

FAIRWAYS METROPOLITAN DISTRICT

141 Union Boulevard, Suite 150
Lakewood, Colorado 80228-1898
Tel: 303-987-0835 • 800-741-3254
Fax: 303-987-2032

NOTICE OF REGULAR MEETING AND AGENDA OF THE BOARD OF DIRECTORS OF THE FAIRWAYS METROPOLITAN DISTRICT AND OF THE WASTEWATER UTILITY ENTERPRISE

| <u>Board of Directors:</u> | <u>Office:</u> | <u>Term/Expiration:</u> |
|----------------------------|---------------------|-------------------------|
| John Pavlovic | President/Archivist | 2022/May 2022 |
| Gerald “Jerry” Schram | Treasurer | 2023/May 2023 |
| Wilmer “Catt” Wilson | Assistant Secretary | 2023/May 2023 |
| VACANT | Assistant Secretary | 2022/May 2022 |
| VACANT | Assistant Secretary | 2022/May 2022 |
| David Solin | Secretary | |

DATE: April 12, 2021 (Friday)

TIME: 5:30 P.M.

PLACE: **VIA Conference Call ONLY**

****NOTE: given current events and current advice and directives from local, state and federal jurisdictions related to COVID-19, this meeting is being held by teleconference only. Board members, consultants and members of the public may participate by teleconference by utilizing the following teleconference information: Conference Line: 1-877-250-3814; Passcode: 5592663.***

I. ADMINISTRATIVE MATTERS

- A. Present Disclosures of Potential Conflicts of Interest.

- B. Approve Agenda; confirm location of meeting and posting of meeting notices.

- C. Review and approve Minutes of the February 15, 2021 Special Meeting (enclosure).

II. COMMUNITY COMMENTS

- A.

III. FINANCIAL MATTERS

- A. Review and ratify the approval of the payment of claims as follows (enclosures):

| Fund | Period ending Feb. 11, 2021 | Period ending March 26, 2021 |
|---------------------|--------------------------------|---------------------------------|
| General | \$ 4,327.67 | \$ 4,047.77 |
| Capital | \$ -0- | \$ -0- |
| Enterprise | \$ 12,235.20 | \$ 10,034.48 |
| Total Claims | \$ 16,562.87 | \$ 14,082.25 |

IV. LEGAL MATTERS

- A. Discuss status of Memorandum of Understanding with Lake Valley Golf Club.
-

V. ENGINEERING / OPERATIONS MATTERS

- A. Operator's Report (to be distributed).
-
- B. Engineer's Report (to be distributed).
-
- C. Review and ratify approval of proposal from Element Engineering, LLC for pond cover engineering and Colorado Department of Public Health and Environment ("CDPHE") (enclosure).
-
- D. Review and ratify approval of 2021 Professional Services Agreement for Operator in Responsible Charge, between the District and ORC Water Professionals, Inc. (enclosure).
-

VI. OTHER MATTERS

- A. _____

VII. ADJOURNMENT **THE NEXT REGULAR MEETING IS SCHEDULED FOR JULY 12, 2021.**

RECORD OF PROCEEDINGS

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE FAIRWAYS METROPOLITAN DISTRICT AND THE BOARD OF DIRECTORS OF THE WASTEWATER UTILITY ENTERPRISE HELD FEBRUARY 15, 2021

A Special Meeting of the Board of Directors of the Fairways Metropolitan District (the “District”) and the Board of Directors of the Wastewater Utility Enterprise (referred to hereafter collectively as the “Board”) was duly called and held on Monday, the 15th day of February, 2021, at 5:30 p.m. The meeting was open to the public.

The meeting was held via conference call due to the State of Emergency declared by Governor Polis and Public Health Order 20-23 Implementing Social Distancing Measures, and threat posed by the COVID-19 coronavirus.

ATTENDANCE

Directors In Attendance Were:

John Pavlovic
Gerald “Jerry” Schram
Wilmer “Catt” Wilson

Also In Attendance Were:

David Solin; Special District Management Services, Inc.

Nick Marcotte, P.E.; Element Engineering, LLC

Tom George, Esq.; Spencer Fane LLP

DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

Disclosure of Potential Conflicts of Interest: Mr. Solin noted that a quorum was present and discussed the requirements of Colorado law to disclose any potential conflicts of interest or potential breaches of fiduciary duty of the Board of Directors to the Secretary of State. The members of the Board were requested to disclose any potential conflicts of interest with regard to any matters scheduled for discussion at this meeting, and incorporated for the record those applicable disclosures made by the Board members prior to this meeting in accordance with statute. There were no additional disclosures made.

RECORD OF PROCEEDINGS

ADMINISTRATIVE MATTERS

Agenda: Mr. Solin reviewed with the Board a proposed Agenda for the District's Special Meeting.

Following discussion, upon motion duly made by Director Schram, seconded by Director Pavlovic and, upon vote, unanimously carried, the Agenda was approved, as presented.

Board Meetings via Telephone: Mr. Solin discussed that, due to the concerns over safety, Board meetings would be conducted via telephone until such time as it is deemed safe to meet in person again. He pointed out that all telephone meetings will remain open to the public, and that the information for joining the teleconference has been posted.

Designation of Posting Location: Following discussion, upon motion duly made by Director Schram, seconded by Director Pavlovic, and upon vote unanimously carried, the Board determined that notices of meetings of the District Board required pursuant to Section 24-6-402(2)(c), C.R.S., shall be posted within the boundaries of the District as least 24 hours prior to each meeting at the following locations: Lake Valley Mailbox Board, All four Bulletin Boards: Fairways Drive, Niblick Drive, Golf Club Drive and Spyglass Lane.

Minutes: The Board reviewed the Minutes of the October 12, 2020 Special Meeting.

