

## PROFESSIONAL SERVICES AGREEMENT

**THIS AGREEMENT** made and entered into as of the 22st day of February, 2021 by and between the City of Sedalia, Missouri, a municipal corporation of the State of Missouri, (hereinafter referred to as "City") and Alliance Water Resources, Inc., a Missouri corporation, (hereinafter referred to as "Alliance").

### WITNESSETH:

**WHEREAS**, Alliance is engaged in the business of providing operational oversight, maintenance and management services for municipal public works facilities;

**WHEREAS**, the City owns a wastewater collection system and a wastewater treatment system including a compost facility and is engaged in providing wastewater services in certain areas in or adjacent to the City; and

**WHEREAS**, Alliance, the sole respondent to the City's request for proposal, provided a complete and reasonable proposal response to perform certain operational oversight, maintenance and management services in accordance with the terms and conditions of this Agreement.

**NOW THEREFORE**, for and in consideration of the mutual promises herein contained and subject to the terms and conditions herein stated, the City and Alliance hereby agree as follows:

### 1. INTRODUCTION

1.1 The foregoing recitals are adopted as part of this Agreement.

1.2 This Agreement shall become effective on April 1, 2022 at which time it shall supersede and nullify any and all prior agreements, offers, service fees, quotations, estimates, representations and warranties between the parties with respect to the operational oversight, maintenance and management of the City's wastewater and separate stormwater collection systems and wastewater treatment system referred to herein as Facilities.

1.3 This Agreement, including any and all Exhibits, Addendums and Amendments thereto, is the entire Agreement between the City and Alliance.

### 2. DEFINITIONS

2.1 "Abnormal Condition" means (a) the presence in influent of substances which cannot be removed or treated by the Facility or Facilities,

including but not limited to those relating to an interference or pass-through; (b) influent which violates applicable law; (c) a flow or loading of influent which is beyond the Facility's or Facilities' capacity set forth in Exhibit B; or (d) changes in source water supply due to contamination or degradation resulting from earthquakes, absence of watershed protection, or man-made disposal of pollutants.

2.2 "Adequate Nutrients" means plant influent nitrogen, phosphorus and iron contents proportional to BODs in the ratio of five (5) parts nitrogen, one (1) part phosphorus and one-half (0.5) part iron for each one hundred (100) parts BODs.

2.3 "Base Fee" means a fixed sum for Alliance services. The Base Fee includes all operational oversight, maintenance and management costs including engineering costs for the Facilities as expressly detailed and required hereunder.

2.4 "Biologically Toxic Substances" means any substance or combination of substances contained in the plant influent in sufficiently high concentration so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge required of the City's NPDES permits. Biologically Toxic Substances include, but are not limited to, heavy metals, phenols, cyanides, pesticides and herbicides.

2.5 "Capacity, Management, Operation and Maintenance (CMOM) Program" means the program developed by U.S. EPA that consists of a set of best management practices that have been developed by the industry and are applied over the entire life cycle of the collection system and treatment plant. These practices include:

- Designing and constructing for O&M
- Knowing what comprises the system (inventory and physical attributes)
- Knowing where the system is (maps and location)
- Knowing the condition of the system (assessment)
- Planning and scheduling work based on condition and performance
- Repairing, replacing, and rehabilitating system components based on condition and performance
- Managing timely, relevant information to establish and prioritize appropriate CMOM activities
- Training of personnel

2.6 "Capital Expenditures" means any expenditures for (1) the purchase of new equipment or Facility supplies or parts; or (2) major repairs which significantly extend equipment or Facility service life; or (3) expenditures that are planned, non-routine and budgeted by the City.

2.7 "Corrective Maintenance" means those non-routine/non-repetitive activities required for operational continuity, safety and performance generally due to failure or to avert a failure of the equipment, vehicle or Facilities or some

component thereof.

2.8 "Facility" or "Facilities" means the wastewater treatment facilities, pumping stations, pipes, and the related equipment, vehicles and rolling stock owned or leased by the City or a component unit thereof and the stormwater collection system.

2.9 "Force Majeure" means any event beyond the reasonable control of Alliance, including but not limited to war, earthquake, fire, flood, explosion or other casualty loss, strikes and labor disputes (other than a legal strike by, or labor dispute of, Alliance employees), civil commotion, epidemic, acts or omissions of the City, its employees, agents or representatives, wrecks or delays in transportation of supplies, materials, and equipment, influent varying from that specified in "Abnormal Conditions".

2.10 "MDNR" means the Missouri Department of Natural Resources.

