



**REQUEST FOR QUALIFICATIONS  
(RFQ 22B)  
FOR  
ENGINEERING CONSULTING SERVICES  
TO  
UPGRADE OF DARDENNE LIFT STATION**

Duckett Creek Sanitary District is soliciting Statements of Qualifications for **Engineering Consulting Services**. The District reserves the right to terminate the Contract for any nonconformity, by the successful proposer, of any term or condition of the Contract by giving thirty (30) days written notice stating the reasons therefore and giving the party time to remedy any deficiencies.



#### **1.4 ESTIMATED SCHEDULE**

- Release of RFQ: November 10, 2022
- SOQ Submission Deadline: December 9, 2022
- Notification: December 21, 2022
- Final Selection: January 12, 2023

#### **1.5 COMPLIANCE WITH TERMS AND CONDITIONS**

Proposer agrees to be bound by the District's terms and conditions for Contracts.

#### **1.6 ERRORS IN STATEMENT OF QUALIFICATIONS**

Proposers or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting SOQ; failure to do so will be at the proposer's own risk. Neither law nor regulations make allowance for error either of omission or commission on the part of proposers.

#### **1.7 MINORITY BUSINESS ENTERPRISE (MBE)/WOMEN BUSINESS ENTERPRISE (WBE)**

The District hereby notifies all proposers that it will affirmatively ensure that in any Contract entered into pursuant to this advertisement, minority business entities will be afforded full opportunity to submit their SOQ in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for award.

### **2. INTRODUCTION OF CONTRACT**

#### **2.1 FEES AND CONTRACT NEGOTIATION**

The District will endeavor to negotiate a Contract with the selected firm for services required for each project (see example agreement **Appendix A**). In the event that a mutually agreeable Contract cannot be agreed upon, District staff will then enter into Contract negotiations with the next preferred firm and so on, until a mutually agreeable Contract can be negotiated. Final approval will be in accordance with District's Purchasing Policy.

#### **2.2 SAMPLE CONTRACT**

An example of the District's standard engineering services Contract is attached as **Appendix A** and is for reference purposes only. A final agreement will be negotiated with selected firm; however, if terms are not agreed upon, then Section 2.1 shall apply. You will not be allowed to charge for services that are not specifically stated in the Contract.

Further, any Contract between the District and successful proposer shall incorporate this RFQ, amendments to this RFQ, and the proposer's responses and proposal as an integral part of the Contract except to the extent that the Contract explicitly provides to the contrary.

#### **2.3 CONTRACT EXECUTION**

This RFQ and the proposer's SOQ will be made part of any resultant Contract and will be incorporated in the Contract set forth, verbatim.

**Precedence** – In the event of contradictions or conflicts between the provisions of the documents comprising this Contract, they will be resolved by giving precedence in the following order:

- a) The provisions of the Contract.
- b) The provisions of the RFQ.
- c) The provisions of the proposer's SOQ.

## **2.4 CONTRACT FORMS**

Any agreement, Contract, or purchase resulting from the District's engagement of an Engineering Consultant shall be on forms either supplied by or approved by the District.

## **3. SELECTION PROCESS**

The estimated schedule of activities for Engineering Consultant selection is anticipated, but may be varied, as required, to accommodate changing circumstances. The District intends to adhere to the schedule, however, if a change is necessary, adequate notice will be provided to proposers.

The District will evaluate each of the proposer's SOQ that adhered to the submittal process and rank firms the District deems qualified to meet the standards to perform the work. The District may require an additional interview process prior to selection if District determines more information is required.

## **4. RESPONSE PRESENTATION AND REVIEW**

### **4.1 RESPONSE CONTENT**

In order to enable direct comparison of competing responses, you must submit your response in strict conformity to the requirements stated here. Failure to adhere to all requirements may result in your response being disqualified as non-responsive.

### **4.2 SELECTION**

The District will evaluate firms based on the following scoring criteria.

Profile of Firm (5 points) - Mission statement; Proximity to and familiarity with the District; and firm's quality assurance/quality control plan.

Experience and Technical Competence (20 points) Specialized experience and technical competence of the firm with respect to projects similar in scope and objectives. Key personnel experience, qualifications, and credentials.

