

BILL NO. S-12-01-03

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving program and project management assistance for City Utilities - 2012 & 2013 between THE SECANT GROUP, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the program and project management assistance for City Utilities - 2012 & 2013 by and between THE SECANT GROUP, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

Professional engineering services for assistance with growth, expansion and acquisition activities and programs for City Utilities for the years 2012 and 2013:

involving a total cost of THREE HUNDRED TEN THOUSAND, THREE HUNDRED THIRTY-SIX AND 00/100 DOLLARS - (\$310,336.00). A copy said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

Bow copy

PROFESSIONAL SERVICES AGREEMENT

PROJECT NAME ("PROJECT")

PROGRAM & PROJECT MANAGEMENT ASSISTANCE FOR CITY UTILITIES

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

by and through its

Board of Public Works
City of Fort Wayne
420 City-County Building
One Main Street
Fort Wayne, IN 46802

and

THE SECANT GROUP, INC. ("PROGRAM MANAGER")

2204 Kensington Boulevard
Fort Wayne, Indiana 46805

Who agree as follows:

CITY hereby engages PROGRAM MANAGER to perform the services set forth in PART I – SCOPE OF BASIC ENGINEERING SERVICES ("Services") and PROGRAM MANAGER agrees to perform the Services for the compensation set forth in Part III - Compensation ("Compensation"). PROGRAM MANAGER shall be authorized to commence the Services upon execution of this Agreement and written authorization to proceed from CITY. CITY and PROGRAM MANAGER agree that these signature pages, together with Parts I-IV and attachments referred to therein, constitute the entire Agreement ("Agreement") between them relating to the Project.

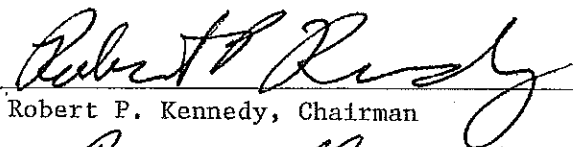
APPROVALS

APPROVED FOR CITY

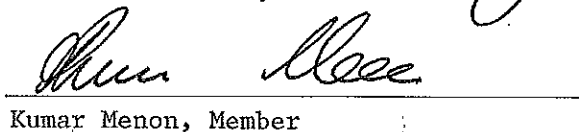
CITY OF FORT WAYNE, INDIANA

BOARD OF PUBLIC WORKS

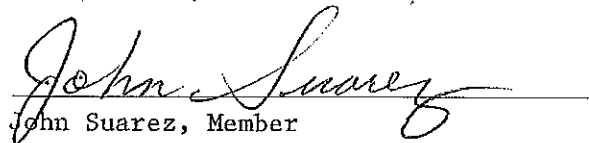
BY:


Robert P. Kennedy, Chairman

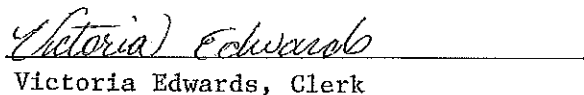
BY:


Kumar Menon, Member

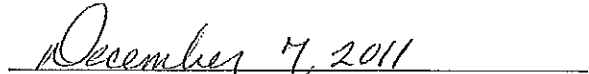
BY:


John Suarez, Member

ATTEST:

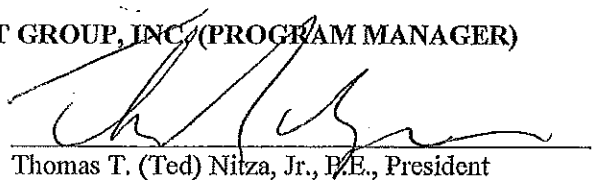

Victoria Edwards, Clerk

DATE:

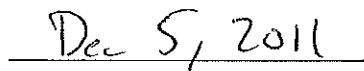

December 7, 2011

THE SECANT GROUP, INC. (PROGRAM MANAGER)

BY:


Thomas T. (Ted) Nitza, Jr., P.E., President

DATE:


Dec 5, 2011

PART I

SCOPE OF BASIC ENGINEERING SERVICES

A. PROJECT & PROGRAM DESCRIPTION

The purpose of this agreement is to provide engineering and management services for various City Utilities capital, regulatory and operating programs and projects under the direction of the Director of Utilities (Project). The program and project management services will include cooperate interaction with various City Departments, staff, regulatory agencies and other affected parties.

