

**RESOLUTION: 24-26**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST MOLINE, ILLINOIS, APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR TEMPORARY WASTEWATER TREATMENT PLANT BY AND BETWEEN THE CITY OF MOLINE AND THE CITY OF EAST MOLINE**

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WHEREAS, intergovernmental cooperation is authorized by the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq* (2012) ("the Act"); and

WHEREAS, Moline and East Moline are "public agencies" (collectively referred to as the "Parties") within the meaning of the Act; and

WHEREAS, East Moline has constructed, owns and operates a wastewater treatment plant known as the East Moline Regional Wastewater Treatment Plant (the "East Moline WWTP"), operating under National Pollutant Discharge Elimination System (NPDES) Permit No. IL 0028550 issued by the Illinois Environmental Protection Agency's Division of Water Pollution Control, effective September 1, 2020 (the "Permit"); and

WHEREAS, Moline has constructed, owns and operates two wastewater treatment plants with NPDES permits containing certain terms and conditions similar to those set forth in the Permit governing the East Moline WWTP and has sufficient resources, experience and expertise to temporarily operate and maintain the East Moline WWTP; and

WHEREAS, East Moline's certified Class 1 Wastewater Treatment Works Operator left employment with the City in November of 2023; and

WHEREAS, East Moline desires to utilize the services of Moline in the temporary operation and maintenance of the East Moline WWTP, all as more particularly set forth herein, and Moline desires to provide such services to East Moline for the compensation and subject to the terms and conditions provided in this Agreement; and

WHEREAS, East Moline has determined that it is in its best interest to secure the temporary operations and maintenance services of Moline to assist in certain work related to the East Moline WWTP until such time as East Moline employs or contracts with a certified Class 1 Wastewater Treatment Works Operator and such person fully assumes all duties of the position (as determined at the discretion of the East Moline City Administrator); and

WHEREAS, East Moline has determined that it is in the best interest of its residents to enter into this Agreement to operate and maintain the East Moline WWTP pursuant to the terms of this Agreement; and

WHEREAS, all aspects of this Agreement are designed and intended to enhance the public health, safety, and welfare, and to provide efficiencies to the parties and their residents.

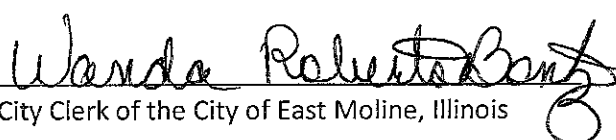
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of East Moline, Illinois, that authorization be granted to execute and attest to an Intergovernmental Agreement for Temporary Wastewater Treatment Plant Operations and Maintenance for the East Moline Regional Wastewater Treatment Plant by and between the City of Moline and the City of East Moline; provided, however, that said Agreement is in substantially similar form and content to that attached hereto and incorporated by this reference thereto as Exhibit A.

Approved this 18th day of March, 2024.

Adopted this 18th day of March, 2024.

  
Mayor Pro Tem of the City of East Moline, Illinois

ATTEST:

  
City Clerk of the City of East Moline, Illinois



**INTERGOVERNMENTAL AGREEMENT FOR  
TEMPORARY WASTEWATER TREATMENT  
PLANT OPERATIONS AND MAINTENANCE  
FOR THE EAST MOLINE REGIONAL  
WASTEWATER TREATMENT PLANT BY AND  
BETWEEN THE CITY OF MOLINE AND THE  
CITY OF EAST MOLINE**

THIS AGREEMENT (“Agreement”) is dated as of this 18th day of March, 2024, and is made and entered into by and between the CITY OF MOLINE, an Illinois home rule municipal corporation, hereinafter referred to as “Moline,” and the CITY OF EAST MOLINE, an Illinois municipal corporation, hereinafter referred to as “East Moline.”

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Moline and East Moline do hereby covenant and agree as follows:

**ARTICLE I**

**RECITALS**

1.0 Article VII, Section 10, of the Constitution of the State of Illinois of 1970 authorizes units of local government to contract or otherwise associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and to use their credit, revenues, and other resources to pay costs related to intergovernmental activities.

1.1 Intergovernmental cooperation is further authorized by the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.* (2012) (“the Act”).

1.2 Moline and East Moline are “public agencies” (collectively referred to as the “Parties”) within the meaning of the Act.