Following discussion, upon motion duly made by Director Schram, seconded by Director Pavlovic and, upon vote, unanimously carried, the Board approved the Minutes of the October 12, 2020 Special Meeting.

COMMUNITY COMMENTS

There were no community comments.

ENGINEERING/ OPERATIONS MATTERS

Operator's Report: The Board entered into discussion regarding the recent upgrades and improvements that have resulted from those upgrades.

Engineer's Report: Mr. Marcotte discussed with the Board the pond cover project. The Board directed Mr. Marcotte to prepare a proposal for the necessary permitting activities with the Colorado Department of Public Health and Environment related to approval for installation of the pond cover.

RECORD OF PROCEEDINGS

FINANCIAL MATTERS

Claims: Mr. Solin reviewed with the Board the payment of claims through the periods ending as follows:

| Fund | Period ending Oct. 16, 2020 | Period ending Nov. 13, 2020 | Period ending Dec. 16, 2020 | Period ending Jan. 20, 2021 |
|---------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| General | \$ 3,824.36 | \$ 4,215.18 | \$ 9,293.98 | \$ 3,146.72 |
| Capital | \$ -0- | \$ -0- | \$ -0- | \$ -0- |
| Enterprise | \$ 30,602.27 | \$ 9,480.97 | \$ 8,915.26 | \$ 7,998.62 |
| Total Claims | \$ 34,426.63 | \$ 13,696.15 | \$ 18,209.24 | \$ 11,145.34 |

Following review and discussion, upon motion duly made by Director Schram, seconded by Director Pavlovic and, upon vote, unanimously carried, the Board ratified approval of the payment of the claims, as presented.

Unaudited Financial Statements: Mr. Solin presented the unaudited financial statements and cash position schedule for the period ending December 31, 2020.

Following review and discussion, upon motion duly made by Director Schram, seconded by Director Pavlovic and, upon vote, unanimously carried, the Board accepted the unaudited financial statements and cash position schedule for the period ending December 31, 2020.

LEGAL MATTERS

Memorandum of Understanding (“MOU”) between the District and Lake Valley Golf Club (“LVGC”): Director Pavlovic noted for the Board he is meeting with LVGC in March 2021. It was also noted Attorney George will work with Director Pavlovic after the March meeting to work on the MOU.

OTHER MATTERS

There were no other matters to discuss at this time.

ADJOURNMENT

There being no further business to come before the Board at this time, upon motion duly made by Director Schram, seconded by Director Pavlovic and, upon vote, unanimously carried, the meeting was adjourned.

Respectfully submitted,

By: _____
Secretary for the Meeting

RECORD OF PROCEEDINGS

THESE MINUTES APPROVED AS THE OFFICIAL FEBRUARY 15, 2021
MEETING MINUTES OF THE FAIRWAYS METROPOLITAN DISTRICT BY
THE BOARD OF DIRECTORS SIGNING BELOW:

John Pavlovic

Gerald Schram

Wilmer Wilson

Fairways Metropolitan District
February-21

| Vendor | Invoice # | Date | Due Date | Amount | Expense Account | Account Number |
|--------------------------------------|---------------|------------|-----------|--------------|----------------------------|----------------|
| DPC Industries, Inc | 737000163-21 | 1/14/2021 | 2/11/2021 | \$ 1,446.03 | Chemicals | 4-782 |
| DPC Industries, Inc | DE73001119-20 | 12/31/2020 | 2/11/2021 | \$ 100.00 | Chemicals | 4-782 |
| Freedom Mailing Service, Inc | 39704 | 1/6/2021 | 2/11/2021 | \$ 190.92 | Billing Service | 1-616 |
| Lake Valley Golf Club | 21-Feb | 2/11/2021 | 2/11/2021 | \$ 550.00 | LVGC Maintenance Agreement | 4-786 |
| ORC Water Professionals, Inc | 223671 | 1/31/2021 | 2/11/2021 | \$ 569.00 | Permits and Testing | 4-780 |
| ORC Water Professionals, Inc | 223671 | 1/31/2021 | 2/11/2021 | \$ 4,833.82 | Plant Maintenance & Repair | 4-750 |
| ORC Water Professionals, Inc | 223671 | 1/31/2021 | 2/11/2021 | \$ 1,082.55 | Plant Operator | 4-755 |
| Special District Management Services | Jan-21 | 1/31/2021 | 2/11/2021 | \$ 97.25 | Supplies and Expenses | 1-690 |
| Special District Management Services | Jan-21 | 1/31/2021 | 2/11/2021 | \$ 408.50 | Billing Service | 1-616 |
| Special District Management Services | Jan-21 | 1/31/2021 | 2/11/2021 | \$ 1,708.00 | Accounting | 1-612 |
| Special District Management Services | Jan-21 | 1/31/2021 | 2/11/2021 | \$ 1,881.00 | Administrative Services | 1-614 |
| Spencer Fane, LLP | 1020475 | 1/31/2021 | 2/11/2021 | \$ 42.00 | Legal | 1-675 |
| UNCC | 221010555 | 1/31/2021 | 2/11/2021 | \$ 10.56 | Utilities | 4-790 |
| Xcel Energy | 716452619 | 1/18/2021 | 2/11/2021 | \$ 3,643.24 | Utilities | 4-790 |
| | | | | \$ 16,562.87 | | |

Fairways Metropolitan District
February-21

| | General | Capital | Enterprise | Totals |
|--|-------------|---------|--------------|--------------|
| Disbursements | \$ 4,327.67 | \$ - | \$ 12,235.20 | \$ 16,562.87 |
| Payroll | | | | \$ - |
| Payroll Taxes (Annually) | \$ - | | | \$ - |
| Total Disbursements from Checking Acct | \$ 4,327.67 | \$ - | \$ 12,235.20 | \$ 16,562.87 |