B. SCOPE OF WORK

Task 1 -- Management of City Utilities Capital, Regulatory and Operating Programs & Projects

- 1.1 *Location of Services.* THE SECANT GROUP, INC. will provide program management services in Fort Wayne where the Program Manager (PM) will be located for the duration of this Agreement. The PM will work out of the City's offices which will be equipped to support execution of these services.
- 1.2 *Program Manager.* Thomas T. (Ted) Nitza, Jr., P.E. will act as Program Manager on behalf of THE SECANT GROUP, INC. for the duration of these services.
- 1.3 *Management of City Personnel.* Program Manager will provide oversight, engineering direction and project communication and coordination with various City Departments and staff.
- 1.4 *Program Management Duties in Support of Water, Wastewater and Stormwater Capital, Operating and Regulatory Programs & Projects.* PM will provide administrative duties, project management duties, conduct negotiations, perform selected in-house studies & designs, manage consultant studies and engineering designs, coordinate with other City departments, coordinate with regulatory review agencies, keep City records and either take or facilitate action steps that result in timely completion of capital, operating and regulatory programs and projects for City Utilities.
- 1.5 *Outside Consultants.* PM will prepare RFQ/RFP's for selected design packages, assist in development of design services agreement and perform contract negotiations for design projects and other required consultant services. PM will attend Board of Works meeting for contract approvals and consultant agreement approvals.
- 1.6 *Design Oversight.* PM will provide oversight and liaison with design consultants and will review their work in relation to design contract requirements. These oversight services will include technical, cost and construction feasibility reviews, and follow-up to verify that review comments are satisfactorily addressed. PM will coordinate and participate in design meetings between design consultant and staff in order to monitor status and assist in keeping projects on schedule.
- 1.7 *Billings.* PM will review and recommend payments on various necessary billings.

- 1.8 *Bidding Assistance/Award/Agreement Review.* For small to midsize projects PM will prepare bid advertisements, attend pre-bid conferences, coordinate with design consultants regarding interpretation of contract documents, prepare and issue addenda, evaluate and make recommendations on bid awards, attend Board of Works meetings to facilitate contract approvals, and attend City Council meetings for contract approvals. For large projects PM will manage consultants, assist, and coordinate during Bidding, Award, and Construction Contract (Agreement) phase of the project.
- 1.9 *Construction and Start-up Services.* PM will provide services during the construction and start-up phases of projects as necessary.

C. SCHEDULE

The program management services will be performed for a period not to exceed one hundred and four (104) weeks from notice to proceed.

D. OPTIONAL ADDITIONAL SERVICES

Upon separate written authorization by City and negotiated fees, ENGINEER can provide the following additional services:

- Program management or technical services requiring special expertise not normally provided by PM.
- Other tasks related to the Project.

PART II

CITY'S RESPONSIBILITIES

City shall, at its expense, do the following in a timely manner so as not to delay the services:

A. INFORMATION/REPORTS

Make available to PROGRAM MANAGER reports, studies, regulatory decisions and similar information relating to the Services that PROGRAM MANAGER may rely upon without independent verification unless specifically identified as requiring such verification.

Make available to PM records and drawings of City Utilities facilities as needed for the assigned capital improvement projects, studies or related work.

B. REPRESENTATIVE

Designate a representative for the project who shall have the authority to transmit instructions, receive information, interpret and define City's requirements and make decisions with respect to the Services. The City representative for this Agreement will be Kumar Menon, Director of City Utilities.

C. DECISIONS

Provide all criteria and full information as to City's requirements for the Services and make timely decisions on matters relating to the Services.

PART III
COMPENSATION

A. COMPENSATION

Compensation for services performed in accordance with Part I – SCOPE OF BASIC ENGINEERING SERVICES of this AGREEMENT shall be in the sum of the following and shall not exceed \$310,336 without additional authorization.

1. Payment for services rendered by THE SECANT GROUP, INC. will be based on the hours incurred times the hourly rate.
2. Payment of actual hourly rates for services rendered by THE SECANT GROUP, INC. working directly on the Project will be in accordance with the following schedule:

Thomas T. (Ted) Nitza, Jr., P.E.	\$85.50/hr.
Engineering Technician I	\$30.00/hr.
Engineering Assistant I	\$20.00/hr.

3. Payment for reimbursable costs, as authorized by the City, will be reimbursed by the City. An example would include partnered or subcontracted professional services or parking expenses for outside meetings attended on behalf of the City, as required, to perform Program Management duties. Any reimbursable mileage shall be at the Federal accepted rate at the time of service. Other reimbursable costs, as authorized by the City, will be at actual cost plus no more than 5% additional charge for administration and other costs.

B. BILLING AND PAYMENT

1. Timing/Format
 - a. THE SECANT GROUP, INC. will invoice City approximately monthly for Services completed at the time of billing. Such invoices shall be prepared in a form and supported by documentation as City may reasonably require, including a table summary of days, hours per day and projects and studies worked on.
 - b. City shall pay THE SECANT GROUP, INC. within 30 days of receipt of approved invoice.

2. Billing Records

THE SECANT GROUP, INC. shall maintain accounting records of its costs in accordance with generally accepted accounting practices. Access to such records will be provided during normal business hours with reasonable notice during the term of this Agreement and for 3 years after completion.