1.3 East Moline has constructed, owns and operates a wastewater treatment plant known as the East Moline Regional Wastewater Treatment Plant (the “East Moline WWTP”), operating under National Pollutant Discharge Elimination System (NPDES) Permit No. IL 0028550 issued by the Illinois Environmental Protection Agency’s Division of Water Pollution Control, effective September 1, 2020 (the “Permit”).

1.4 Moline has constructed, owns and operates two wastewater treatment plants with NPDES permits containing certain terms and conditions similar to those set forth in the Permit governing the East Moline WWTP and has sufficient resources, experience and expertise to temporarily operate and maintain the East Moline WWTP.

1.5 East Moline’s certified Class 1 Wastewater Treatment Works Operator left employment with the city in November of 2023.

1.6 East Moline desires to utilize the services of Moline in the temporary operation and maintenance of the East Moline WWTP, all as more particularly set forth herein, and Moline desires to provide such services to East Moline for the compensation and subject to the terms and conditions provided in this Agreement.

1.7 East Moline has determined that it is in its best interest to secure the temporary operations and maintenance services of Moline to service the East Moline WWTP until such time as East Moline employs or contracts with a certified Class 1 Wastewater Treatment Works Operator.

1.8 Moline has determined that it is in the best interest of its residents to enter into this Agreement to operate and maintain the East Moline WWTP pursuant to the terms of this Agreement.

1.9 All aspects of this Agreement are designed and intended to enhance the public health, safety, and welfare, and to provide efficiencies to the parties and their residents.

## ARTICLE II

### TERM

2.0 **Term.**

The term of this Agreement shall commence upon execution and continue in full force until East Moline employs or contracts with a certified Class 1 Wastewater Treatment Works Operator and said Operator begins his/her employment with East Moline. This Agreement may be terminated by either of the parties hereto by giving at least thirty (30) days' notice, in writing, to the other party of its intent to terminate this Agreement.

## ARTICLE III

### MOLINE DUTIES

3.0 **Scope of Services.** After the Commencement Date and throughout the term of this Agreement, Moline shall:

A. Provide Wastewater Treatment Plant operations and maintenance guidance to East Moline staff with regard to regulatory compliance;

B. Submit required regulatory reports pursuant to the NPDES permit;

C. Provide necessary communications with the IEPA and the USEPA and provide necessary guidance to East Moline staff, consulting engineers and contractors concerning all regulatory and operational matters.

3.1 Moline employees shall be allowed to enter the East Moline WWTP to do work necessary to perform the services described above and with the same access rights and authorizations as any East Moline employee, though at no time during the performance of this

Agreement shall Moline officials, employees, agents or volunteers be deemed to have established an employer-employee relationship with East Moline.

3.2 If directed by East Moline and agreed to by Moline in writing pursuant to an amendment to this Agreement, or otherwise resulting from a change in governing law or all or any of the facility permits, the Parties may amend this Agreement to contract for Moline to perform additional services. In such case, the Parties agree to negotiate compensation for such additional services in accordance with then-applicable time and materials rates for Moline.

3.3 Except as enumerated herein, East Moline WWTP employees shall be responsible for all other East Moline WWTP duties, as is customary and in compliance with state and federal law.

#### **ARTICLE IV**

#### **MOLINE COMPENSATION**

4.0 The City of Moline will complete the duties listed above and provide an invoice to East Moline each month for all work completed. The invoice will be mailed to the address indicated herein below, unless Moline is otherwise notified in writing by East Moline. Services listed above shall be billed based on the actual hourly time spent performing the task. The hourly charge rate will be \$60.98 an hour.

#### **ARTICLE V**

#### **INDEMNIFICATION, LIABILITY AND INSURANCE**

##### **5.0 Mutual Indemnification**

Moline shall indemnify, hold harmless and defend East Moline and its officers, employees and agents for and against all injuries, deaths, losses, damages, including property damage, claims, suits, liabilities, judgments, costs and expenses, including reasonable attorneys' fees, which may in any way accrue against East Moline and its officers, employees and agents as a consequence of the negligent acts or omissions or willful misconduct of Moline's officers, employees, agents and independent contractors pursuant to this Agreement, but only to the extent that such damages are found to be caused by Moline's wrongful acts, errors or omissions, and Moline shall, at its own expense, appear, defend and pay all charges of attorneys' fees and costs and other expenses. East Moline shall indemnify, hold harmless and defend Moline and its officers, employees and agents for and against all injuries, deaths, losses, damages, including property damage, claims, suits, liabilities, judgments, costs and expenses, including reasonable attorneys' fees, which may in any way accrue against Moline and its officers, employees and agents as a consequence of the negligent acts or omissions or willful misconduct of East Moline's officers, employees, agents and independent contractors pursuant to this Agreement, but only to the extent that such damages are found to be caused by East Moline's wrongful acts, errors or omissions, and East Moline shall, at its own expense, appear, defend and pay all charges of attorneys' fees and costs and other expenses.