2.11 "MS4 permit" means the municipal separate storm sewer system (MS4) stormwater permit issued to the City by the permit program administered by the Missouri Department of Natural Resources addressing a conveyance or system of conveyances that is owned by the City that discharges to waters of the state, designed or used to collect or convey stormwater (including storm drains, pipes, ditches, etc.), is not a combined sewer; and not part of the publicly owned treatment works (sewage treatment plants).

2.12 "NPDES permit" means the National Pollutant Discharge Elimination System permit issued to the City by the permit program administered by the Missouri Department of Natural Resources addressing water pollution by regulating point sources that discharge pollutants to waters of the United States.

2.13 "Preventive or Preventative Maintenance" means maintenance that is regularly performed on a piece of equipment to lessen the likelihood of it failing. Preventive maintenance is performed while the equipment is still working, so that it does not break down unexpectedly. The costs related to preventive maintenance are those associated with routine and/or repetitive activities required by the equipment or facility manufacturer or Alliance to maximize the service life of the equipment, vehicles, and Facilities.

2.14 "Service Commencement Date" means the date on which Alliance begins operational oversight, maintenance and management of the Facilities.

### 3. GENERAL

3.1 It is understood that the relationship of Alliance to the City is that of an independent contractor.

3.2 All grounds, facilities, equipment and vehicles now owned or leased by the City or acquired by the City shall remain the property of the City.

3.3 This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be adjudicated, venue shall be proper only in the Circuit Court of Pettis County, Missouri.

3.4 This Agreement shall be binding upon the respective successors and assignees of each of the parties hereto.

3.5 All notices shall be in writing and transmitted by certified mail to the appropriate address as follows:

**City:** City of Sedalia  
City Administrator  
200 S. Osage Avenue  
Sedalia, MO 65301

**Alliance:** Alliance Water Resources  
President  
206 South Keene Street  
Columbia, MO 65201

3.6 This Agreement may be modified only in writing and signed by the parties. City agrees that its remedies against Alliance and its affiliates and Alliance's remedies against the City shall be limited to those expressly provided in this Agreement. All releases, indemnities and limitations on liability and remedies stated herein shall apply, regardless of whether the liability or remedies arise in contract, warranty, negligence, strict liability or otherwise.

3.7 Alliance shall in accordance with RSMO 285.530.2 not employ or subcontract with, unauthorized aliens in connection with the scope of services to be completed under this Agreement and agrees to provide an affidavit, Exhibit C, to the City affirming that Alliance has not and will not in connection with this Agreement knowingly employ, or subcontract with, any person who is an unauthorized alien.

3.8 The award of this Agreement is subject to the availability of appropriated funds. The City and Alliance agree that funds expended for the purposes of this Agreement must be appropriated and sanitary sewer fees collected sufficient to make payment. Therefore, this Agreement shall automatically terminate without penalty or termination costs if such

funds are not available to the City. The City shall be responsible for providing notice to Alliance per section 3.5 and for paying Alliance for costs incurred through receipt of such notice.

3.9 Alliance shall agree not to offer employment to City of Sedalia employees for a period of two (2) years after such employee leaves the employment of the City of Sedalia.

#### 4. **SCOPE OF SERVICES**

4.1 Alliance shall manage the Facilities and the Facilities' operations in accordance with all applicable federal, state, and local laws, ordinances and regulations and this Agreement. More specifically, Alliance shall provide the following under the direction and with input from the City:

- a. Alliance shall be responsible, at a minimum, for overseeing and assisting to ensure the City and the City's Facilities meet the following regulatory requirements and any subsequent modifications thereto:
  - i. The NPDES permit for each of the wastewater treatment facilities issued by the MDNR and as may be periodically amended.
  - ii. The CMOM program continued implementation including:
    - Predictive, preventive and corrective maintenance scheduling and tracking;
    - Identification of potential problem areas;
    - Information to support facility and operational planning;
    - Equipment performance monitoring;
      - Status reports for management and contract compliance monitoring including equipment availability; and
      - Begin tracking life cycle and forecasting repair versus replacement needs.
  - iii. The Industrial Pretreatment Program.
  - iv. The MS4 permit including the City's stormwater management program.
  - v. The Inflow and Infiltration (I&I) Program.
  - vi. All sampling, testing and analysis as required by the permits, federal, state and local rules and regulations, currently in effect and as may be amended.
  - vii. Sludge management including sludge handling and disposal to ensure compliance with federal and state regulations including, but not limited to, wastewater treatment plant processing, compost facility operation, land application or other appropriate handling and disposal methods.