Capacity and Capability (20 points) - The capacity and capability of the firm to perform the work, including specialized services and resources. Provide examples of innovative methods and results.

Past Record of Performance (20 points) - The past record of performance of the firm with respect to such factors as control of costs, quality of work, and ability to meet schedules.

Project Approach (30 points) - Proposed detailed strategy and process for utilizing your experience and expertise to be responsive to the District's request for services for this specific project. A site visit by the proposer prior to preparing a project approach is recommended.

Responsiveness, Completeness, and Consistency with RFQ (5 points) - Submitted SOQ is complete, responsive to the request, and consistent with RFQ.

## **5. TERMS AND CONDITIONS**

- The District reserves the right to accept or reject in part or whole any SOQ submitted, and to waive any technicalities for the best interest of the District.
- The District reserves the right to retain all SOQs submitted and to use any ideas in received SOQs regardless of whether the proposer is selected for the contemplated project.
- All SOQs will be considered final as submitted. No additions, deletions, corrections, or adjustments will be accepted after the SOQ submission deadline. The District reserves the right to make inquiry of any proposer submitting a SOQ to clarify its understanding of their submittal.
- The District reserves the right to reject the SOQ of a firm who has previously failed to perform properly or complete on time agreements of a similar nature.
- Items/services Qualifications must meet or exceed the District specifications; however, the District may consider and accept alternate SOQs if specified herein when most advantageous to the District. The District reserves the right to hold to the District specifications and to determine "or equal" status.
- SOQ submission creates no obligation on the part of the District to award a Contract or to compensate any proposer for any costs incurred during RFQ response, submission or interviews. All expenses for making SOQs to the District are to be borne by the proposer.
- The District is exempt from federal, state and local taxes, therefore, tax must not be included in the proposed price.
- Proposers are required to clearly identify any deviations from the scope of services in the document.
- An authorized officer of the company submitting the SOQ must sign all Statement of Qualifications, in ink.
- All prices and notations must be in ink or typewritten on the attached form. Mistakes must be crossed out, corrections typed adjacent and must be initialed in ink by the person signing the SOQ.
- Following the award, additional services of the same general category that could have been encompassed in the award of this agreement, and that are not already in the agreement, may be added as agreed by both parties.
- The successful proposer is specifically denied the right of using, in any form or medium, the names of the District for public advertising unless express written permission is granted.
- The District may provide thirty (30) calendar days' notice before cancelling the Contract.

## **6. LIABILITY AND INSURANCE REQUIREMENTS**

The successful proposer shall assume all risk and liability for accidents and damages that may occur to persons or property during the execution of work under this agreement. The proposer shall file with the District a certificate of insurance evidencing the following coverage(s) together with a copy of the required endorsement prior to commencement of any work:

- a. Workers Compensation Employer's Liability and Professional Liability:



Any entity contracting with the District shall only be required to provide the referenced affidavit on an annual basis. A copy of the affidavit is included in this Qualification request. Firms may choose to send the required documentation using one of the following options:

- Send the notarized affidavit and E-Verify MOU signature page to: the District, Attn: Director of Engineering and Operations, 3550 Hwy K, O’Fallon, Missouri 63368 prior to responding to any solicitations; **OR**
- Send the notarized affidavit and E-verify MOU signature page along with a Qualification solicitation response.

These documents will be kept on file. The notarized affidavit and E-Verify MOU signature page will remain current for one year from the date of the notarized affidavit. Please contact our office if you need assistance with the 1) E-Verify notarized affidavit or 2) E-Verify MOU signature page.

**PLEASE NOTE:**

Acceptable enrollment and participation documentation consist of a valid copy of the signature page of the **E-Verify Memorandum of Understanding**, completed and signed by the Company, and the Department of Homeland Security-Verification Division. The online address to enroll in the E-verify program is:

<https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>

**9. INDEMNIFICATION**

To the fullest extent permitted by law, the CONTRACTOR shall indemnify and hold harmless the DISTRICT, DISTRICT ENGINEER, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property other than the Work itself, including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the CONTRACTOR, a Subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party or person described in this Section.