Fairways Metropolitan District
March-21

| Vendor | Invoice # | Date | Due Date | Amount | Expense Account | Account Number |
|--------------------------------------|-----------------|-----------|-----------|--------------|----------------------------|----------------|
| CO Dept of Public H & E | WUDR212006079 | 3/11/2021 | 3/26/2021 | \$ 1,708.00 | Permits and Testing | 4-780 |
| CO Dept of Public H & E | WUSA212006078 | 3/11/2021 | 3/26/2021 | \$ 1,574.00 | Permits and Testing | 4-780 |
| DPC Industries, Inc | DE73000030-21 | 1/31/2021 | 3/26/2021 | \$ 100.00 | Chemicals | 4-782 |
| Element Engineering, LLC | 0004-01 | 2/28/2021 | 3/26/2021 | \$ 520.00 | Engineering | 4-677 |
| Gerald Schram* | 2.15.21 Meeting | 3/26/2021 | 3/26/2021 | \$ 92.35 | Director Fees Payable | 1-314 |
| John Pavlovic* | 2.15.21 Meeting | 3/26/2021 | 3/26/2021 | \$ 92.35 | Director Fees Payable | 1-314 |
| Lake Valley Golf Club | 21-Mar | 3/26/2021 | 3/26/2021 | \$ 550.00 | LVGC Maintenance Agreement | 4-786 |
| ORC Water Professionals, Inc | 223850 | 2/28/2021 | 3/26/2021 | \$ 569.00 | Permits and Testing | 4-780 |
| ORC Water Professionals, Inc | 223850 | 2/28/2021 | 3/26/2021 | \$ 1,082.55 | Plant Operator | 4-755 |
| Patterson, Stanley | 3262021 | 2/9/2021 | 3/26/2021 | \$ 395.00 | Sewer Service Fees | 4-531 |
| SDA | SDA 2021 | 2/10/2021 | 3/26/2021 | \$ 392.77 | Insurance & Bonds | 1-670 |
| Special District Management Services | Feb-21 | 2/28/2021 | 3/26/2021 | \$ 112.45 | Supplies and Expenses | 1-690 |
| Special District Management Services | Feb-21 | 2/28/2021 | 3/26/2021 | \$ 473.50 | Billing Service | 1-616 |
| Special District Management Services | Feb-21 | 2/28/2021 | 3/26/2021 | \$ 1,078.00 | Accounting | 1-612 |
| Special District Management Services | Feb-21 | 2/28/2021 | 3/26/2021 | \$ 1,285.00 | Administrative Services | 1-614 |
| Spencer Fane, LLP | 1024689 | 2/28/2021 | 3/26/2021 | \$ 429.00 | Legal | 1-675 |
| UNCC | 221020570 | 2/28/2021 | 3/26/2021 | \$ 7.92 | Utilities | 4-790 |
| Wilmer Wilson | 2.15.21 Meeting | 3/26/2021 | 3/26/2021 | \$ 92.35 | Director Fees Payable | 1-314 |
| Xcel Energy | 720365333 | 2/17/2021 | 3/9/2021 | \$ 3,528.01 | Utilities | 4-790 |
| | | | | \$ 14,082.25 | | |

Fairways Metropolitan District
March-21

| | General | Capital | Enterprise | Totals |
|--|-------------|---------|--------------|--------------|
| Disbursements | \$ 3,770.72 | \$ - | 10,034.48 | \$ 13,805.20 |
| Payroll | \$ 277.05 | | | \$ 277.05 |
| Payroll Taxes (Annually) | \$ - | | | \$ - |
| Total Disbursements from Checking Acct | \$ 4,047.77 | \$ - | \$ 10,034.48 | \$ 14,082.25 |

February 16, 2021

Mr. David Solin
District Manager
Fairways Metropolitan District
141 Union Boulevard, Suite 150
Lakewood, CO 80228

RE: Proposal for Professional Engineering Services
Pond Cover Engineering and CDPHE Permitting

Dear Mr. Solin:

Element Engineering, LLC is pleased to present this proposal for the above-referenced project. This proposal lists our Project Understanding, Scope of Work, Deliverables, Schedule, Exclusions, Fee, and Additional Work Tasks and Billing.

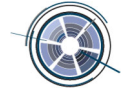
PROJECT UNDERSTANDING

It is our understanding that the Fairways Metropolitan District wishes to cover the settling pond of the Fairways Metropolitan District Wastewater Treatment Plant (FMDWWTP). In order complete this work Colorado Department of Public Health and Environment (CDPHE) permitting and review is required.

SCOPE OF WORK

The proposed scope of work is to complete permitting of the settling pond cover system. In order to obtain CDPHE approval for these items, the following efforts are required:

- Regulation 22, Section 8 Site Application Report
 - Fee request form
 - Site application form
 - Site Application Engineering Report per *CDPHE Regulation 22, Section 8*
 - 30% Concept Plans
 - Notify local agencies of project by sending site application to each agency (county health department, 208 agency)
 - Respond to CDPHE questions and comments in order to obtain approval
- Process Design Report
 - Process Design Report per CDPHE per *CDPHE Design Criteria for Domestic Wastewater Treatment Works (WPC-DR-1)*
- 100% Plans and Specifications
 - Site plan, specifications for cover, etc.