- viii. Any related pollution prevention plans required by U.S. EPA, MDNR or other federal, state or local regulatory authority for each wastewater treatment facility.
- b. Alliance shall provide the following specific services, at a minimum, in relation to the operations, maintenance and management of the treatment facilities, compost facility, pump stations and collection systems.
  - i. Oversight and management of day-to-day Facilities and collection systems operations. Such operations shall be conducted in compliance with OSHA, U.S. EPA, federal, state and City regulations, laws or other requirements, as each may apply.
  - ii. Oversight and management of City staff assigned and completion of associated personnel documentation.
  - iii. Oversight of all sampling, testing and analysis required by the City's permits, rules and regulations, currently in effect and as may be amended.
  - iv. Oversight and management of all predictive, preventive and corrective maintenance and repair of all equipment and system infrastructure.
  - v. Oversight of calibration and maintenance required on all flow meters and safety equipment.
  - vi. Oversight of biosolids treatment including the dewatering and composting processes within the capabilities of the system. When composting is not available and as may be used from time-to-time based upon the capabilities of the system. Oversight of transportation of materials as well as appropriate land application or landfilling.
  - vii. Cleaning of pump stations including sediment and grease removal and disposal.
  - viii. Upkeep and maintenance of all the Facilities' buildings and associated equipment.
  - ix. Purchase of supplies, materials and equipment in accordance with the annual budget approved by the City Council and in accordance with the City's Financial Management Policies available on the Internet at <http://www.ci.sedalia.mo.us/content/11298/11376/default.aspx>. Alliance shall ensure that transactions involving purchases made for the City do

not include Missouri sales taxes or Federal Excise Taxes as the City is tax exempt.

- x. Appropriate disposal of any grit or refuse collected at the Facilities.
  - xi. Cleaning of the Facilities through oversight of janitorial and custodial services.
  - xii. Oversight of grounds maintenance and landscaping services.
  - xiii. As may from time-to-time be needed, assist the City's Public Works Director with engineering selection and contract negotiations.
  - xiv. Oversight of the Facilities' security.
  - xv. Open communications with the Public Works Director to keep the City fully informed regarding all aspects of facility operations, maintenance, regulatory requirements, personnel issues, etc.
- c. Alliance shall provide qualified operations, maintenance and management personnel including on-site, technical support, administrative and professional services to operate and maintain the wastewater treatment plants, compost facility and collection system including lift stations on a 24-hour per day, 7 day per week, 365 day per year basis,
- d. Experience has shown the City shall need Alliance to provide a sufficient number of qualified staff to meet the scope of services set forth herein. At a minimum, the following staffing shall be required under the Agreement and these key positions must be filled on an interim or permanent basis at all times. The exact number of staff required to meet the following is to be determined by Alliance.
- i. Full-time wastewater local manager(s) or equivalent who is qualified in management, administrative and technical areas of wastewater treatment, process control, wastewater laboratory analysis, collection systems and maintenance and repair procedures. The individual(s) must possess an MDNR Level A Certificate in good standing. The Local Manager or designee must at all times be able to respond within 30 minutes to any of the wastewater treatment plants, compost facility or other wastewater collection system emergency.
  - ii. Full-time wastewater plant operations supervisor(s) or equivalent who is qualified in supervision, operations and technical areas of wastewater

treatment, process control, wastewater laboratory analysis and maintenance and repair procedures. The individual(s) must possess an MDNR Level A Certificate.

