Minor Capital Improvements: VWNAOS shall provide minor capital improvements not to exceed \$150,000 per year for the first Incentive Target Price year beginning April 1, 2005 and ending March 31, 2006. In addition, any unexpended portion of this annual budget shall be carried over to the next year’s Miscellaneous Capital Improvements Budget. And, at the termination

of the contract, any unspent portion of these funds shall be refunded to the City in full. The improvements (hereafter referred to as “project” or “projects”) shall meet the CITY’s accounting definition of a capital improvement and each individual project shall not exceed \$20,000. VWNAOS shall provide a list of projects each year including a budget for each.

VWNAOS and the CITY shall agree on a list of proposed projects for each ITP Year prior to commencing any project for that year. Should it become apparent, during the progress of a project being performed, that the budget for that project will be exceeded, VWNAOS shall immediately notify the CITY.

Implementation of any or all of the described projects is contingent on the availability of funding. This agreement is not a guaranty that any funds will be available for any project. Further, the CITY retains the right to discontinue or increase funding for any or all projects at its sole discretion. In such case that funding is discontinued after expenses have been incurred, the CITY will reimburse expenses as described below.

Following agreement on the list of projects that will be completed each year, the CITY shall, each month, pay to VWNAOS an amount equal to the estimated budget for the agreed-upon projects divided by twelve (12). VWNAOS shall provide separate billing for this amount.

The CITY will pay actual expenses for material and contract labor (labor contracted by VWNAOS and performed by non-VWNAOS personnel to complete the project) with a 15% Indirect Support Cost mark-up and 10% Profit mark-up.

Instrumentation & Control costs for VWNAOS personnel, other than the Great Falls plant staff, shall be at the following rates with no markup: O&M Tech Specialist - \$50/hr.; I&C Designer, PLC Programmer, or Engineer - \$100/hr for the ITP year starting April 1, 2005. Each year, thereafter, these rates shall increase by the CPI.

The costs for these small capital improvement projects shall not be included in the annual Incentive Target Price calculation or reconciliation process.

Work to be performed under this section shall include all labor and materials for complete installation for the various components in accordance with accepted industry standards and all codes and regulations in effect in the State of Montana and the City of Great Falls at the time this amendment is signed. All components shall be appropriately installed and fully functional. All projects, in their entirety, shall become the property of the CITY.

XII. Upon execution of this Amendment or at the direction of the City, VWNAOS shall pay the City the following sums within 30 days of the request:

1. The sum of \$200,000, which the City shall have no obligation to repay unless the Agreement is terminated for any reason prior to the end of the

Extended Term in which event the City shall pay VWNAOS in accordance with Article XII, Section 3 below.

2. The sum of \$200,000, which shall be loaned to the City at the rate of 5% per annum (the "Loan") and shall be repaid by the City to VWNAOS monthly beginning with the first payment of Compensation to VWNAOS under the Extended Term (See Exhibit "B" for loan payment schedule). In the event that the Agreement is terminated for any reason prior to the end of the Extended Term, the City shall pay VWNAOS in accordance with Article XII, Section 3 below.
 3. In the event that this Amendment or the Agreement are terminated for any reason prior to the end of the Extended Term, the City shall pay VWNAOS the termination payment set forth in Exhibit "C" on the termination date, which encompasses both Sections 1 and 2 under this Article XII. Exhibit C attached assumes the payment date is August 1, 2004. Exhibit C shall be revised by the parties as appropriate to reflect the date that the monies described in Sections 1 and 2 above are actually paid to the City.
- XIII. All references to "Consumer Price Index" or "CPI" contained herein shall be to the Consumer Price Index-All Urban Consumers (U.S. All items, 1982-84=100)(Series Id: CUUR0000SA0; Not Seasonally Adjusted)
- XIV. Facility Enhancements: VWNAOS may submit a request for modifications or changes it deems beneficial to the operations and/or maintenance of the WWTP or lift stations. For a project to qualify under this provision, VWNAOS must submit a proposal identifying the scope, cost, means of funding and benefits associated with the project. If accepted, the City and VWNAOS will negotiate the terms of the capital investment cost recovery and the split between the two parties relative to the future cost savings associated with the project. The intent of the Sharing of Cost Savings provision is to provide an incentive for VWNAOS to continually seek innovative initiatives which improve the overall operations and maintenance of the WWTP and Lift Stations, while reducing costs. All improvements to the facilities shall remain the City's sole property after termination of this Agreement unless otherwise specifically agreed to in writing. All work performed under this Article shall be done in accordance with State Law and City Codes.
- XV. All terms of the Agreement not specifically amended or modified by this instrument shall remain unmodified and in full force and effect.

WHEREFORE, both parties indicate their approval of this Amendment by their signature below and each party warrants that all action necessary to bind the parties to the terms of this Agreement has been taken.

**VEOLIA WATER NORTH AMERICA
OPERATING SERVICES, INC.**

By: _____

Name: _____

Title: _____

Date: _____

CITY OF GREAT FALLS

(SEAL & ATTEST)

By _____
John W. Lawton
City Manager

By _____
Carolyn Horst
Deputy City Clerk

APPROVED FOR LEGAL CONTENT:

By _____
David V. Gliko
City Attorney
