

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Re: City of O'Fallon Water Utility and Wastewater Systems (the "Systems")

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is made as of \_\_\_\_\_, 2014, by and between the City of O'Fallon ("City") and [ ], as an interested party in the Systems and the potential transaction generally described herein ("Interested Party").

WHEREAS, City and Interested Party are evaluating the potential sale, transfer or other arrangement with respect to the Systems (the "Potential Transaction").

WHEREAS, City has agreed to disclose to Interested Party certain information with respect to the Systems and the Potential Transaction, which information is highly confidential (the "Confidential Information").

WHEREAS, City may provide the Interested Party with certain written materials which contain the Confidential Information (the "Confidential Written Materials").

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Interested Party agrees as follows:

1. Interested Party and its agents, representatives, affiliates, subsidiaries, directors, accountants, legal counsel, advisors, partners, members, managers, officers and employees ("Representatives") will not disclose, permit the disclosure of, release, disseminate or transfer the Confidential Information, the Confidential Written Materials or any information obtained from the City with respect to the Systems or the Potential Transaction to any other person or entity.

2. This Agreement applies to the Confidential Information, the Confidential Written Materials or any other information or documentation received from Interested Party or City, as applicable, now or in the future, which is not readily available to the general public.

3. The Confidential Information and Confidential Written Materials shall be used for the sole purpose of evaluating the Systems and Potential Transaction, and it shall not at any time or in any manner be used for any other purpose.

4. Interested Party and its Representatives shall not contact directly any persons concerning the Systems or Potential Transaction, other than the City Administrator, without City's prior written consent, which consent may be withheld at City's sole and absolute discretion.

5. If Interested Party and its Representatives are reviewing information with respect to the Systems and Potential Transaction on behalf of, or as a representative of, a corporation, partnership, limited liability company, or other group or legal entity, the person(s) signing this Agreement on its behalf agrees to (a) take all reasonable precautions to limit the dissemination of the Confidential Information and Confidential Written Materials only to those persons within the entity who need to know such information for purposes of making an informed decision, (b) advise any person within the entity being provided with the Confidential Information or Confidential Written Materials of this Agreement and its contents, and (c) use reasonable efforts to obtain confirmation from any person within the entity being provided with the Confidential Information or Confidential Written Materials that such person is aware of this Agreement and its contents and agrees to abide by its terms.

6. In the event discussions between Interested Party and City are terminated for any reason whatsoever or no definitive agreement relating to the Potential Transaction is entered into within 90 days after the execution of this Agreement, then Interested Party agrees to promptly return to City all copies of the Confidential Information supplied by City, without retaining copies thereof, and to destroy all copies of any analyses, compilations, studies or other documents prepared by it for its use containing or reflecting any such Confidential Information.

7. City makes no representations or warranties, express or implied, as to the accuracy or completeness of any information provided by it, including information contained in the Confidential Written Materials.

*Confidentiality and Non-Disclosure Agreement*  
*(Continued)*

8. The existence of this Agreement, as well as the fact that communications or exchanges of information and documents between City and Interested Party and its Representatives are contemplated or have occurred, shall also be considered to be Confidential Information under this Agreement.

9. This Agreement constitutes the entire understanding between City and Interested Party with respect to the Confidential Information and merges all prior discussions between them relating thereto.

10. No amendment or modification of this Agreement shall be valid or binding unless made in writing and signed by both City and Interested Party by their respective duly authorized officers or representatives.

11. Interested Party recognizes that the unauthorized use or disclosure by it of the Confidential Information would cause irreparable injury to City. Therefore, it is agreed and understood that City shall be entitled, in addition to any other remedies or damages available, to specific performance and injunctive relief (without the necessity of posting or filing a bond or any other security, or the obligation to prove actual damages) to restrain a violation hereof by Interested Party and its agents, servants, employees and all other persons acting therefore.

12. Interested Party agrees to indemnify, defend and hold harmless City, its members, agents and affiliates harmless from and against any damage, cost, loss, claim or liability suffered by any of them arising out of, relating to or resulting from Interested Party's and any of its Representatives' failure to comply with the terms of this Agreement.

13. Any person signing this Agreement represents that he or she has the authority to bind any party for whom they sign.

14. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois.

(remainder of page intentionally left blank)

ACKNOWLEDGED AND AGREED as of the date and year first written above.

City of O'Fallon:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Telephone Number*

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

\_\_\_\_\_  
*Email Address*

[ ]:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Telephone Number*

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

\_\_\_\_\_  
*Email Address*