C. ADDITIONAL TERMS AND CONDITIONS

1. Termination by the CITY.

The CITY may terminate this agreement for PM services for any or no reason on sixty (60) days written notice made to THE SECANT GROUP, INC. In the event of

termination, the City shall be required to accept services at the average rate of 34 hours per week during the 60 day termination period in a similar manner as the then previous 60 days.

2. Termination by THE SECANT GROUP, INC.

THE SECANT GROUP, INC. may terminate this agreement for PM services for any or no reason on sixty (60) days written notice made to the CITY. In the event of termination, the City can choose to continue to request and receive services at the average rate of 34 hours per week during the 60 day termination period.

PART IV 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 at the time and within the locality where the services are performed. No warranty or guarantee, express or implied, are provided, including warranties or guarantees contained in any uniform commercial code.
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 ENGINEER and CITY. ENGINEER will promptly notify CITY of any perceived changes of scope in writing and the parties shall negotiate modifications to this Agreement.
3. **SAFETY.** ENGINEER shall establish and maintain programs and procedures for the safety of its employees. ENGINEER specifically disclaims any authority or responsibility for general job site safety and safety of persons other than ENGINEER employees.
4. **DELAYS.** If events beyond the control of ENGINEER, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be extended for a period equal to the delay. In the event such delay exceeds 90 days, ENGINEER will be entitled to an equitable adjustment in compensation.
5. **TERMINATION/SUSPENSION.** ~~Either party may terminate this Agreement upon 30 days written notice to the other party in the event of substantial failure by the other party to perform in accordance with its obligations under this Agreement through no fault of the terminating party. CITY shall pay ENGINEER for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination.~~
- See Section III.C.
6. **REUSE OF PROJECT DELIVERABLES.** Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by CITY for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by ENGINEER for the specific purpose intended, shall be at CITY's sole risk.
7. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by ENGINEER is supplied for the general guidance of the CITY only. Since ENGINEER has no control over competitive bidding or market conditions, ENGINEER cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CITY.
8. **RELATIONSHIP WITH CONTRACTORS.** ENGINEER shall serve as CITY's professional representative for the Services, and may make recommendations to CITY concerning actions relating to CITY's contractors, but ENGINEER specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CITY's contractors.
9. **MODIFICATION.** This Agreement, upon execution by both parties hereto, can be modified only by a written instrument signed by both parties.
10. **PROPRIETARY INFORMATION.** Information relating to the Project, unless in the public domain, shall be kept confidential by ENGINEER and shall not be made available to third parties without written consent of CITY.
11. **INSURANCE.** ENGINEER shall maintain in full force and effect during the performance of the Services the following insurance coverage; provided, however, that if a High Risk Insurance Attachment is attached hereto, the

requirements of the High Risk Insurance Attachment shall be substituted in lieu of the following requirements;

- a) Worker's Compensation per statutory requirements
- b) General Liability \$1,000,000 minimum per occurrence/ \$1,000,000 aggregate (if the value of the projects exceeds \$10,000,000 then this shall be \$5,000,000 aggregate).
- c) Automobile Liability \$1,000,000 per occurrence
- d) Products Liability \$1,000,000 per occurrence
- e) Completed Operations Liability \$1,000,000 minimum per occurrence

The Certificate of Insurance must show the City of Fort Wayne, its Divisions and Subsidiaries as an Additional Insured and a Certificate Holder, with 30 days notification of cancellation or non-renewal. All Certificates of Insurance should be sent to the following address:
City of Fort Wayne Purchasing Department
Fort Wayne, IN 46802

12. **INDEMNITIES.** To the fullest extent permitted by law, ENGINEER shall indemnify and save harmless the City from and against loss, liability, and damages sustained by CITY, its agents, employees, and representatives by reason of injury or death to persons or damage to tangible property to the extent caused directly by the negligent errors or omissions of ENGINEER, its agents or employees.

13. **LIMITATIONS OF LIABILITY.** Each party's liability to the other for any loss, cost, claim, liability, damage, or expense (including attorneys' fees) relating to or arising out of any negligent act or omission in its performance of obligations arising out of this Agreement, shall be limited to the amount of direct damage actually incurred. Absent gross negligence or knowing and willful misconduct which causes a loss, neither party shall be liable to the other for any indirect, special or consequential damage of any kind whatsoever.

14. **ASSIGNMENT.** 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 insure to the benefit of any permitted assigns.

15. **ACCESS.** CITY shall provide ENGINEER safe access to any premises necessary for ENGINEER to provide the Services.

16. **PREVAILING PARTY LITIGATION COSTS.** In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs from the other party.

17. **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 another section of this Agreement or operate as a waiver of any future default, whether like or different in character.