In claims against any person or entity indemnified under the above paragraph by an employee of the CONTRACTOR, a Subcontractor, or anyone directly or indirectly employed by them or anyone whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the CONTRACTOR under this Section shall not extend to the liability of the DISTRICT, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions, after requested in writing by the CONTRACTOR, or instructions by the DISTRICT, the DISTRICT ENGINEER, or any consultants, and agents and employees of any of them provided such instructions or failure to give is the primary cause of the injury or damage.

**10. RIGHTS AND DUTIES UPON TERMINATION AND EXPIRATION**

Upon expiration of the Contract term, the successful proposer agrees to hold over under the terms and conditions of this Contract for a reasonable period of time to allow the District to re-bid a Contract, not to exceed ninety (90) days. The successful proposer will be reimbursed for this service at the prior Contract rate(s). The successful proposer shall remain obligated to the District under all clauses of this Contract that expressly, or by their nature, extends beyond and survives the expiration or termination of this Contract.

The performance of work or purchase of goods under this order may be terminated in whole or in part by the District, with or without cause, at any time upon the delivery to the successful proposer of a written "Notice of Termination" specifying the extent to which performance of work or the goods to be purchased under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of any other termination rights of the District as set forth herein.

## **11. OPEN RECORDS**

Any and all information contained in or submitted with the SOQ becomes a public record subject to the Missouri Sunshine Law when a negotiated Contract based on the SOQ is entered or all SOQs are rejected. If the proposer believes that any information contained in or submitted with the SOQ is protected from disclosure by the Missouri Sunshine Law, the proposer must clearly identify what information the proposer believes is so protected and must also clearly identify the legal basis therefore.

## **12. SPECIFICATIONS**

### **12.1 INTRODUCTION**

The District is seeking Professional Consulting Firms (Engineering Consultant) to submit Statement of Qualifications for the purpose of providing design and construction engineering services for upgrading the District's Dardenne Lift Station (RFQ 22B).

### **12.2 SCOPE OF SERVICES**

Services required by the Consultant include:

- Evaluate and design the necessary improvements.
- Prepare plans with contract specifications
- Obtain required permits and provide construction phase inspection and management services for each project.

Contract for projects will be negotiated for each phase in accordance to **Section 2.1 Fees and Contract Negotiations**. These negotiations will be considered a subsidiary cost and no separate payment will be made therefore. The Consultant should be prepared to attend at least one (1) meeting per project with the District for Contract negotiations.

#### **12.2.1 Dardenne Lift Station Upgrade:**

The Dardenne Lift Station is located in the southern portion of the city of St. Peters off of Mid Rivers Drive. The Dardenne Lift Station discharges into a 20-inch DIP force main to the Harvester Pump Station, from which flow is conveyed to the District's Treatment Plant No. 1.

The Dardenne Lift Station is equipped with three Flygt pumps, each sized at 3,300 gpm. The District desires to replace these existing pumps. However, the pump station cannot be hydraulically isolated, and therefore a new wet well adjacent to the existing wet well and valve vault must be designed and constructed with



new pumps and piping. A new gate and opening to the existing wet well structure must also be designed and constructed to allow the new pump station to be isolated from the existing pump station. The existing pump station will remain in place for possible future flow bypassing.

The District also desires to upgrade the control system with a Flygt proprietary control system.

Once the new wet well, control system, pumps, piping and electrical appurtenances are constructed and ready for startup, bypass pumping will be required to complete the following tie-ins:

- New piping to existing 20” force main on the east side of the pump station
- New wet well to existing wet well

To create a bypass, the influent flow to the pump station must be intercepted, and conveyed to the existing 20-inch diameter pump station force main. The influent line to the pump station is a 30-inch DIP pipe. A new square structure with a 30” gate valve will be required to isolate the existing wet well and allow bypass pumping during construction of the proposed improvements (see **Appendix B**).

The bypass pump capacity must be based upon a single pump capable of pumping the dry weather flow, and must be sized to match the new larger pumps envisioned at the pump station. The bypass pumping arrangement scope will include pumping, isolation check valves, piping and fittings. Additionally, there will be excavation and restoration of the site. Power and control wiring for the bypass pump may be temporarily run from a new protected ground-mounted control panel.