DELIVERABLES

The following deliverables will be provided:

- CDPHE site application approval
- CDPHE Process Design Report and 100% Plans and Specifications approval
- As-built certification based on contractor as-built documents

SCHEDULE

The following schedule is anticipated (note dates may change at the client's request):

| | |
|-----------------------------------|------------------------------------|
| All Submittal Documents to CPDHE: | 45 Days after Approval of Proposal |
| CDPHE Review Time: | Unknown* |

**CDPHE review time has significantly increased due to workload and backlog. Review time may be 120 - 160 days or more for the submittals.*

EXCLUSIONS AND ASSUMPTIONS

The following assumptions were made in preparing this proposal:

- Preliminary Effluent Limits (PELs) are assumed not to be required.
- Boulder County Location and Extent Review is not considered to be required.
- The owner must pay CDPHE review fees estimated at \$645 for the Site Application and \$700 for the Design Review. These fees are not included in this proposal.

FEES

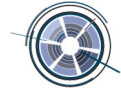
The proposed fee for this project shall not exceed \$7,500 using the rate schedule currently approved by FMD.

ADDITIONAL WORK TASKS AND BILLING

Additional work tasks can be completed on a Time and Materials basis.

Invoices will be sent monthly for time expended. Accounts will be due and payable within thirty (30) days after date of invoice.

Whenever the account is more than thirty (30) days delinquent, Element Engineering may suspend any further work called for until such account is made current. The fact that Element Engineering may continue to work beyond that time, shall not be deemed to be a waiver of its rights hereunder. This Agreement may be terminated by the client at any time.



If the foregoing is satisfactory to you, please sign a copy of this letter and return a PDF or hard copy for our files. Element Engineering looks forward to continuing a professional relationship with the Fairways Metropolitan District.

Sincerely,

ELEMENT ENGINEERING, LLC

Nicholaus P. Marcotte, P.E.
President

APPROVED and ACCEPTED this _____

day of 02 / 17 / 2021, 2021

By: _____

For: _____

| | |
|--------------------------------|--|
| TITLE | Pond Cover Permitting Approval |
| FILE NAME | FWMD Proposal - Pond Covers.pdf |
| DOCUMENT ID | b3ec3d6a9e5d41d8b909d1e295367918c4aa23ef |
| AUDIT TRAIL DATE FORMAT | MM / DD / YYYY |
| STATUS | ● Completed |

Document History



SENT

02 / 17 / 2021
22:37:28 UTC

Sent for signature to John Pavlovic (puduser@comcast.net)
from dsolin@sdmsi.com
IP: 50.78.200.153



VIEWED

02 / 17 / 2021
23:54:25 UTC

Viewed by John Pavlovic (puduser@comcast.net)
IP: 71.196.136.187



SIGNED

02 / 17 / 2021
23:57:34 UTC

Signed by John Pavlovic (puduser@comcast.net)
IP: 71.196.136.187



COMPLETED

02 / 17 / 2021
23:57:34 UTC

The document has been completed.

Dear David Solin,

ORC Water Professionals is pleased to continue providing services for your facility in 2021 and future years to come.

We are committed to your facility and to demonstrate our devotion we are offering this renewal agreement over an extended four (4) year term. This extended agreement will ensure you the same rate over the extended term. Rates would only change if significant regulatory revisions occur throughout the term.

Please find our professional services agreement packet for January 1, 2021 through December 31, 2024 to include our scope of services, compensation schedule, rate sheet and compliance addendum. To approve this agreement, please sign the signature page (page 7) and kindly return it via email to info@orcwater.com. If requested a paper copy of this packet can be mailed to you.

Please contact me if you have any questions. We look forward to continuing our professional relationship.

Sincerely,



Tom Schubert
ORC Water Professionals Inc
Office: 720 287-0605
Cell: 303 912-2087



PROFESSIONAL SERVICES AGREEMENT

CLIENT: Fairways Metro District
141 Union Blvd., Ste. 140
Lakewood, CO 80228

FACILITY:

CONSULTANT: ORC Water Professionals Inc.
11919 West I-70 Frontage Rd Ste. 116A
Wheat Ridge, CO 80033
Phone: 720-287-0605

TERM: January 1, 2021– December 31, 2024

INITIAL TERM:

The initial term of this Agreement shall be from January 1, 2021 to December 31, 2024. The Client and Consultant may negotiate to extend the term of this Agreement and the terms and conditions under which the relationship shall continue.

If the Commencement Date is other than the first of the month, the Monthly Service Fee for any partial month during the Term shall be prorated and calculated on a daily basis.

SECTION 1 - ENGAGEMENT: Client agrees to employ Consultant and Consultant accepts such engagement on the terms and conditions set forth in this Professional Services Agreement (this "Agreement").

- 1.1 **Employment Eligibility:** The Agreement is subject to, and Consultant shall comply with, the provisions of CRS 8-17.5-101 et seq. Consultant certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Contract and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c). Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Consultant (a) shall use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Consultant has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply



with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Consultant participates in the State program, Consultant shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Consultant has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Consultant fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Consultant shall be liable for damages.

SECTION 2 - SCOPE OF SERVICES: Consultant agrees to perform Basic Services and Additional Services, if requested (collectively, "**Services**"), in accordance with the following descriptions, definitions, terms and conditions:

- 2.1. "**Monthly Operations and Maintenance**" shall mean those services described and set forth in Addendum "A" [**Scope of Services**] attached hereto and made a part hereof.
- 2.2. "**Additional Services**" shall mean those services performed by Consultant not described in Addendum "A" and which have been expressly authorized by Client pursuant to a written or verbal request for Additional Services.
- 2.3. "**Reimbursable Expenses**" shall mean reasonable out-of-pocket costs incurred by Consultant in the performance of Consultant's Services, including postage, delivery charges, parts, equipment, analysis etc.
- 2.4. "**Facilities**" shall mean Client's Water System, Wastewater System, grounds, appurtenances, and/or site where work is to be performed by Consultant hereunder.
- 2.5. "**Work**" shall mean any Services to be performed by Consultant hereunder.

