



**CONTINUING PROFESSIONAL SERVICES AGREEMENT**

This Agreement is by and between:

Heart of the Valley Metropolitan Sewerage District (Owner)  
801 Thilmany Road  
Kaukauna, WI 54130

and

Donohue & Associates, Inc. (Donohue)  
3311 Weeden Creek Road  
Sheboygan, WI 53081

Who agree as follows:

Owner hereby engages Donohue to perform the Services set forth in Part I for the compensation set forth in Part III. Donohue will be authorized to commence the Services upon execution and receipt of this Agreement from Owner. Owner and Donohue agree that this signature page, together with Parts I through IV attached, constitute the entire Agreement for this Project.

**APPROVED FOR OWNER**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

**APPROVED FOR DONOHUE**

By: \_\_\_\_\_

Printed Name: Michael W. Gerbitz

Title: Senior Vice President

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

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

**A. PROJECT DESCRIPTION**

Donohue shall perform the Services requested by the Owner and agreed to by Donohue. Such services shall be defined with a written Task Order including Scope of Services, Project Timing, and Compensation. The Task Order will be signed by Donohue and the Owner, and shall be incorporated into this Agreement as a Task Order. This Agreement shall be automatically renewed annually on the anniversary of its original execution. Either Donohue or Owner may terminate this Agreement by giving the other party written notice at least 30 days prior the renewal date.

**PART II**  
**OWNER RESPONSIBILITIES**

- A. In addition to other responsibilities of Owner set forth in this Agreement and each Task Order, Owner shall:
1. Identify a person authorized to act as the Owner's representative to respond to questions and make decisions on behalf of Owner, accept completed documents, approve payments to Donohue, and serve as liaison with Donohue as necessary for Donohue to complete its Services.
  2. Furnish to Donohue copies of existing documents and data pertinent to Donohue's Scope of Services, including but not limited to and where applicable: design and record drawings for existing facilities; property descriptions, land use restrictions, surveys, geotechnical and environmental studies, or assessments.
  3. Provide to Donohue existing information regarding the existence and locations of utilities and other underground facilities.
  4. Provide Donohue safe access to premises necessary for Donohue to provide the Services.
  5. Inform Donohue whenever Owner observes or becomes aware of a Hazardous Environmental Condition, as defined in Part IV.3. of this Agreement, that may affect Donohue's Scope of Services or time for performance.

**PART III**  
**COMPENSATION, BILLING AND PAYMENT**

- A. Owner shall pay Donohue for Services in accordance with a project specific negotiated fee. Compensation will be designated in each Task Order and will apply only to the Task Order in which it is designated.
- B. Donohue will be compensated for professional services on a Task Order basis. Compensation will be either on a lump sum basis or a not-to-exceed basis in accordance with Donohue's standard chargeout rates in effect at the time the Services are performed. Routine expenses will be billed at cost and subconsultant costs will include a 10% markup.
- C. Donohue will bill Owner monthly, with net payment due in 30 days. For lump sum Task Orders, the invoice will contain a calculation of the amount of lump sum due based on percentage of Project completed during the billing period.
- D. Donohue will notify Owner if Project scope changes require modifications to the Task Order contract value. Services relative to scope changes will not be initiated without authorization from Owner.

**PART IV**  
**HEART OF THE VALLEY METROPOLITAN SEWERAGE DISTRICT**  
**STANDARD TERMS AND CONDITIONS**

1. **STANDARD OF CARE.** Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession under similar circumstances at the time and in the locality where the Services are performed. Professional services are not subject to, and Donohue does not provide, any warranty or guarantee, express or implied. Any warranties or guarantees contained in any purchase orders, requisitions or notices to proceed issued by Owner are void and not binding upon Donohue.

2. **CHANGE OF SCOPE.** The Scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by Owner. For some projects involving conceptual or process development services scope may not be fully definable during initial phases. As the project progresses, facts discovered may indicate that scope must be redefined. Donohue will promptly provide Owner with a written amendment to this Agreement to recognize such change, which shall be deemed accepted if not objected to within 15 days of receipt by Owner.