- iii. Full-time administrative assistant(s) or equivalent who shall be able to schedule meetings, handle correspondence and incoming calls, regulatory reporting, budget and expense reporting and other associated clerical work for the wastewater local manager and wastewater plant operations supervisor.
- iv. Alliance shall provide up to sixteen hours of professional engineering services per month. Specifically, engineering service hours shall be provided by a Professional Engineer (P.E.) with wastewater treatment plant operations technical expertise and experience. Additionally, Alliance shall provide upon the City's request up to an additional sixteen (16) hours of professional engineering service on an as needed, if needed basis at a rate of one hundred forty-five U.S. dollars (\$145.00) per hour.
- e. Alliance shall provide support by making an experienced Alliance Division Manager available to the Local Manager and the City.
- f. Alliance shall be responsible for emergency services twenty-four (24) hours per day, seven (7) days per week and three hundred sixty-five (365) days per year.
- g. Alliance shall provide a local manager or in the local manager's absence an alternate Alliance staff person who must be able to respond to emergency calls to any of the Facilities within 30 minutes of receipt of such call.
- h. Alliance shall be responsible for reducing the firm fixed price for monthly services charged to the City when a vacancy occurs in one of these contracted positions and an interim staff person is not available from Alliance to fill the position. At a minimum, the reduction in the firm fixed price shall include costs associated with: staff wages or salary dependent on position, benefits and related supplies and travel expenses during the period of the vacancy.
- i. If the City has concerns about Alliance staff performance, the City shall give notice to Alliance of concerns and allow Alliance up to sixty (60) days to reach an agreed solution with the City. Unless such concerns involve: use of drugs or alcohol in the workplace as the City has a zero tolerance policy; unauthorized possession of firearms, explosives or weapons on City property; initiation or participation in verbal altercations or physical fighting, except to defend oneself or another on City property; providing false information on regulatory reports; loss of the individual's MDNR Level A Certificate; theft or unauthorized removal of City property or that of a City employee from City Facilities; maliciously destroying or damaging any City property or that of a City employee at a City Facility; conviction of a felony as



defined by applicable law or willfully overriding, removing, failing to use or inappropriately using safety devices or protective equipment which results in or could result in injury to another. If the City has concerns related to the issues listed herein, Alliance shall immediately relieve the individual of duties related to this Agreement. Alliance shall then provide interim staffing within a timeframe mutually agreed upon with the City, but no longer than five (5) days from receiving such notice of concerns.

- j. Alliance, as an independent contractor, shall provide for Alliance staff, including the professional engineer, all salaries or wages and associated benefits, cell phones, vehicle(s), vehicle maintenance, fuel, other travel expenses, office equipment and supplies, uniforms, safety equipment including personal protective equipment and training required to meet the terms and conditions of this Agreement.
- k. Alliance will operate and maintain the wastewater facilities so as to avoid any circumstances which cause prohibited bypasses from wastewater treatment facilities or collection system sanitary sewer overflows.
- l. Alliance shall maintain the wastewater collection system and facilities including equipment and lift stations in a manner that preserves the managed assets and ensures the reliability and efficiency of the facilities and systems within the resources provided by the City.
  - i. Alliance shall work with the City to establish maintenance requirements for all buildings, structures, property and equipment so that such assets are maintained in accordance with the agreed upon standards.
  - ii. Alliance shall maintain existing levels of redundancy for each facility and where such redundancy is lacking, if any, Alliance shall promptly bring this to the attention of the Public Works Director for appropriate planning and action.
  - iii. Alliance shall be responsible for managing and overseeing corrective maintenance and repair of all wastewater treatment facilities, collection system including lift station components and compost facility equipment.
- m. Alliance shall participate in planning activities and provide information to the City on a regular basis in support of the City's short- and long-term planning objectives for capital improvements, maintenance/repairs and policy and regulatory matters.
  - i. Capital Improvements. Alliance shall provide information and recommendations for capital improvements for the wastewater and compost facilities as well as the collection system to increase operating efficiency, improve quality of service and extend the useful life of assets including

development of information to support capital financing plans. Additionally, Alliance shall assist in developing and implementing the annual budget.

- ii. Maintenance. Alliance shall provide information and make recommendations to update existing maintenance plans and support the development of a long-term maintenance strategy for the wastewater and compost facilities, including identification of cost-saving measures, cost-effective maintenance projects and routine/preventive maintenance program scheduling taking into consideration manufacturer's recommendations.
  - iii. Policy/Regulatory Issues. Alliance shall provide an evaluation of proposed or actual regulatory changes including changes to the NPDES permits from an operations standpoint to determine their effect on wastewater facilities capacity, management, operation and maintenance including any financial impacts or required changes to the City's policies and procedures. The City may also require input from Alliance to establish or challenge the appropriateness of permit limitations.
- n. Alliance shall develop and implement a program for City employee training for wastewater operations and maintenance skills improvement; as well as recommendations for improving the City's current health and safety program including an addendum to include chemical use necessary in the wastewater treatment process and develop and implement a security plan.
  - o. Alliance shall submit payroll information to the City for all City employees assigned to the Water Pollution Control Department and submit information to the Public Works Director for review and final approval.
  - p. Alliance shall complete annual performance evaluations and any disciplinary actions for all City employees assigned to the Water Pollution Control Department and submit information to the Public Works Director for review and concurrence.
  - q. Alliance shall provide timely and complete communications and reporting to the Public Works Director in relation to the status of facility operations, maintenance, regulatory requirements including reporting, permits and any personnel issues throughout the period of the Agreement.
    - i. Alliance shall prepare and timely provide to the City a minimum of 5 working days prior to the due date for submission to federal or state authorities all required weekly, monthly, quarterly or annual reports and related analytical data including test/sampling results.
    - ii. Alliance shall coordinate through the City with regulatory agencies regarding treatment plant performance and compliance. Alliance shall ensure

operational records are maintained to disclose information necessary to establish compliance or document sources of pollution received at the Facilities.