5.1 **Notice of Claim**

Each Party shall provide notice to the other Party pursuant to this Agreement in the event that any person or entity shall in any way provide notice to the Party of any claim or demand pursuant to this Agreement from which the other Party shall be obligated to indemnify, hold harmless and defend the Party pursuant to this Article V.

5.2 **Reservation of Defense Rights**

Nothing in this Agreement shall be construed as prohibiting Moline or East Moline, and their respective officers, employees and agents from defending, through the selection and use of their own agents, attorneys and experts, any claims, actions or suits brought against them arising out of the performance of this Agreement.

5.3 **Insurance**

At its own respective expense, each Party shall obtain and keep in force during the duration of this Agreement broad form comprehensive general liability insurance with the following minimum limits: The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law:

A. Comprehensive general liability, with a general aggregate of \$5,000,000.00 and \$1,000,000.00 for each occurrence.

B. Worker's compensation insurance in accordance with the provisions of the laws of the State of Illinois, including occupational disease provisions, for all applicable employees pursuant to this Agreement.

C. Comprehensive automobile liability, with coverage to include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed, covering personal injury, bodily injury and property damage, with a combined single limit coverage of \$1,000,000.00.

5.3.1 Each Party and its officers, employees and agents shall be named as additional insureds on all of the other Party's insurance policies, except Worker's Compensation, during the entire term of this Agreement. Said policies shall not be allowed to expire or be cancelled, nor shall said coverages be reduced, without thirty (30) days prior written notice to the other Party.

5.3.2 Each Party understands and agrees that any insurance protection required by this Agreement or otherwise provided by that Party, shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the other Party and its officers, employees and agents as herein provided.

5.3.3 Each Party shall require any contractor performing any work to carry liability insurance and name the other Party as an additional insured under such policies to the same extent that the first Party obtains such insurance for itself. The first Party shall furnish copies of certificates of insurance evidencing coverage for any contractor performing any such work to the other Party.

D. East Moline Property Insurance. East Moline shall maintain property damage insurance for property leased to or owned by East Moline that is to be operated by Moline under this Agreement.

5.4 **Liability for Fines**

5.4.1 Moline shall pay any regulatory fines and penalties assessed against East Moline for noncompliance with any Federal, State or local law, regulation, permit condition or provision of any administrative or court order, when such fine or penalty results from the negligent acts, failure to act or willful misconduct of Moline or the Moline personnel assigned to the East Moline WWTP. East Moline shall assist Moline in contesting any such fines in administrative proceedings, and/or in court, prior to any payment by Moline.

5.4.2 East Moline shall pay any regulatory fines and penalties assessed against East Moline for noncompliance with any administrative or court order, when such fine or penalty results from (i) the failure of East Moline to act on a recommendation from Moline or (ii) failure to bring the East Moline WWTP into compliance with modifications or additions to environmental laws that are made effective during the term of this Agreement.

**ARTICLE VI**

**DEFAULT, CURE, REMEDIES AND TERMINATION**

6.0 **Defaults; Events of Default**

In the event of a breach or violation of any material term, representation, warranty, covenant, agreement, or condition of this Agreement (“Default”), the Party not in Default shall serve written notice upon the Party in Default, which notice shall be in writing and shall specify the particular Default. Failure on the part of either Party to cure the Default within thirty (30) days after receiving written notice thereof (unless a different time period is specified in the Agreement for curing non-performance of a specific task or event) shall constitute an “Event of Default.” Except as otherwise provided in this Agreement, no Event of Default of this Agreement may be found to have occurred if performance has commenced to cure such default to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice and the Party alleged to be in Default continues diligently to pursue such cure. Except as otherwise provided, no Default by either Party shall be actionable or be of other consequence unless and until it shall constitute an Event of Default.