SECTION 3 - COMPENSATION: Client agrees to pay Consultant in accordance with the following descriptions, definitions, terms and conditions:

- 3.1. **Monthly Operations and Maintenance:** Compensation for Monthly Operations and Maintenance (O&M), will be as defined in Addendum "B" [**Compensation Schedule**] attached hereto and made a part hereof, plus Reimbursable Expenses.
- 3.2. **Additional Services:** Compensation for Additional Services will be charged (i) on a lump sum basis to be agreed upon in writing by Client and Consultant prior to the commencement of the Additional Services, or (ii) at Client's option, on the basis of actual hours expended by Consultant's personnel and billed at Consultant's Standard Hourly Rates set forth in Addendum "C" [**Rate Sheet**] attached hereto and made a part hereof, plus in either case Reimbursable Expenses.
- 3.3. **Reimbursable Expenses:** All Reimbursable Expenses will be itemized on Consultant's invoices.
- 3.4. **Regulatory Adjustments:** The Monthly Service Fee may also be adjusted as a result of changes in any legal requirement. Should the Operation and Maintenance Costs increase solely as a direct result of changes in any Legal Requirement which occur and become effective during the Term, the Monthly Service Fee shall be increased by an amount equal to the actual costs necessary to comply appropriately with such legislative or regulatory changes, as determined by the Consultant



and approved by the Client. The Consultant shall not proceed with changes to operations without the express direction of the Client, unless mandated by State or Federal Rules and Regulations.

- 3.5 **Facility Operation:** If the Client does not provide adequate resources to legally operate the facilities, the Client will be notified by mail and will have seven days to rectify the situation. If the situation is not rectified, the Consultant will have the option of increasing their services at a proportional fee or relieving themselves of the client. It is the Consultant's hope that communications would proceed to resolve any issues.
- 3.6 Regulation 100 requires that all operational decisions are reserved to the certified operator in responsible charge, in this case the Consultant. The Client must ensure that all process control and/or facility integrity decisions about water quality or quantity or wastewater effluent quality or quantity that may affect public health or environment are made by either a certified operator in responsible charge or by another operator certified at a level equal to or above the classification of the facility he or she is operating in accordance with the facility's written operating plan.

SECTION 4 - INVOICING: Consultant will invoice Client monthly, based on Services completed. Invoices will show the percentage of Services completed and the percentage of Services remaining to be performed, if applicable. Client will remit payment to Consultant within thirty days following receipt of Consultant's invoice. If Client fails to make any payment owing to Consultant within said 30-day period and such failure is not cured by Client within five (5) days following written notice thereof, Consultant may suspend its performance under this Agreement.

SECTION 5 - PERFORMANCE STANDARDS: Services performed by Consultant will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession. Consultant will be responsible for all data, interpretations and recommendations made by Consultant. Consultant shall not be responsible for modifications made by others to Consultant's data or for loss or damages resulting from Client's failure to follow Consultant's interpretations and recommendations.

SECTION 6 - SUBORDINATION OF LIENS: Consultant acknowledges and agrees that all liens, rights and interest, if any, owned, claimed or held, or to be owned, held or claimed by Consultant against the Facilities, or any improvements, fixtures or furnishings now or hereafter constituting part of the Facilities, are and shall be subordinate and inferior to the liens and security interests of any mortgage, deed of trust, assignment or other security instrument now or hereafter encumbering the Facilities, and all amendments, renewals, modifications, consolidations, refinancing or extensions thereof.

SECTION 7 - INSURANCE: Consultant shall maintain (and shall cause all sub-consultants engaged by Consultant to maintain) throughout the performance of the Services insurance with companies acceptable to Client in the following types and amounts (or such additional amounts as Client may require) Consultant shall cause each sub-consultant employed by Consultant to purchase and maintain insurance of the type specified in this Section. When requested by Client, Consultant shall furnish copies of certificates of insurance evidencing coverage for each sub-consultant.

- 7.1 **Workmen's Compensation and Employer's Liability Insurance:** Consultant shall maintain Workers Compensation and Employers Liability insurance as required by statute. Employers Liability limits shall not be less than \$ 1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.



- 7.2 **Commercial General Liability (CGL) Insurance:** Consultant shall maintain Commercial General Liability (CGL) insurance with a limit of not less than \$ 4,000,000 Each Occurrence, \$ 4,000,000 General Aggregate, \$ 4,000,000 Products-Completed Operations Aggregate, \$ 5,000 Medical Expense, \$ 50,000 Damage to Premises Rented to You, and \$4,000,000 Personal and Accidental Injury.
- 7.3 **Automobile Liability Insurance:** Consultant shall maintain Automobile Liability Insurance in a form to include coverage for all owned and non-owned and hired automobiles with liability limits for bodily injury and for property damage of \$ 1,000,000 per occurrence.
- 7.4 **Environmental Consultants Professional Liability Coverage:** Consultant shall maintain Environmental Consultants Professional Liability Coverage insurance with a limit of not less than \$ 4,000,000 Each Claim and \$ 4,000,000 Coverage Aggregate.
- 7.5 **Transportation Pollution Liability Coverage:** Consultant shall maintain limits of \$4,000,000 for each claim, and \$4,000,000 Coverage Aggregate.
- 7.6 **Additional Insured:** Prior to the commencement of the Work, Consultant shall furnish to Client with certificates of all insurance required hereunder. All such insurance, except the Worker's Compensation Policy, Professional Liability/Errors and Omissions Policy and the Workmen's Compensation and Employer's Liability Insurance, shall name Client as an additional insured. Additional insured coverage as required in this subparagraph shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Consultant or Client. A copy of the endorsement will be submitted with the Certificate of Insurance.
- 7.7 **Cancellation:** Client shall be notified in writing at least thirty (30) days prior to any cancellation or alteration of such insurance policies. Failure to maintain the required insurance may result in termination of this Agreement at the Client's option. Failure of Client to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Client to identify a deficiency from evidence that is provided shall not be construed as a waiver of Consultant's obligation to maintain such insurance. By requiring insurance herein, the Client does not represent that coverage and limits will necessarily be adequate to protect Consultant or its sub-consultants and such coverage and limits shall not be deemed as a limitation of Consultant's or its sub-contractors' liability under the indemnities granted by Consultant in this Agreement.
- 7.8 **Subrogation Waiver:** Consultant waives all rights against Client and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Commercial General Liability, Business Automobile, or Workers Compensation insurance required by Consultant pursuant to this Agreement. Further, Consultant shall indemnify and hold Client harmless from any and all claims, losses, damages or expenses, including but not limited to, attorney's fees and increased insurance premiums, arising out of any Consultant's failure to secure the required insurance coverages.