1. Alliance shall work with City staff to ensure records are accurate, complete and adequately maintained to document the operations of the facility including daily plant logs.
  2. Alliance shall comply with all requests for information about the City's Facilities received from the City, U.S. EPA, MDNR or others as requested and approved by the City. Alliance shall participate and provide timely information for audits (including financial audits), open records requests (Chapter 610 RSMo), assigned reporting to include any and all changes in compliance reporting requirements that may arise from time-to-time.
  - iii. Alliance shall submit an annual report to the City describing the general operational and maintenance activities performed under the Agreement by Alliance during the just completed 12 month Agreement period. Alliance upon request shall be responsible for presenting such annual report to the City Council.
  - iv. Alliance shall assist the City in collecting and providing information and documentation to support or deny the settlement of claims by the City's insurance carrier(s).
- 4.2 Alliance shall be liable for fines and/or civil penalties imposed by regulatory agencies for violation of the City's NPDES permits or rules or regulations of the MDNR or the U.S. EPA which occur during the term of the Agreement and which were caused by Alliance negligence, willful conduct, lack of due diligence, malfeasance or misfeasance. Alliance shall be given full authority to contest such violations and the City shall assist Alliance in such proceedings. Except to the extent caused by Alliance's negligence, willful conduct, lack of due diligence, malfeasance, misfeasance or breach of its obligations under the Agreement, Alliance shall not be responsible for fines or penalties or any other liability if influent characteristics exceed facility design parameters, influent contains biologically toxic substances, source water contains non-treatable substances or the facility is inoperable due to circumstances beyond Alliance's control.
- 4.3 The City shall:
- a. Maintain all licenses and permits related to the Facilities and operations thereof and pay associated license and permit fees related to the Facilities or City staff.
  - b. Provide use of office, laboratory and shop space.

- c. Provide use of all land, equipment, improvements, buildings, structures and facilities under its ownership and presently located at the Facilities or currently available to or assigned for Facility use.
- d. Staff the Facilities with qualified operations and maintenance personnel who meet certification requirements of the State of Missouri as necessary to meet wastewater treatment requirements.
- e. Pay all expenses required for the operation and maintenance of the Facilities including, but not limited to, costs associated with preventive or corrective maintenance, personnel costs of City employees, utilities (electricity, gas, telephone, Internet, etc.), applicable fuels, chemicals, biosolids transportation and, as applicable, disposal, outside services, and other necessary materials for compliant operation of the Facilities.
- f. Plan for and make Capital Expenditures at the Facilities.
- g. Pay all taxes or governmental fees, if any, associated with the Facilities.
- h. Perform all functions and retain all responsibilities and obligations related to Facilities not expressly assumed herein by Alliance.
- i. Agree not to offer employment to Alliance employees for a period of two (2) years after completion of services.
- j. Agree to file sewer backup claims with their insurance carrier. The Alliance shall assist the City to provide information and documentation to support or deny the settlement of claims by the City's insurance carrier.

## 5. COMPENSATION

5.1 Alliance Base Fee compensation under this Agreement shall be eighteen thousand one hundred ninety-eight U.S. dollars (\$18,198) per month or two hundred eighteen thousand three hundred and seventy-six U.S. dollars (\$218,376) annually for the first year services under the Agreement.

5.2 Compensation to Alliance is due upon receipt of a complete and mathematically accurate invoice from Alliance and payable within thirty (30) days. City shall pay interest at an annual rate of nine percent (9%) on payments not postmarked by the thirty-first day after receipt of a complete and mathematically accurate invoice, any such interest being calculated from the due date of the payment.

5.3 The Base Fee shall be revised on the anniversary date of this agreement. The Base Fee shall be adjusted in proportion to the change in the Consumer Price Index for All Urban Consumers (CPI-U), All Items, not seasonally adjusted, in the prior twelve (12) month period as published by the U.S. Department of Labor. The annual adjustment will be based on the CPI-U 12-month percentage change through each December and released by the U.S. Department of Labor during the month of January. Such increase shall not be less than 1% and not more than 5% unless otherwise agreed upon.