18. **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.

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

20. **STATUTE OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims regarding ENGINEER's performance under this Agreement shall expire one year after Project Completion.

ATTACHMENT NO. 1

PROGRAM MANAGEMENT COMPENSATION SUMMARY

STAFFING	RATE (HOURLY)
Program Manager	\$85.50
Engineering Technician I	\$30.00
Engineering Assistant I	\$20.00
ITEM	TOTALS
Direct Expense (Hourly Staffing) Estimate	\$280,336
Reimbursable Expense Estimate*	<u>\$30,000</u>
Not-to-Exceed Total	\$310,336

***Pre-Approved Subcontractors: Earth Source, Inc.; Heartland Restoration Services, Inc.**

CITY OF FORT WAYNE, INDIANA

THE SECANT GROUP, INC.
(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

1. **FINANCIAL INTERESTS;**
2. **POTENTIAL CONFLICTS OF INTERESTS;**
3. **CURRENT AND PENDING CONTRACTS OR PROCUREMENTS**

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$25,000 or more. Vendors shall disclose the financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration of an award of contract by the City. This Disclosure Statement must be completed and submitted together with Vendor's contract, bid, proposal, or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

Section 1. Disclosure of Financial Interest in Vendor

- a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

(i) Equity ownership exceeding 5% ☒

(ii) Distributable income share exceeding 5% ☐

(iii) Not Applicable (If N/A, go to Section 2) ☐

Name: THOMAS T. NITZA JR Name: _____

Address: 2204 KENSINGTON BLVD. FTW Address: _____

- b. For each individual listed in Section 1a., show his/her type of equity ownership: sole proprietorship ☐ stock ☐ partnership interest ☐ units (LLC) ☒ other (explain) _____

- c. For each individual listed in Section 1a., show the percentage of ownership interest in Vendor (or its parent): ownership interest: 100 %

Section 2. Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)

For each individual listed in Section 1a., check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

- a. City employment, currently or in the previous 3 years, including contractual employment for services. Yes _____ No _____

- b. City employment of "Member of Immediate Family" (defined herein as: spouse, parent, child or sibling) including contractual employment for services in the previous 3 years.

Yes

No.

✓

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years.

Yes

No.

✓

- d. Relationship to Member of Immediate Family holding appointive City office currently or in the the previous 3 years

Yes

No

✓

Section 3. DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have current contracts (including leases) with the City? Yes ✓ No _____.

- b. If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact using space below (attach additional pages as necessary).

PO# 11085018-030, NTP JAN 4, 2011, \$147,272.00, PROFESSIONAL SERVICES, KUMAR MENON 427-1381.

- c. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes ✓ No _____.

PROPOSED PROFESSIONAL SERVICES FOR 2012 & 2013, \$310,336.
KUMAR MENON 427-1381

- If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

Section 4. CERTIFICATION OF DISCLOSURES

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:

- Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;

- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same elements as the offense of bid-rigging or bid-rotating.

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

THE SECANT GROUP, INC.
(Name of Vendor)

2204 Kensington BLVD.
Address
(260) 416 6188
Telephone
ted.nitza@thesecantgroup.com
E-Mail Address

The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed) THOMAS T. NITZA Title President
Signature Thomas T. Nitza Date Dec 7, 2011

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.

Interoffice Memo

Date: **December 8, 2011**

To: Common Council Members

From: Matthew Wirtz, City Utilities Engineering

**RE: Contract Title: Program and Project Management Assistance for City Utilities
- 2012 & 2013**

Consultants Selected: The Secant Group, Inc.

Contract Value: \$310,336.00

The consultants shall provide:

Professional engineering services for assistance with growth, expansion and acquisition activities and programs for City Utilities for the years 2012 and 2013.

Project Description:

Services include engineering studies and planning assistance, project management, coordination with regulatory agencies, environmental engineering, testimony, general assistance with project management, technical support and negotiations with developers and contract customers.

Implications of not being approved:

City Utilities is a regional provider of services and provides sewer and drinking water to many customers and several communities outside of Fort Wayne's corporate limits. City Utilities strives to be the "provider of choice" for sewer and water services.

Failure to maintain the engineering workload and technical support necessary for City Utilities growth, expansion acquisition activities and programs may lead to missed opportunities for strategic growth and management and diminished relationships with existing contract customers.

If Prior Approval is being Requested, Justify:

n/a

Selection and Approval Process:

City Utilities Engineering reviewed the qualifications and negotiated final pricing with the selected firm. City Utilities Engineering finds the not-to-exceed fee to be appropriate for this work. The Board of Public Works approved this agreement on December 7, 2011.

Funding:

This Professional Service Agreement (PSA) will be funded by water, sewer and stormwater revenues.

CC: BOW
Matthew Wirtz
Diane Brown
Chrono
File