6.1 **Remedies for Events of Default**

Except where a particular remedy is specified in this Agreement for a specific Default or Event of Default, in the Event of Default by a Party in the performance of any of its obligations under this Agreement, the Parties shall participate in the “Dispute Resolution” process set forth in Section 6.2. If the Dispute Resolution process is not successful, then either Party shall have the right to pursue all rights and remedies available to it at law or in equity. In any action with respect to this Agreement, the Parties may, in law or in equity, by suit, action, mandamus, or

any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement or seek monetary damages for the breach of this Agreement; provided, however, each Party agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the other Party, or any of its elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys, on account of the negotiation or execution of this Agreement. Each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies and benefits allowed by law. In the event of a judicial proceeding brought by one Party to this Agreement against the other Party to this Agreement, the prevailing party shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including without limitation reasonable attorneys' fees, incurred in connection with the judicial proceeding.

6.2 **Dispute Resolution**

If a dispute arises between the Parties concerning this Agreement, the Parties will first attempt to resolve the dispute by negotiation. Each Party will designate persons to negotiate on their behalf. The Party contending that a dispute exists must specifically identify in writing all issues and present it to the other Party. The Parties will meet and negotiate in an attempt to resolve the matter. If the dispute is resolved as a result of such negotiation, there must be a written determination of such resolution, and ratified by the corporate authorities of each Party, which will be binding upon the Parties. If necessary, the Parties will execute an addendum to this Agreement. Each Party will bear its own costs, including attorneys' fees, incurred in all proceedings under this Section 6.2. If the Parties do not resolve the dispute through negotiation, any Party to this Agreement may pursue other remedies as set forth herein below to enforce the provisions of this Agreement.

6.3 **Venue**

Any action brought by either party to this Agreement shall be prosecuted in a court of competent jurisdiction in Rock Island County, Illinois. In the event that either Party hereto institutes legal proceedings against the other Party for violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment against the losing Party all expenses of such legal proceedings incurred by the prevailing Party, including, but not limited to, court costs and attorneys' fees, and witnesses' fees incurred by the prevailing Party in connection therewith.

6.4 **No Waiver of Right to Enforce**

Failure of any Party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and/or conditions set forth herein, or any of them, upon any other party imposed, shall not, absent other facts and circumstances, constitute or otherwise be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement and/or condition, but the same shall continue in full force and effect.

6.5 **Cumulative Remedies**

Unless expressly provided otherwise herein, the rights and remedies of the Parties provided for herein shall be cumulative and concurrent and shall include all other rights and

remedies available at law or in equity, may be pursued singly, successively or together, at the sole discretion of either Party and may be exercised as often as occasion therefore shall arise.

6.6 **Termination.**

A. This Agreement is conditioned upon the faithful performance by both parties of all the terms and provisions hereof. Either party may give notice of termination for an Event of Default involving a material term of this Agreement if the dispute resolution process described above does not resolve the Event of Default.

B. This Agreement may be terminated upon the written agreement of the Parties approved by their respective corporate authorities, in which case any costs prior to the effective date of such termination shall be prorated.

**ARTICLE VII**

**GENERAL PROVISIONS**

7.0 **Force Majeure**

Neither Party shall be considered in default of its obligations under this Agreement in the event of any delay or failure to perform if such delay or failure is caused by a Force Majeure Event, which in fact interferes with the ability of such Party to discharge such obligation hereunder. The Party relying on this Section with respect to any such delay or non-performance shall give written notice thereof to the other Party to this Agreement. The individual or entity relying on this Section with respect to any such delay may rely on this Section only to the extent of the actual number of business days of delay caused by any such events described above. For purposes of clarity, when making an extension of a date or period by reference to business days, intervening days that are not business days shall be automatically added. For each business day that a Party is delayed by a Force Majeure Event, the dates and deadlines set forth in this Agreement shall be extended by one (1) business day.

**ARTICLE VIII**

8.0 **Entire Agreement**

This Agreement contains the entire agreement between the Parties respecting the matters set forth herein and supersedes all prior agreements, whether oral or written, among the Parties hereto respecting such matters, if any, there being no other oral or written promises, conditions, representations, understandings, warranties or terms of any kind as conditions or inducements to the execution hereof and none have been relied upon by either Party. There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this Agreement. All negotiations between the Parties are merged in this Agreement, and there are no understandings or agreements, verbal or written, other than those incorporated in this Agreement.