5.4 The Base Fee shall be equitably adjusted for any substantial change in the costs of Facilities management, including but not limited to changes in flow, customer accounts, monitoring or reporting requirements, regulatory requirements, personnel or staffing requirements, or increased costs due to Force Majeure occurrences. Any adjustments shall be negotiated prior to expenditure.

## 6. TERM AND TERMINATION

6.1 This Agreement shall commence on April 1, 2022 and shall extend for a period of one year. No less than ninety (90) days prior to expiration of this Agreement, the City may notify Alliance of extension of this Agreement for a period of one year. This Agreement may be amended for a total of four additional one-year periods.

6.2 Either party may terminate this Agreement for a material breach of the Agreement by the other party after giving written notice of breach and allowing the other party thirty (30) days to correct the breach. Excepting breaches by City for nonpayment of Alliance's invoices, neither party shall terminate this Agreement without giving the other party fifteen (15) days written notice of intent to terminate after failure of the other party to correct the breach.

6.3 Upon notice of termination, the City and Alliance shall agree to an action plan

which will enable the City to continue operation in an organized fashion. Alliance agrees to assist and cooperate with the City in any such transition.

## 7. INDEMNITY, LIABILITY AND INSURANCE

7.1 Alliance shall indemnify, save harmless and defend City from any and all claims, liabilities, penalties, fines, forfeitures, suits and costs and expenses incident thereto, including reasonable attorneys' fees, which City may incur, pay in settlement, or become responsible for as a result of death or bodily injury to any person, damage to any property, adverse effects on the environment, or violation of any law arising out of or relating to Alliance's material breach of any term of this Agreement, or any negligent or willful act or omission of Alliance, its employees, or subcontractors in the performance of this Agreement.

City shall indemnify, save harmless and defend Alliance from any and all claims, liabilities, penalties, fines, forfeitures, suits and costs and expenses incident thereto, including reasonable attorney's fees, which Alliance may incur, pay in settlement, or become responsible for as a result of death or bodily injury to any person, damage to any property, adverse effects on the environment, or violation of any law arising out of or relating to the City's material breach of any term of this Agreement, or any negligent or willful act or omission of the City, its employees, or subcontractors in the performance of this Agreement.

The City and Alliance shall each provide the other with prompt and timely written notice, as per Section 3.5, of any event or proceeding of which either acquires knowledge and for which indemnification may be sought so that each shall have any opportunity to take such actions as may be desirable to contain or minimize the consequences of any such event or proceeding and to defend or settle at such party's expense any such proceeding.

7.2 Alliance shall be liable for fines or civil penalties imposed by regulatory agencies for violation of the City's NPDES permit or rules or regulations of the Missouri Department of Natural Resources or the United States Environmental Protection Agency which occur during the term of this Agreement and which were caused by Alliance negligence or willful conduct. Alliance shall be given full authority to contest such violations and the City shall assist Alliance in such proceedings. Except to the extent caused by Alliance's negligence, willful conduct, or breach of its obligations under this Agreement, Alliance shall not be responsible for fines or penalties or any other liability if influent characteristics exceed Facilities design parameters (as defined in Exhibit B),

7.3 Each party shall obtain and maintain insurance coverage of a type and in amounts described in Exhibit A. Each party, to the extent permitted by law, shall name the other party as an additional insured on all insurance policies covering the Facilities and shall provide the other party with satisfactory proof of insurance upon written request. In the event either party changes insurance or

has a policy cancelled, that party shall provide notice thirty (30) days prior to the change or cancellation as per Section 3.5.

## 8. WARRANTY

8.1 Alliance warrants that it will manage the Facilities in accordance with the Scope of Services set forth in this Agreement and generally accepted industry principles and practices for operations and management of similar facilities within the Facilities design capacities.

## 9. EXCUSE OF PERFORMANCE

9.1 The parties agree that any delay or failure of either party to perform its obligations under this Agreement, except for indemnification required hereunder or the payment of money, shall be excused if and to the extent caused by acts of God, strikes, fire, flood, windstorm, explosion, riot, war, sabotage, or other similar cause beyond the reasonable control of the party affected, provided that prompt notice of such delay is given by such party to the other and each of the parties shall be diligent in attempting to remove or overcome the effects of such cause or causes.

## 10. MISCELLANEOUS

10.1 The parties intend that there shall not be any third party beneficiaries to this Agreement.

10.2 If any provision of this Agreement is held invalid or unenforceable, such provision shall be modified consistent with the original intent of the parties, so as to be enforceable and the remainder of the Agreement shall remain in full force and effect.