SECTION 8 - INDEMNITY: To the fullest extent permitted by law, Consultant shall indemnify, defend, protect and hold harmless Client, and its officers, employees, shareholders, partners and members (collectively, the "Indemnitees") from and against all losses, claims, fines, penalties, causes of action, liabilities, injuries, damages, losses and expenses, including attorneys' fees and expenses (collectively,



"Losses"), that the Indemnitees, or any of them, may incur that arises out of, or occurs in connection with, the negligent acts or omissions of the Consultant, its sub-consultants, agents or employees or anyone directly or indirectly employed by any one of them. Such obligation shall not, however, extend to any losses which are the result of the sole negligence or willful misconduct of an Indemnatee nor to the portion of any Losses which are attributable to, or the result of, the willful misconduct of an Indemnatee.

SECTION 9 - OWNERSHIP AND USE OF CONSULTANT'S WORK PRODUCT: All documents, including electronic files, drawings and specifications, prepared by Consultant pursuant to this Agreement, or other instruments of service in respect of the Work (collectively, "**Work Product**"), whether completed or partially completed, shall immediately become the property of Client upon payment of all fees owing to Consultant under this Agreement with respect to the preparation of such Work Product, or partially completed portion thereof. Client shall be entitled to use and to rely upon, and may allow others to use and rely upon, the Work Product, or partially completed portion thereof, so long as (i) Consultant has received payment for the Work Product being used or relied upon and (ii) the use of or reliance upon such Work Product is limited to the Work described in this Agreement. Client acknowledges and agrees that any use or reuse of the Work Product in connection with work outside the scope of this Agreement will be at Client's sole risk and without liability or legal exposure to Consultant.

SECTION 10 - TERMINATION OF SERVICES: Either party may terminate this Agreement upon a breach by the other party giving written notice of the breach (including reasonable detail of the same) to the breaching party; provided however that, except for non-payment of Consultant's invoices when due (in which case Consultant may terminate immediately) and non-compliance by Consultant which causes or threatens to cause a violation of any term or condition in a permit for any of the Facilities (in which case Client may terminate immediately), the breaching party shall have thirty (30) days to cure such breach or commence reasonable steps to cure such breach before termination provided in the above-referenced notice shall become effective. Either party may also terminate this Agreement without cause on thirty (30) days written notice. If this Agreement is terminated without cause, the Consultant shall be paid in full for services rendered through the date of termination.

SECTION 11 - INDEPENDENT CONSULTANT: Consultant shall be deemed to be an independent Consultant. Nothing contained in this Agreement shall be regarded as creating any other relationship between the parties including, but not limited to, any relationship of employer - employee.

SECTION 12 - NON-SOLICITATION, NO-HIRE OF EMPLOYEES: This Non-Solicitation, No-Hire Agreement is entered into by the Consultant and the Client named on page one (1) of this Professional Services Agreement.

- 12.1 **Solicitation of Client's Employees.** During the Term of this Agreement, and for one (1) year thereafter, Consultant shall not (a) offer employment to or employs any Client employee either full-time or part-time, or (b) hire or offer to hire any Client employee as a consultant, intern, trainee, or the equivalent of Consultant, to provide services or products having the same general nature as those provided by Client to its customers under this Agreement; Consultant shall not request, cause, or induce the Client employees to breach any agreement between the employee and Client; and Consultant shall not request, cause, or induce the employee to leave the employ of Client.
- 12.2 **Solicitation of Consultant's Employees.** During the Term of this Agreement, and for one (1) year thereafter, Client shall not (a) offer employment to or employs any Consultant employee either



full-time or part-time, or (b) hire or offer to hire any Consultant employee as a consultant, intern, trainee, or the equivalent of Client, to provide services or products having the same general nature as those provided by Consultant to its customers under this Agreement; Client shall not request, cause, or induce the Consultants employees to breach any agreement between the employee and Consultant; and Client shall not request, cause, or induce the employee to leave the employ of Consultant.

SECTION 13 - BINDING AGREEMENT/COUNTERPARTS: Subject to Section 13 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be executed in one or more counterparts, all of which together shall constitute a single agreement and each of which shall be an original for all purposes.

SECTION 14 - ASSIGNMENT: Except for a Permitted Assignment (hereafter defined), neither Client nor Consultant shall assign or transfer its interest in this Agreement without the written consent of the other. For purposes hereof, a Permitted Assignment shall mean (i) any assignment by Client of this Agreement or Client's rights under this Agreement to another person or entity who takes over the development, management, and/or construction of the Facilities; or (ii) any assignment by Client in favor of any lender or equity investor providing financing for the Facilities or the Work.

SECTION 15 - AUTHORITY: Client and Consultant each represent to the other that the person signing below has full authority to bind such party to this Agreement.