3. **HAZARDOUS ENVIRONMENTAL CONDITIONS.** Unless expressly stated otherwise in the Scope of Services (Part I) of this Agreement, Donohue's scope of services does not include any services relating to a Hazardous Environmental Condition, including but not limited to the presence at the Project site of asbestos, PCBs, Petroleum, Hazardous Substances or any other pollutant or contaminant, as those terms are defined in pertinent federal, state and local laws. In the event Donohue or any other party encounters a Hazardous Environmental Condition, Donohue may at its option suspend performance of services until Owner: a) retains appropriate consultant(s) or contractor(s) to identify and remediate or remove the Hazardous Environmental Condition; and b) warrants that the Project site is in full compliance with all applicable environmental laws.

4. **SAFETY.** Unless specifically included as a service to be provided under this Agreement, Donohue specifically disclaims any authority or responsibility for general job site safety and safety of persons other than Donohue employees.

5. **DELAYS.** If performance of Donohue's Services is delayed through no fault of Donohue, Donohue shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.

6. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party. Owner shall pay Donohue for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination.

In the event either party defaults in its obligations under this Agreement (including Owner's obligation to make the payments required hereunder), the non-defaulting party may, after giving seven days written notice, suspend performance under this Agreement. The non-defaulting party may not suspend performance if the defaulting party commences to cure such default within the seven-day notice period and completes such cure within a reasonable period of time.

Donohue may terminate this Agreement upon seven days written notice if: a) Donohue believes that Donohue is being requested by Owner to perform services contrary to law or Donohue's responsibilities as a licensed professional; or b) Donohue's Services for the Project are delayed, suspended or interrupted for a period of at least 90 days for reasons not attributable to Donohue's performance of Services; or c) Owner has failed to pay any amount due and owing to Donohue for a period of at least 60 days. Donohue shall have no liability to Owner on account of such termination.

7. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by Donohue is supplied for the general guidance of the Owner only. Since Donohue has no control over competitive bidding or market conditions, Donohue cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to Owner.

8. **RELATIONSHIP TO CONTRACTORS.** Donohue shall serve as Owner's professional representative for the Services, and may make recommendations to Owner concerning actions relating to Owner's contractors. Donohue specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by Owner's contractors. Donohue neither guarantees the performance of any construction contractor nor assumes responsibility for any contractor's failure to perform in accordance with the construction contract documents.

9. **CONSTRUCTION REVIEW.** For projects involving construction, Owner acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost. Owner agrees to hold Donohue harmless from any claims resulting from performance of construction-related services by persons other than Donohue.

10. **INSURANCE.** Donohue will maintain Professional, Commercial General, Automobile, Worker's Compensation and Employer's Liability insurance in amounts in accordance with legal and Donohue's business requirements. Certificates evidencing such coverage will be provided to Owner upon request. For projects involving construction, Owner agrees to require its construction contractor, if any, to include Donohue as an additional insured on its policies relating to the Project. Donohue's coverages referenced above shall, in such case, be excess over contractor's primary coverage.

11. **INDEMNIFICATION.** Donohue shall indemnify and save harmless Owner from and against loss, liability and damages sustained by Owner due to bodily injury or death to persons or damage to tangible property to the extent caused by the willful misconduct or negligence of Donohue, its agents or employees.

To the fullest extent permitted by law, Owner shall defend, indemnify and save harmless Donohue, its agents, employees, and representatives from and against loss, liability and damages (including reasonable litigation costs) arising from or relating to Donohue's Services under this Agreement, except to the extent that such loss, liability or damages is caused by the willful misconduct or negligence of Donohue, its agents or employees.

Owner also agrees to require its construction contractor, if any, to include Donohue as an: a) indemnitee under any indemnification obligation to Owner; and b) additional insured under its Commercial General Liability policy.

To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Donohue, its employees, agents and representatives, and Donohue's consultants, from and against any loss, liability and damages caused by, arising out of or resulting from the presence at the Project site of asbestos, PCBs, Petroleum, Hazardous Substances or any other pollutant or contaminant, as those terms are defined in pertinent federal, state and local laws, except to the extent that the loss, liability or damages is caused solely by the willful misconduct or negligence of Donohue, its agents or employees.