10.3 The failure of either party to enforce any right hereunder shall not be construed as a waiver of its right to enforce that or any other right hereunder in the future.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives on the date and year first above written.

**ALLIANCE WATER RESOURCES, INC.**

**CITY OF SEDALIA**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**Attest:**

**Attest:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Title



## **EXHIBIT A**

### **Alliance shall maintain:**

- 1. Statutory Worker's Compensation Insurance for all Alliance's employees at the Facilities as required by law.**
- 2. Comprehensive or Commercial General Liability Insurance for bodily injury and/or property damage as follows:**

<b>General Aggregate</b>	<b>\$3,000,000</b>
<b>Each Occurrence Limit</b>	<b>\$1,000,000</b>
<b>Umbrella Aggregate</b>	<b>\$4,000,000</b>

### **City shall maintain:**

- 1. Comprehensive or Commercial General Liability Insurance covering general liability, personal injury and property damage in amounts not less than Missouri statutory requirements relating to Sovereign Immunity.**

### **Each Party:**

- 1. Shall maintain adequate property insurance for its equipment and real and personal property, including, but not limited to, extended coverage.**
- 2. Shall provide, with respect to its owned vehicles, Commercial Automobile Liability Insurance for bodily injury and/or property damage with \$500,000 combined single limits per occurrence and in the aggregate.**

**EXHIBIT B**  
**WASTEWATER FACILITY CHARACTERISTICS**

- B.1** Alliance shall not be responsible for fines or penalties or any other liability if there are limitations if the plant design which limit adequate treatment, or if the wastewater influent exceeds facility design parameters including maximum daily and instantaneous flow, does not contain adequate nutrients, contains biologically toxic substances, or the Facilities is inoperable due to circumstances beyond Alliance control.
- B.2** Alliance liability regarding payment of fines, penalties or any other related liability is restricted to effluent limitations established in existing **NPDES Permit No. MO-010567** dated May 1, 2013, **MO-0023027** dated September 6, 2012, and **MO-0023019** dated November 15, 2011. In the event that effluent limitations are revised in subsequent NPDES permits, Alliance shall have the right to renegotiate the terms of Section 7 in the Agreement by giving notice to the city within forty-five (45) days after the effective date of the revised permit.

**EXHIBIT C**

**BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION,  
AND AFFIDAVIT OF WORK AUTHORIZATION**

**BUSINESS ENTITY CERTIFICATION:**

**The contractor must certify their current business status by completing either Box A or Box B or Box C on this Exhibit.**

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|---|
| <p><b><u>BOX A:</u></b> To be completed by a non-business entity as defined below.</p> <p><b><u>BOX B:</u></b> To be completed by a business entity who has not yet completed and submitted documentation pertaining to the federal work authorization program as described at <a href="http://www.dhs.gov/files/programs/gc_1185221678150.shtm">http://www.dhs.gov/files/programs/gc_1185221678150.shtm</a>.</p> <p><b><u>BOX C:</u></b> To be completed by a business entity who has current work authorization documentation on file with the City of Sedalia.</p> |
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**Business entity**, as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, is any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term “**business entity**” shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term “**business entity**” shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term “**business entity**” shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

Note: Regarding governmental entities, business entity includes Missouri schools, Missouri universities (other than stated in Box C), out of state agencies, out of state schools, out of state universities, and political subdivisions. A business entity does not include Missouri state agencies and federal government entities.

**BOX A – CURRENTLY NOT A BUSINESS ENTITY**

I certify that \_\_\_\_\_ (Company/Individual Name) **DOES NOT CURRENTLY MEET** the definition of a business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo as stated above, because: (check the applicable business status that applies below)

- I am a self-employed individual with no employees; **OR**
- The company that I represent employs the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

I certify that I am not an alien unlawfully present in the United States and if \_\_\_\_\_ (Company/Individual Name) is awarded a contract for the services requested herein under \_\_\_\_\_ (Bid/SFS/Contract Number) and if the business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, then, prior to the performance of any services as a business entity, \_\_\_\_\_(Company/Individual Name) agrees to complete Box B, comply with the requirements stated in Box B and provide the \_\_\_\_\_(insert agency name) with all documentation required in Box B of this exhibit.