SECTION 16 - MEDIATION; ATTORNEYS' FEES: Client and Consultant agree that all claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement or breach thereof first shall be submitted to mediation. Any party hereto may initiate mediation and the parties agree to fully cooperate and participate in good faith to resolve their dispute(s). The cost of mediation shall be shared equally by the parties. If following mediation either party makes a claim or brings an action against the other party for any act arising out of the performance of this Agreement, the non-prevailing party shall pay all legal and other costs (including reasonable attorneys' fees) incurred by the prevailing party.

SECTION 17 - GOVERNING LAW: This Agreement shall be construed and enforced in accordance with the laws of the state where the Work is located.

SECTION 18 - PARAGRAPH TITLE: Paragraph titles in this Agreement are for convenience only and are not intended to detract from or limit the effect of any language in this Agreement.

SECTION 19 - MODIFICATION: No modification of this Agreement shall be binding on either party unless reduced to writing and signed by the party to be bound.

SECTION 20 - ENTIRE AGREEMENT: This Agreement and the Addenda attached hereto contain the entire agreement between Client and Consultant.

SECTION 21 - NOTICES: All notices and any other communications permitted or required under this Agreement must be in writing and will be effective (i) immediately upon delivery in person, email or by facsimile, provided delivery is made during regular business hours or receipt is acknowledged by a person reasonably believed by the delivering party to be employed by the recipient; or (ii) 24 hours after deposit



with a commercial courier or delivery service for overnight delivery, provided delivery is made during regular business hours or receipt is acknowledged by a person reasonably believed by the delivering party to be employed by the recipient; or (iii) three days after deposit with the United States Postal Service, certified mail, return receipt requested, postage prepaid. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by the counsel for such party. All notices must be properly addressed and delivered to the parties at the addresses set forth on page 1 of this Agreement, or at such other addresses as either party may subsequently designate by written notice given in the manner provided in this Section.

SECTION 22 – RESPONSIBILITIES OF THE FACILITY OWNER: Support the Operator in Responsible Charge (ORC) in implementing and enforcing the Colorado Department of Environment and Public Health’s Regulation No. 100 5 CCR 1003-2. The owner acknowledges that the “Operator in Responsible Charge”, the Consultant, has ultimate responsibility for decisions regarding the daily operational activities of the facility that will directly impact the quality and/or quantity of drinking water, treated wastewater, or treated effluent. The Consultant may draft SOP’s regarding proper operations, and limitations of intervention to be followed by any individual/s who are working within the facilities.

IN WITNESS WHEREOF,

Consultant and Client have executed this Agreement as of the date first above written.

CLIENT:

CONSULTANT:

By: John R Pavlovic

By: ORC Water Professionals Inc.

John Pavlovic
Name: _____

Name: _____

FMD President
Title: _____

Title: _____

Date: 03 / 25 / 2021

Date: _____



ADDENDUM A – Scope of Services

Operator in Responsible Charge – Wastewater Treatment and Collection

ORC Water Professionals will provide Client with the appropriate Operator in Responsible Charge (ORC) as determined and mandated by the Colorado Department of Public Health and Environment (CDPHE). This operator will provide the listed scope of services to include but not limited to, the following:

- The operator in responsible charge of the wastewater facility will hold a valid certificate equal to or greater than the classification of the wastewater facility he or she operates.
- The operator in responsible charge shall protect the public health and the environment in the conduct of his or her duties. These duties shall include the following:
 - Management or administration of the operation of the wastewater facility;
 - Accountability for the proper operation and maintenance of the wastewater facility for compliance with applicable regulations and/or permit requirements, including monitoring and reporting requirements;
 - Control of, supervision over, or active participation in the planning, operation or maintenance of the wastewater facility;
 - Availability to make decisions and initiate actions regarding the operation of the wastewater facility in a timely manner;
- Process control and/or facility integrity decisions with respect to effluent quality or quantity that may affect the public health or the environment are reserved to the Consultant.
- Maintain accurate and complete records on the operation and laboratory data as required by CDPHE and submit and fulfill all operating reporting requirements.
- Provide checks on all pertinent equipment and document the operational status or maintenance requirements thereof in a logbook that will be kept on site.
- Conduct all compliance sampling as required and present those samples to the certified laboratory for analysis. Laboratory costs are specified in Addendum C.
- Actively pursue improvements in effectiveness and efficiency with regard to the operation and maintenance of the facility. Suggested improvements will be presented to the Client for pre-approval.
- Maintain adequate chemical levels. Order and fill chemical reserves as needed.
- Coordinate with client to ensure a safe, efficient operation and conduct inspections to detect malfunctions. If malfunctions are detected, Consultant will notify Client of necessary repairs or replacements and if authorized by the Client, Consultant will initiate corrective actions.



Operator in Responsible Charge – Wastewater Treatment and Collection (cont)

Certified operators shall protect the public health and the environment by properly performing and/or supervising the activities pertinent to controlling the operation of a wastewater facility, including but not limited to the following:

- controlling the selection of or flow from a source to a wastewater facility and controlling the selection of or flow from a wastewater facility to a receiving body or system;
 - controlling the processing of raw and/or treated wastewater;
 - preparing and/or controlling chemical addition for wastewater treatment;
 - observing and taking necessary actions in response to variations in operating conditions;
 - interpreting meter and/or gauge readings and adjusting facility processes based on such interpretations;
 - operating valves and/or gates either manually or by remote control;
 - starting and/or stopping pumps;
 - maintaining logs and/or records;
 - collecting and/or analyzing process control samples;
 - ensuring proper inspection and testing of new, modified, or repaired facilities prior to placing or returning such facilities into service;
 - developing and implementing preventative maintenance programs and performing routine maintenance functions for facilities;
 - overseeing compliance with laws and regulations and reporting as appropriate to facility owners and the CDPHE.
- Develop collections system maintenance schedules, review conditions, suggest implementation schedule for repair of collection system components.
 - ORC Water Professionals will provide 24-hour emergency response for all wastewater related issues.
 - ORC will work with the Clients management company and/or Engineering consultants to review and consult on any capital or operational improvements.
 - ORC Water Professionals will present a professional image to the public as a representative of the Client at all times.