Construction costs for these improvements is expected to be approximately \$2.3M

### **13. FORMAT FOR SUBMISSION AND EVALUATION OF QUALIFICATIONS**

To facilitate a fair and efficient selection process, proposers are requested to utilize the following standard format. All costs for preparing and submitting SOQs in response to this RFQ shall be the responsibility of the proposer and shall not be chargeable in any manner to the District.

#### 13.1 Letter of Transmittal

- Four (4) pages maximum.
- Statement communicating firm's understanding of scope of services requested.

#### 13.2 Table of Contents

#### 13.3 Profile of Firm

- Location, size, proximity to and familiarity with the District.
- Quality assurance/quality control plan.

#### 13.4 Consultants submitting SOQ should provide a list of relevant experience within St. Charles County in the following areas:

- The capacity and capability of the firm to perform the work, including specialized services and resources.
- Examples of innovative methods and results. Include the past record of performance of the firm with respect to such factors as control of costs, quality of work, and ability to meet schedules on similar projects requiring preparation of plans, specifications, acquiring easements and obtaining required permits for sewer extensions, pump stations and force-main relocations, construction and administration services for projects of similar size and complexity in St. Charles County that required the Missouri Department of Natural Resources, U.S. Army Corps of Engineers, county, city and/or utility providers review for approval and/or permitting.

- Proposed detailed strategy and process for utilizing your experience and expertise to be responsive to the District's request for services for this specific project. A site visit by the proposer prior to preparing a project approach is recommended.

## **EXCEPTION SHEET**

If the item(s) and/or service proposed in the response to this RFQ is in any way different from that which is contained in this RFQ, the proposer is responsible to clearly identify all such differences in the space provided below. Otherwise, it will be assumed that the proposer's offer is in total compliance with all aspects of the RFQ.

Below are the exceptions or differences to the stated scope of services (attach additional sheets as needed).

**AFFIDAVIT OF WORK AUTHORIZATION**

The Proposer/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 service related to Contract(s) with the District 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 to 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

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

Subscribed and sworn to me this \_\_\_\_\_ (day) of \_\_\_\_\_ (month/year).

I am commissioned as a notary public within the County of \_\_\_\_\_, \_\_\_\_\_ (County/State) and my commission expires on \_\_\_\_\_ (date).

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Date

**APPENDIX A TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES**

Project: \_\_\_\_\_  
Client: \_\_\_\_\_

Date of Letter, Proposal, or Agreement: \_\_\_\_\_  
Client Signature: \_\_\_\_\_

**1. SCOPE OF SERVICES**

For the above-referenced Project, the Consultant will perform the services set forth in the above-referenced Letter, Proposal, or Agreement, in accordance with these Terms and Conditions. The Consultant has relied upon the information provided by Client in the preparation of the Proposal, and shall rely on the information provided by or through Client during the execution of this Project as complete and accurate without independent verification.

**2. PAYMENTS TO CONSULTANT**

Compensation will be as stated in the above-referenced Letter, Proposal, or Agreement. Statements will be in the Consultant’s standard format and are payable upon receipt. Time is of the essence in payment of statements, and timely payment is a material part of the consideration of this Agreement. A late payment charge will be added to all amounts not paid within 30 days of statement date and shall be calculated at 1.5 percent per month from statement date. Client shall reimburse any costs incurred by the Consultant in collecting any delinquent amount, including reasonable attorney’s fees. If a portion of the Consultant’s statement is disputed, Client shall pay the undisputed portion by the due date. Client shall advise the Consultant in writing of the basis for any disputed portion of any statement.

**3. INSURANCE**

A. During the course of performance of its services, the Consultant will maintain Worker’s Compensation insurance with limits as required by statute, Employer’s Liability insurance with limits of \$1,000,000, Commercial General Liability and Automobile Liability insurance each with combined single limits of \$1,000,000, and Professional Liability insurance with limit of \$1,000,000 per claim and annual aggregate.