\_\_\_\_\_  
Authorized Representative’s Name (Please Print)

\_\_\_\_\_  
Authorized Representative’s Signature

\_\_\_\_\_  
Company Name (if applicable)

\_\_\_\_\_  
Date

**EXHIBIT C, continued**

**(Complete the following if you DO NOT have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the City of Sedalia. If completing Box B, do not complete Box C.)**

**BOX B – CURRENT BUSINESS ENTITY STATUS**

I certify that \_\_\_\_\_ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530.

\_\_\_\_\_  
Authorized Business Entity Representative's Name (Please Print)

\_\_\_\_\_  
Authorized Business Entity Representative's Signature

\_\_\_\_\_  
Business Entity Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
E-Mail Address

As a business entity, the contractor must perform/provide each of the following. The contractor should check each to verify completion/submission of all of the following:

- Enroll and participate in the E-Verify federal work authorization program (Website: [http://www.dhs.gov/files/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/files/programs/gc_1185221678150.shtm); Phone: 888-464-4218; Email: [e-verify@dhs.gov](mailto:e-verify@dhs.gov)) with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND
- Provide documentation affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program. Documentation shall include EITHER the E-Verify Employment Eligibility Verification page listing the contractor's name and company ID OR a page from the E-Verify Memorandum of Understanding (MOU) listing the contractor's name and the MOU signature page completed and signed, at minimum, by the contractor and the Department of Homeland Security – Verification Division. If the signature page of the MOU lists the contractor's name and company ID, then no additional pages of the MOU must be submitted; AND
- Submit a completed, notarized Affidavit of Work Authorization provided on the next page of this Exhibit.

**EXHIBIT C, continued**

**AFFIDAVIT OF WORK AUTHORIZATION:**

The contractor who meets the section 285.525, RSMo, definition of a business entity must complete and return the following Affidavit of Work Authorization.

Comes now \_\_\_\_\_ (Name of Business Entity Authorized Representative) as \_\_\_\_\_ (Position/Title) first being duly sworn on my oath, affirm \_\_\_\_\_ (Business Entity Name) is enrolled and will continue to participate in the E-Verify federal work authorization program with respect to employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the City of Sedalia, Missouri for the duration of the contract(s), if awarded in accordance with subsection 2 of section 285.530, RSMo. I also affirm that \_\_\_\_\_ (Business Entity Name) does not and will not knowingly employ a person who is an unauthorized alien in connection with the contracted services provided under the contract(s) for the duration of the contract(s), if awarded.

***In Affirmation thereof, the facts stated above are true and correct. (The undersigned understands that false statements made in this filing are subject to the penalties provided under section 575.040, RSMo.)***

_____ Authorized Representative's Signature	_____ Printed Name
_____ Title	_____ Date
_____ E-Mail Address	_____ E-Verify Company ID Number

Subscribed and sworn to before me this \_\_\_\_\_ of \_\_\_\_\_. I am  
(DAY) (MONTH, YEAR)  
commissioned as a notary public within the County of \_\_\_\_\_, State of  
(NAME OF COUNTY)  
\_\_\_\_\_, and my commission expires on \_\_\_\_\_.  
(NAME OF STATE) (DATE)

_____ Signature of Notary	_____ Date
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**EXHIBIT C, continued**

***(Complete the following if you have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the City of Sedalia. If completing Box C, do not complete Box B.)***

**BOX C – AFFIDAVIT ON FILE - CURRENT BUSINESS ENTITY STATUS**

I certify that \_\_\_\_\_ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, and have enrolled and currently participates in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the City of Sedalia. We have previously provided documentation to the City that affirms enrollment and participation in the E-Verify federal work authorization program. The documentation that was previously provided included the following.

- ✓ The E-Verify Employment Eligibility Verification page OR a page from the E-Verify Memorandum of Understanding (MOU) listing the contractor’s name and the MOU signature page completed and signed by the contractor and the Department of Homeland Security – Verification Division
- ✓ A current, notarized Affidavit of Work Authorization (must be completed, signed, and notarized within the past twelve months).

**Date** of Previous E-Verify Documentation Submission: \_\_\_\_\_

Previous **Bid/Contract Number** for Which Previous E-Verify Documentation Submitted:  
\_\_\_\_\_  
(if known)

\_\_\_\_\_  
Authorized Business Entity Representative’s  
Name (Please Print)

\_\_\_\_\_  
Authorized Business Entity  
Representative’s Signature

\_\_\_\_\_  
E-Verify MOU Company ID Number

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
Business Entity Name

\_\_\_\_\_  
Date

**FOR CITY USE ONLY**

Documentation Verification Completed By:

\_\_\_\_\_  
City Staff

\_\_\_\_\_  
Date