12. **LIMITATIONS OF LIABILITY.** No employee or agent of Donohue shall have individual liability to Owner; and Owner covenants and agrees not to sue any employee or agent of Donohue in connection with the Services under this Agreement.

Owner agrees that, to the fullest extent permitted by law, Donohue's total liability to Owner for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, Donohue's negligence, errors, omissions, strict liability, or breach of contract, shall not exceed the total compensation received by Donohue under this Agreement or proceeds of Donohue's professional liability insurance, whichever is greater.

**IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL DONOHUE BE LIABLE TO OWNER FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES.**

13. **OWNERSHIP AND REUSE OF PROJECT DOCUMENTS.** The Owner acknowledges Donohue's deliverables and other related final documents, including electronic files, as instruments of professional service. Nevertheless, the deliverables and other related final documents prepared under this Agreement shall become the property of the Owner upon completion of the services and payment in full of all monies due to Donohue. The Owner shall not reuse or make any modification to the deliverables and other related final documents without the prior written authorization of Donohue. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless Donohue, its officers, employees, and subconsultants against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the deliverables and other related final documents by the Owner or any person or entity that acquires or obtains the deliverables and other related final documents from or through the Owner without the written permission of Donohue.

14. **ELECTRONIC MEDIA.** Copies of documents that may be relied upon by Owner are limited to printed copies that are signed and sealed by Donohue. Files or information in electronic media are furnished by Donohue to Owner solely for convenience of Owner. If there is a discrepancy between electronic files and printed copies, the printed copies govern.

Because data stored in electronic media format can deteriorate or be modified, the Owner agrees to perform acceptance tests within 60 days. Donohue will not be responsible to correct any errors or for maintenance of documents in electronic media format after the acceptance period.

15. **AMENDMENT.** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties, except as provided in Paragraph 2.

16. **SUCCESSORS, BENEFICIARIES AND ASSIGNEES.** This Agreement shall be binding upon and inure to the benefit of the owners, administrators, executors, successors, and legal representatives of the Owner and Donohue.

The rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assignees.

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

18. **STATUTE OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

19. **DISPUTE RESOLUTION.** Owner and Donohue shall provide written notice of a dispute within a reasonable time and after the event giving rise to the dispute. Owner and Donohue agree to negotiate any dispute between them in good faith for a period of 30 days following such notice. Owner and Donohue may agree to submit any dispute to mediation or binding arbitration, but such mediation or arbitration shall not be required or a prerequisite to initiating a lawsuit to enforce this Agreement.

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

21. **NO WAIVER.** No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

22. **SEVERABILITY.** The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

23. **AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

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

*Date: August 2004*



**TASK ORDER 1 TO  
CONTINUING PROFESSIONAL SERVICES AGREEMENT  
Between Heart of the Valley Metropolitan Sewerage District (Owner) and  
Donohue & Associates, Inc. (Donohue)  
Date of Original Executed Agreement:**

**TASK ORDER NAME/DESCRIPTION**

<b>Name</b>	Facility Master Planning – Step 1
<b>Description</b>	The population and businesses inside the Service Area have consistently increased in recent years. Because of this Service Area prosperity, loadings to the wastewater treatment facility (Facility) have consistently increased. Present-day average organic loadings exceed 90% of the Facility’s rated capacity. This Task Order will document historical flows and loadings, potential future flow and loading growth scenarios, the current rated capacity of the Facility, and, potentially, latent capacity that has not yet been recognized. In effect, this Task Order will lay the foundation for a well-conceived Facility Master Plan to cost-effectively accommodate continued Service Area prosperity, wastewater treatment services, and NPDES Permit compliance. Information produced by this Task Order will allow the Owner to define cost-effective subsequent Steps to produce the Facility Master Plan.