B. If the Project involves on-site construction, construction contractors shall be required to provide (or Client may provide) Owner’s Protective Liability Insurance naming Client as a Named Insured and the

Consultant as an Additional Insured or to endorse Client and the Consultant using ISO from CG 20 10 11 85 endorsement or its equivalent as Additional Insureds on all construction contractor’s liability insurance policies covering claims for personal injuries and property damage in at least the amounts required of the Consultant in 3A above. Construction contractors shall be required to provide certificates evidencing such insurance to Client and the Consultant. Contractor’s compensation shall include the cost of such insurance including coverage for contractual and indemnification obligations herein.

C. Client and the Consultant release each other and waive all rights of subrogation against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of the Consultant’s services. A provision similar to this shall be incorporated into all construction contracts entered into by Client, and all construction contractors shall be required to provide waivers of subrogation in favor of Client and the Consultant for damage covered by any construction contractor’s property insurance.

**4. INDEMNIFICATION**

To the extent allowed by law, Client will require all construction contractors to indemnify, defend, and hold harmless Client and the Consultant from any and all loss where loss is caused or alleged to be caused in whole or in part by the construction contractors, their employees, agents, subcontractors or suppliers.

**5. PROFESSIONAL RESPONSIBILITY –  
LIMITATION OF REMEDIES**

A. The Consultant will exercise reasonable skill, care, and diligence in the performance of its services and will carry out its responsibilities in accordance with customarily accepted professional practices. If the Consultant fails to meet the foregoing standard, the Consultant will perform at its own cost, the professional services necessary to correct errors and omissions reported to the Consultant in writing within one year from

the completion of the Consultant's services for the Project.

B. The Consultant's aggregate liability for all damages connected with its services for the Project whether or not covered by the Consultant's insurance, will not exceed \$1,000,000.

## **6. PERIOD OF SERVICE AND SCHEDULE**

The provisions of this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the services stated in the Proposal. The Consultant's obligation to render services hereunder will extend for a period that may reasonably be required for the completion of said services. The Consultant shall make reasonable efforts to comply with deliverable schedules (if any) and consistent with the Consultant's professional responsibility.

## **7. COMPUTER PROGRAMS OR MODELS**

Any use, development, modification, or integration by the Consultant of computer models or programs does not constitute ownership or a license to Client to use or modify such computer models or programs.

## **8. ELECTRONIC MEDIA AND DATA TRANSMISSIONS**

A. Any electronic media (computer disks, tapes, etc.) or data transmissions furnished (including Project Web Sites or CAD file transmissions) are for Client information and convenience only. Such media or transmissions are not to be considered part of the Consultant's instruments of service. The Consultant, at its option, may remove all indicia of its ownership and involvement from each electronic display.

B. The Consultant shall not be liable for loss or damage directly or indirectly, arising out of Client's use of electronic media or data transmissions.

## **9. DOCUMENTS**

A. All documents prepared by the Consultant pursuant to this Agreement are instruments of service in respect of the Project specified herein. They are not intended or represented to be suitable for reuse by Client or others in extensions of the Project beyond that now contemplated or on any other Project. Any reuse,

extension, or completion by Client or others without written verification, adaptation, and permission by the Consultant for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to the Consultant.

B. In the event that the Consultant is to reuse, copy or adapt all or portions of reports, plans, or specifications prepared by others, Client represents that Client either possesses or will obtain permission and necessary rights in copyright, patents, or other proprietary rights and will be responsible for any infringement claims by others. Client warrants the completeness, accuracy, and efficacy of the information, data and design provided by or through Client (including prepared for Client by others), for which the Consultant shall rely on to perform and complete its services.

## **10. ESTIMATES, SCHEDULES, FORECASTS, AND PROJECTIONS**

Estimates, schedules, forecasts, and projections prepared by the Consultant relating to loads, interest rates and other financial analysis parameters, construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are opinions based on the Consultant's experience, qualifications, and judgement as a professional. Since the Consultant has no control over weather, cost and availability of labor, cost and availability of material and equipment, cost of fuel or other utilities, labor productivity, construction contractor's procedures and methods, unavoidable delays, construction contractor's methods of determining prices, economic conditions, government regulations and laws (including the interpretation thereof), competitive bidding or market conditions, and other factors affecting such estimates or projections, the Consultant does not guarantee that actual rates, costs, quantities, performance, schedules, etc., will not vary significantly from estimates and projections prepared by the Consultant.