ADDENDUM B – Compensation Schedule

The base Monthly Operations and Maintenance (O&M) fees include mileage, travel time, fuel surcharges as well as normal routine operations as defined in Addendum A, Scope of Services.

Operator in Responsible Charge:

- Fee is based on an estimated number of hours spent on the project per month with a minimum of one (1) field visit to the site during a week for chemical optimization process control, operations oversight and compliance sampling.
- **Monthly Operations and Maintenance Base Fee:** **\$ 1,082.55**

Monthly Regulatory Compliance

- The ORC Water Professional's Regulatory Compliance Officer will monitor the facilities permitted regulatory requirements and maintain accurate and complete records for all laboratory analysis data. Complete and submit the monthly reporting requirements mandated by the Colorado Department of Public Health and Environment (CDPHE).
- **Base Monthly Regulatory Compliance Fee:** **Included in Base Fee**

Additional Services:

- Monthly compliance analysis is based on the CDPHE issued facility permit and/or monitoring schedule. These required regulatory samples and all other sample analysis costs are reflected on the attached 2021 Rate Sheet.
- **Additional Services and Rates if Applicable:** **2021 Rate Sheet**



ADDENDUM C – 2021 Rate Sheet

| Labor Services | Hourly Rate | Over Time * | \$120.00 |
|-----------------------|--------------------|--------------------|-----------------|
| Facility Operator | \$80.00 | | |
| Regulatory Specialist | \$97.00 | | |

Laboratory Analysis

| | | | | | |
|----------------|----------|-----------------------|------------|------------------------|---------------|
| Aluminum | \$23.00 | Iron | \$36.00 | DW SOC/VOC | \$1,551.00 |
| Ammonia | \$27.00 | Influent Screen | \$1,575.00 | Sulfate | \$36.00 |
| Arsenic | \$23.00 | Langlier Index | \$130.00 | TDS | \$34.00 |
| BOD | \$57.00 | Lead | \$27.00 | TIN | \$75.00 |
| Cadmium | \$23.00 | Manganese | \$40.00 | TKN | \$56.00 |
| Chloride | \$39.00 | MPA (excluding labor) | \$924.00 | TOC and Alkalinity | \$75.00 |
| Chromium III | \$66.00 | Nickel | \$23.00 | Total Coliform | \$44.00 |
| Chromium VI | \$45.00 | Nitrate | \$41.00 | TSS | \$34.00 |
| Copper | \$27.00 | Nitrite | \$41.00 | TTHM | \$65.00 |
| Cyanide | \$93.00 | PFAs | \$485.75 | TTHM and Haa5 | \$380.00 |
| Dioxin | \$791.50 | Phosphorus | \$39.00 | Uranium | \$37.00 |
| E. Coli | \$44.00 | Radium 226 | \$155.00 | GW VOC | \$227.00 |
| Fecal Coliform | \$44.00 | Radium 228 | \$215.00 | WET (acute/chronic) | Cost Plus 25% |
| Fluoride | \$33.00 | Selenium | \$23.00 | Zinc | \$19.00 |
| Gross Alpha | \$203.00 | Silver | \$23.00 | Shipping | \$37.50 |
| Inorganics | \$361.00 | GW SOC | \$303.00 | Other Laboratory Tests | Cost Plus 25% |

Chemicals

| | |
|--------------------------|---------------|
| All Chemicals & Delivery | Cost Plus 20% |
|--------------------------|---------------|

General Equipment, Materials and Subcontractors

| | | | |
|----------------------|----------|----------------------------|---------------|
| Trash Pump | \$65/Day | Well Depth Indicator | \$41/day |
| Monitoring Well Pump | \$48/Day | Materials & Subcontractors | Cost Plus 20% |

Residential Meter Reading **

\$5.53 / meter

Consumer Confidence Reports

| | |
|--|----------|
| Completed and sent to Consumers by the Client | \$99.00 |
| Completed and sent to Consumers by ORC (up to 300 residents) | \$549.00 |

**Unless specified in the contract, labor overtime rates will be charged for work performed on non-regularly scheduled weekends, emergency callouts, repairs and all federally recognized holidays. These rates are billed on a port-to-port basis.*

*** Unless specified in the contract, additional labor may apply.*

| | |
|--------------------------------|--|
| TITLE | 2021 ORC Agreement - Fairways |
| FILE NAME | ORC Fairways Agreement.pdf |
| DOCUMENT ID | d8b5def80fed6e30d309dfbfc191367cd8053b2c |
| AUDIT TRAIL DATE FORMAT | MM / DD / YYYY |
| STATUS | ● Out For Signature |

Document History



SENT

03 / 25 / 2021
23:37:20 UTC

Sent for signature to John Pavlovic (puduser@comcast.net) and Tom Schubert (tschubert@orcwater.com) from dsolin@sdmsi.com
IP: 50.78.200.153



VIEWED

03 / 26 / 2021
01:08:36 UTC

Viewed by John Pavlovic (puduser@comcast.net)
IP: 65.140.130.90



SIGNED

03 / 26 / 2021
01:21:12 UTC

Signed by John Pavlovic (puduser@comcast.net)
IP: 65.140.130.90



INCOMPLETE

03 / 26 / 2021
01:21:12 UTC

This document has not been fully executed by all signers.