**A. SCOPE OF SERVICES**

**1 – Document Historical Flows and Loadings**

Task(s)	Description	Services
110	Develop and Submit Request for Information	Request information relevant to this Task Order. Anticipated information includes historical flow and loading data, effluent quality data, and biosolids data. Donohue assumes the historical data will be available in an electronic format this can be easily manipulated in an Excel spreadsheet.
120	Assemble Historical RWW Flows and Loadings: Last 5 Years	Manipulate recent Facility historical raw wastewater flow and loading data (2015, 2016, 2017, 2018, and available 2019) to define growth rates, probability distributions, and relevant timeframe conditions: annual average, maximum month, maximum week, maximum day, and peak hour.
130	Assemble Historical Community Flows and Loadings: Last 5 Years	Manipulate recent “community” (Kaukauna, Little Chute, Kimberly, Combined Locks, and Darboy Sanitary District) historical raw wastewater flow and loading data (2015, 2016, 2017, 2018, and available 2019) to define growth rates, probability distributions, and relevant timeframe conditions.



140	Assemble Most-Relevant Historical Significant Industrial User (SIU) Flows and Loadings: Last 5 Years	Manipulate recent SIU historical raw wastewater flow and loading data (2015, 2016, 2017, 2018, and available 2019 for the Outagamie County landfill, Red Hills landfill, and potential others that are deemed relevant to this effort) to define growth rates, probability distributions if the data set supports such distributions, and relevant timeframe conditions.
150	Document Historical Flows and Loadings	Produce a DRAFT and FINAL Technical Memorandum that documents historical flows and loadings. Prepare for, conduct, and document a conference call to review the DRAFT TM. The FINAL TM will address Owner comments.  <u>Deliverables</u> Meeting Notes DRAFT TM 1 – Historical Flows and Loadings FINAL TM 1 – Historical Flows and Loadings

## 2 – Establish Future Scenarios

Task(s)	Description	Services
210	Develop Three Future Flow and Loading Scenarios	Using the information produced in Phase 1, establish three rational future flow and loading scenarios: Most Probable, Fast, and Slow. Each of these scenarios will estimate flow and loading growth throughout a 20-year planning horizon. These scenarios may be limited by the build-out capacity of the Service Area and Planning Area. Consider the number of historical service connections.
220	Document Future Flow and Loading Scenarios	Produce a DRAFT and FINAL Technical Memorandum that documents historical flows and loadings. Prepare for, conduct, and document a conference call to review the DRAFT TM. The FINAL TM will address Owner comments.  <u>Deliverables</u> Meeting Notes DRAFT TM 2 – Future Flows and Loadings FINAL TM 2 – Future Flows and Loadings

## 3 – Establish Future Flow and Loading Scenarios

Task(s)	Description	Services
310	Document Unit Process and Facility Flow and Loading Capacities	Document the assumed or calculated capacity of each major unit process as well as the Facility as a whole, as defined during the last major upgrade.
320	Document Historical Treatment Facility Performance: Last 5 Years	Document historical effluent quality and biosolids production (2015, 2016, 2017, 2018, and available 2019). This performance information might reveal latent or yet unrecognized unit process or Facility capacities.
330	Document WPDES Permit Compliance Concerns	Based on the preceding review of historical Facility performance, current WPDES Permit requirements, and anticipated near-term WPDES Permit requirements, as well as the future flow and loading

		scenarios, document WPDES Permit compliance concerns. This effort will pay particular attention to future TMDL compliance.
340	Assess Capacity Re-Rate Opportunities	Determine if one or several unit processes have more capacity than the WDNR has recognized. If these unrecognized capacities might increase the entire-Facility capacity, submit a request to re-rate the Facility to the WDNR.
350	Document Capacity Analysis: Capacities and Compliance Concerns Timeline	Produce a DRAFT and FINAL Technical Memorandum that documents historical flows and loadings. Prepare for, conduct, and document a conference call to review the DRAFT TM. The FINAL TM will address Owner comments.  <u>Deliverables</u> Meeting Notes DRAFT TM 3 – Capacity Analysis FINAL TM 3 – Capacity Analysis
360	Present to Commission	Present the key findings from TM 1, 2, and 3 to the Commission. The presentation will also discuss and recommend well-conceived next Steps to address increasing flows and loadings.  <u>Deliverable</u> Council Presentation: PowerPoint Summary of Findings

**B. PROJECT TIMING**

Donohue shall be authorized to commence the Services set forth herein upon execution of this Agreement and complete the Scope of Services within 90 days after receiving authorization to proceed. Donohue’s services under this Agreement will be considered complete when Donohue has delivered to Owner the deliverables defined under Scope of Services.