## **11. ON-SITE SERVICES**

A. Project site visits by the Consultant during investigation, observation, construction or equipment installation, or the furnishing of Project representatives shall not make the Consultant responsible for construction means, methods, techniques, sequences, or procedure; for

construction safety precautions or programs; or for any construction contractor(s') failure to perform its work in accordance with the contract documents.

B. Client shall disclose to the Consultant the location and types of any known or suspected toxic, hazardous, or chemical materials or wastes existing on or near the premises upon which work is to be performed by the Consultant's employees or subcontractors. If any hazardous wastes not identified by Client are discovered after a Project is undertaken, Client and the Consultant agree that the scope of services, schedule, and compensation may be adjusted accordingly. Client agrees to release the Consultant from all damages related to any pre-existing pollutant, contaminant, toxic, or hazardous substance at the site.

## **12. CHANGES**

Client shall have the right to make changes within the general scope of the Consultant's services, with an appropriate change in compensation and schedule, upon execution of a mutually acceptable amendment or change order signed by authorized representatives of Client and the Consultant.

## **13. TERMINATION**

Services may be terminated by Client or the Consultant by seven (7) days' written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If so terminated, Client shall pay the Consultant all amounts due the Consultant for all services properly rendered and expenses incurred to the date of receipt of notice of termination, plus reasonable costs incurred by the Consultant in terminating the services.

## **14. DISPUTES, NEGOTIATIONS, MEDIATION**

A. If a dispute arises relating to the performance of the services to be provided and, should that dispute result in litigation, it is agreed that the substantially prevailing party (as determined in equity by the court) shall be entitled to recover all reasonable costs of litigation, including staff time, court costs, attorney's fees and other related expenses.

B. The parties shall participate in good faith negotiations to resolve any and all disputes. Should

negotiations fail, the parties agree to submit to and participate in a third party-facilitated mediation as a condition precedent to resolution by litigation. Unless otherwise agreed to, mediation shall be conducted under the rules of the American Arbitration Association and shall be held in St. Louis, Missouri.

C. The parties agree that any dispute between them, including any action against an officer, director or employee of a party, arising out of or related to this Agreement, whether in contract or tort, not resolved through direct negotiation and mediation, shall be resolved by litigation in the state or federal courts located in St. Charles County, Missouri, and each party expressly consents to jurisdiction therein. Any litigation to compel or enforce, or otherwise affect the mediation shall be in state or federal courts located in St. Charles County, Missouri, and each party expressly consents to jurisdiction therein.

## **15. WITNESS FEES**

A. The Consultant's employees shall not be retained as expert witnesses, except by separate written agreement.

B. Client agrees to pay the Consultant pursuant to the Consultant's then current schedule of hourly labor billing rates for time spent by any employee of the Consultant responding to any subpoena by any party in any dispute as an occurrence witness or to assemble and produce documents resulting from the Consultant's services under this Agreement.

## **16. CONTROLLING LAW**

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Missouri without regard to any conflicts of law provisions.

## **17. RIGHTS AND BENEFITS – NO ASSIGNMENT**

The Consultant's services will be performed solely for the benefit of Client and not for the benefit of any other persons or entities. Neither Client nor the Consultant shall assign or transfer interest in this Agreement without the written consent of the other.

## **18. ENTIRE CONTRACT**

These Terms and Conditions and the above-referenced Letter, Proposal, or Agreement contain the entire

agreement between the Consultant and Client relative to the Consultant's services for the Project herein. All previous or contemporaneous agreements, representations, promises, and conditions relating to the Consultant's services for the Project are superseded. Since terms contained in purchase orders do not generally apply to professional services, in the event Client issues to the Consultant a purchase order, no preprinted terms thereon shall become part of this Agreement. Said purchase order documents, whether or not signed by the Consultant, shall be considered only as an internal document of Client to facilitate administrative requirements of Client's operations.