8.1 **Interpretation and Severability**

It is the intent of Moline and East Moline that this Agreement be construed and interpreted so as to preserve its validity and enforceability as a whole. In case of any conflict among the provisions of this Agreement, including any exhibits hereto, the provision that best promotes and reflects the intent of the Parties shall control. If any provision of this Agreement is construed or held to be void, invalid, or unenforceable in any respect, the remaining provisions of this Agreement shall not be affected thereby but shall remain in full force and effect. In addition, the Parties acknowledge that each Party has had the opportunity to seek review of this Agreement by counsel prior to its execution and therefore this Agreement shall be deemed to have been drafted mutually by Moline and East Moline.

8.2 **Amendments**

Except as expressly provided otherwise in this Agreement, this Agreement shall not be modified, changed, altered, amended or terminated without the written consent and duly authorized consent of Moline and East Moline.

8.3 **Waivers**

No term or condition of this Agreement shall be deemed waived by any party unless the term or condition to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of such party. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement; nor shall waiver of any default be deemed to constitute a waiver of any subsequent default whether of the same or different provisions of this Agreement.

8.4 **Regulatory Bodies**

This Agreement shall be subject to all valid rules, regulations and laws applicable hereto passed and promulgated by the United States of America, the State of Illinois, or any other governmental body or agency having lawful jurisdiction, or any authorized representative or agent of any of them; provided, however, that this Section 8.4 shall not be construed as waiving the right of any party to challenge the validity of any such rules, regulations and laws on any basis, including the impairment of this Agreement.

8.5 **Successors; Assignment**

No Party shall assign this Agreement, in whole or in part, or any of its rights or obligations under this Agreement, without the prior written consent of the other Party. This Agreement shall be binding on, and shall inure to the benefit of the successors and permitted assigns of Moline and East Moline.

8.6 **Notices**

All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof when delivered in person or by express mail or messenger at the address set forth below or three business days after deposit thereof in any main or branch United States post office, certified or registered mail, return receipt requested, postage prepaid, properly addressed to the parties, respectively, as follows:

For notices and communications to Moline:

City of Moline  
619 16th Street  
Moline, IL 61265  
Attn: City Administrator

With a copy to:

Ancel Glink, P.C.  
140 S. Dearborn Street, Suite 600  
Chicago, IL 60603  
Attn: Margaret Kostopulos

For notices and communications to East Moline:

City of East Moline  
912 16<sup>th</sup> Avenue  
East Moline, IL 61244  
Attn: City Administrator

With a copy to:

City of East Moline  
912 16<sup>th</sup> Avenue  
East Moline, IL 61244  
Attn: City Attorney

By notice complying with the foregoing requirements of this Section, each party shall have the right to change addressees or addresses or both for future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

**8.7 Independent Contractor**

The Parties mutually understand and agree that all personnel furnished by Moline to perform the services provided under this Agreement is/are an Independent Contractor and is/are not an employee(s) of East Moline and shall be and remain at all times an Independent Contractor.

**8.8 Execution in Counterparts**

This Agreement may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute one and the same Agreement.

**8.9 No Third Party Beneficiaries**

Nothing in this Agreement shall create, or shall be construed or interpreted to create, any third party beneficiary rights.

**8.10 Captions and Section Headings**

Captions and section headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

8.11 **Governing Law**

This Agreement shall be deemed to be an intergovernmental agreement made under and shall be construed in accordance with and governed by the laws of the State of Illinois.

8.12 **Binding Authority**

The individuals executing this Agreement on behalf of the Parties represent that they have the legal power, right, and actual authority to bind their respective parties to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the City of Moline and the City of East Moline have, by their duly authorized officers, set their hands and affixed their seals on the date first above written.

CITY OF MOLINE, ILLINOIS,  
a municipal corporation,

CITY OF EAST MOLINE, ILLINOIS,  
a municipal corporation,

\_\_\_\_\_  
Mayor

*Symon A. Segura*  
Mayor Pro Tem

Attest: \_\_\_\_\_  
City Clerk

Attest: *Wanda Roberto Bonz*  
City Clerk

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

Date: March 18, 2024