**C. COMPENSATION**

Compensation for the work as defined in the Scope of Services (Part I) of this Agreement shall be a lump sum of \$25,400. See attached Workflow Diagram for level of effort and fee breakdown.

**APPROVED FOR OWNER**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

**APPROVED FOR DONOHUE**

By: \_\_\_\_\_

Printed Name: Michael W. Gerbitz

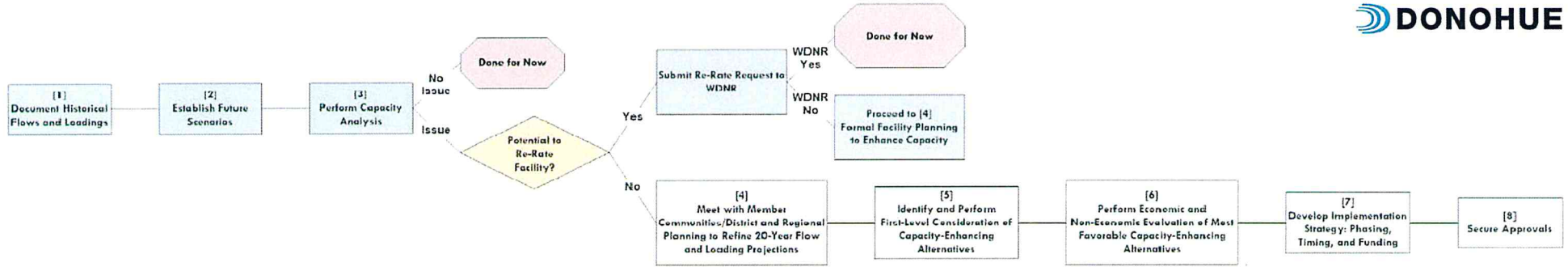
Title: Senior Vice President

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

**Workflow Diagram | TO1: Treatment Facility Master Planning - Step 1**

Heart of the Valley Metropolitan Sewerage District, Kaukauna, Wisconsin

Phase	Tasks	Workshops or Meetings	Deliverables	Schedule	Level of Effort			Fee			
					Project Manager	Senior Process Engineer	Junior Process Engineer	Labor	Expenses	Total Fee	
					\$240	\$190	\$115				
<b>1 Document Historical Flows and Loadings</b>	110 Develop and Submit Request for Information			1 Month		1		\$190		\$8,515	
	120 Assemble Historical RWW Flows and Loadings: Last 5 Years						1	15	\$1,915		
	130 Assemble Historical Community Flows and Loadings: Last 5 Years						1	25	\$3,065		
	140 Assemble Historical Significant Industrial User Flows and Loadings: Last 5 Years						1	5	\$765		
	150 Document Historical Flows and Loadings	1 - Historical Flows and Loadings	D/F TM 1 - Historical Flows and Loadings			2	5	10	\$2,580		
<b>2 Establish Future Scenarios</b>	210 Develop Three Future Flow and Loading Scenarios			1 Month		2	20	\$2,680		\$5,260	
	220 Document Future Flow and Loading Scenarios	2 - Future Flows and Loadings	D/F TM 2 - Future Flows and Loadings			2	5	10	\$2,580		
<b>3 Perform Capacity Analysis</b>	310 Document Unit Process and Facility Flow and Loading Capacities			1 Month		2	5	\$955		\$11,625	
	320 Document Historical Treatment Facility Performance: Last 5 Years						2	5	\$955		
	330 Document WPDES Permit Compliance Concerns						5	5	\$1,525		
	340 Assess Capacity Re-Rate Opportunities						5	15	\$2,675		
	350 Document Capacity Analysis: Capacities and Compliance Concerns Timeline	3 - Capacity Analysis	D/F TM 3 - Capacity Analysis			7	7	15	\$4,735	\$150	
	360 Present to Commission					2			\$480	\$150	
<b>Hour Totals</b>					13	37	130				
<b>Fee Totals</b>				<b>3 Months</b>	\$3,120	\$7,030	\$14,950	\$25,100	\$300	\$25,400	
					12%	28%	60%				





# Facility Master Planning Workflow

HOVMSD | Sep 10, 2019