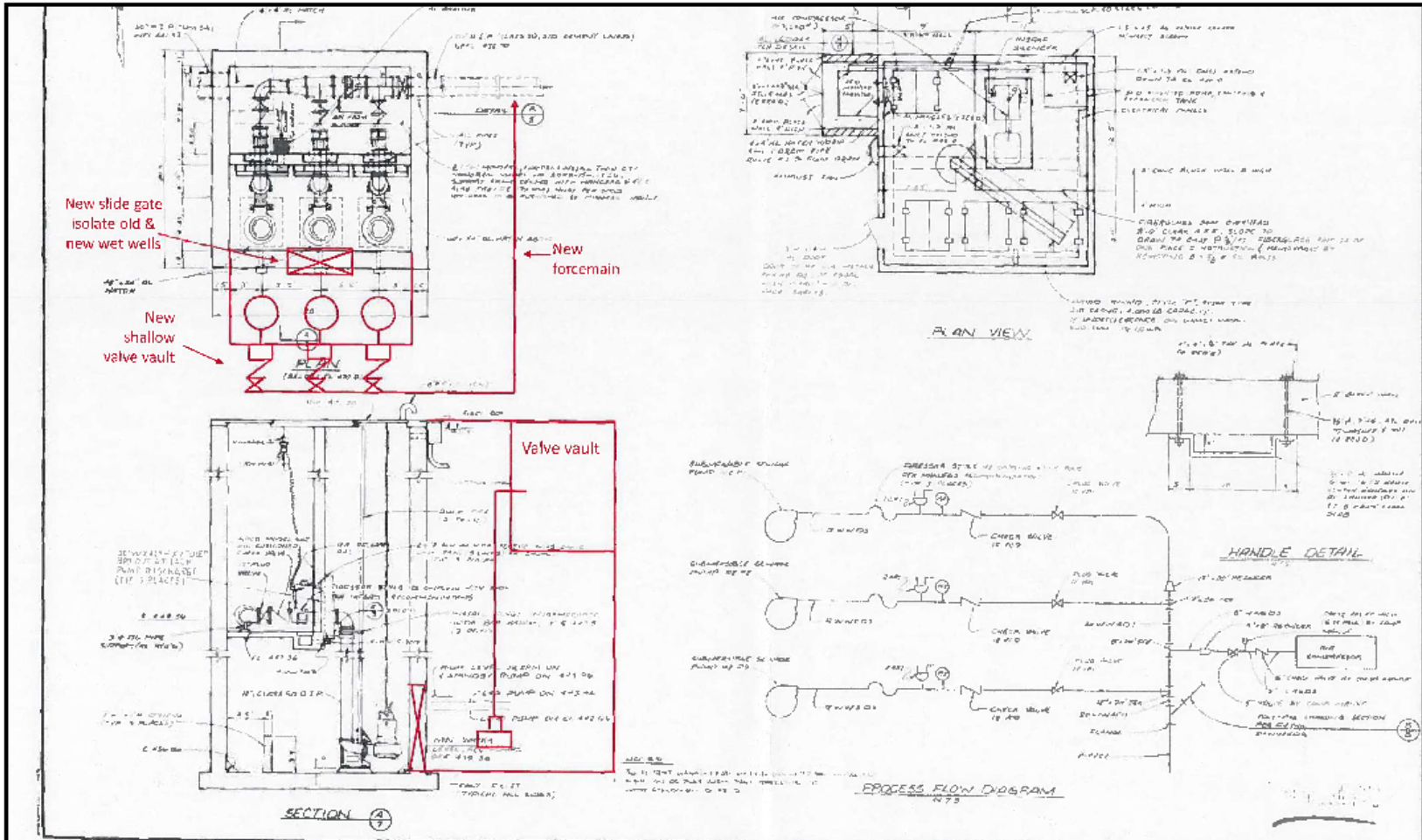
#### **19. SEVERABILITY**

Any unenforceable provision herein shall be amended to the extent necessary to make it enforceable; if not possible, it shall be deleted and all other provisions shall remain in full force and affect.

- END -



# APPENDIX B



Duckett Creek Sanitary District

Dardenne Pump Station Upgrade