

1 **BILL NO. S-17-07-04**

2 **SPECIAL ORDINANCE NO. _____**

3 **AN ORDINANCE** certifying and approving the need
4 for the services of a consultant to provide
5 professional On-Call Resident Project
6 Representative/Inspection Services – August 1,
7 2017 – July 31, 2019 to the Division of City
8 Utilities through its Board of Public Works.

9 **WHEREAS**, the City of Fort Wayne through its Board of Public Works desires to
10 provide professional On-Call Resident Project Representative/Inspection Services – August 1,
11 2017 – July 31, 2019- to the Division of City Utilities for new sanitary sewers, water mains and
12 stormwater facilities on private developments and Utility funded Capital Improvement projects; and

13 **WHEREAS**, the City of Fort Wayne does not have the capability of performing this
14 work with in-house forces; and

15 **WHEREAS**, the Board of Public Works believes that there is a need to employ GAI
16 Consultants, Construction Support Services, DLZ of Indiana, Butler, Fairman & Seifer, A&Z
17 Engineering, VS Engineering, Inc., and CH2M Hill Engineers, Inc. to perform these services; and

18 **WHEREAS**, it is anticipated that the amount to be paid to said consultants on an
19 annual basis, will be in excess of \$100,000.00.

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

22 **SECTION 1.** The Common Council of the City of Fort Wayne hereby certifies and
23 approves the need for the services of consultants to provide professional On-Call Resident Project
24 Representative/Inspection Services – August 1, 2017 – July 31, 2019 - to the Division of City
25 Utilities for new sanitary sewers, water mains and stormwater facilities on private developments
26 and Utility Funded Capital Improvement project.

27 **SECTION 3.** This Ordinance shall be in full force and effect from and after its
28 passage and any and all necessary approval by the Mayor.

29 _____
30 Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

PROFESSIONAL SERVICES AGREEMENT

City Utilities- Resident Project Representative / Inspection Services

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

By and through its

Board of Public Works
City of Fort Wayne
200 East Berry Street
Suite 210
Fort Wayne, IN 46802

and,

PROJECT ENGINEER ("FIRM"):

DLZ Indiana, LLC
825 S. Barr Street
Fort Wayne, IN 46802

Who agree as follows:

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

APPROVALS

APPROVED FOR CITY:

BOARD OF PUBLIC WORKS

BY: _____
Robert P. Kennedy, Chair

BY: _____
Kumar Menon, Member

BY: _____
Mike Avila, Member

ATTEST:

BY: _____
Lyndsey Richards, Clerk

APPROVED FOR FIRM: DLZ INDIANA, LLC

BY: _____

PRINTED NAME _____

TITLE: _____

DATE: _____

PART I
FIRMS RESPONSIBILITIES

A. GENERAL RESPONSIBILITIES

FIRM Shall:

1. Certify and warrant that it has the capacity to perform the services required by CITY with high professional quality, ability and expertise and further certify and warrant that it has the capacity and authority to enter into this Agreement.
2. Perform Resident Project Representative (RPR) and inspection services during the construction of Water Pollution Control and Water Filtration Facility projects along with sanitary sewers, water mains, and stormwater sewer facilities in assigned projects, and perform onsite evaluation and observation services for lateral connections to CITY's infrastructure systems to determine whether said infrastructure/connections are constructed in substantial conformance with plans and specifications approved by Fort Wayne City Utilities Development Services or Engineering Department, City Utilities Design Standards Manual, and Chapters 51, 52 and 53 of the City Code of Fort Wayne, Indiana, as set forth in Service by Firm section included herein.
3. Maintain appropriate records and forms, as instructed by CITY and submit all records and forms to CITY as set forth in Services by Firm section.

B. SERVICES BY FIRM:

Services to be provided for the project are as follows:

1. FIRM shall have a designated person as a point of contact for RPR services oversight.
2. FIRM shall provide professional RPR, inspection, observation and testing services during the construction of facilities on assigned projects.
3. FIRM shall provide Inspection personnel as required for a period of time necessary to complete the construction project and prepare a final construction report.
 - a. The qualifications and experiences of personnel provided by FIRM are subject to approval by CITY. No personnel shall be assigned to the project until such approval is obtained.
 - b. The Inspector shall take directions from and report to CITY'S assigned Contract Manager (CM) on all matters concerning contract compliance and administration.
 - c. The Inspector shall coordinate project activities with CITY'S assigned Contract Manager.
4. FIRM shall also do the following:
 - a. FIRMS will be expected to fully utilize the Program Management Information System (PMIS), a web based system that will allow for FIRMS to submit inspection reports, photographs, and other various forms of project documentation electronically to City Utilities Engineering. When functionality becomes available, FIRMS shall submit invoices through PMIS.
 - b. FIRM will be expected to fully utilize AssetHound, a Mobile App to document daily construction activities (daily report), photos, and test reporting for uploading to PMIS.

- c. Serve as CITY'S Liaison with the Developer / Contractor, working principally through the Developer / Contractor's field superintendent or such other person in authority as designated by the Developer / Contractor. Acting in liaison capacity, the Inspector shall be thoroughly familiar with the plans and specifications applicable to the project and observe the construction for compliance with respect to all provisions therein.
- d. Review the NPDES Stormwater permit / plans and conduct on-site observations as a basis for determining that the project is proceeding in substantial conformance with the approved permit / plan requirements. Any deviation observed shall be reported in writing promptly to CITY by the Inspector.
- e. Review the construction schedule prepared by the Developer / Contractor and assist CITY in making sure schedule is being held to meet project milestones (ex. Substantial & Final Completion) and ensure schedule is updated monthly and submitted with pay application.
- f. Cooperate with CITY in dealing with the various local agencies having jurisdiction over the project.
- g. Provide observation of Capital, Developer, and ACRSD construction activities performed by the Contractor to ensure work complies with the contract documents and related project permits.
 - 1. Daily logs – to be loaded into AssetHound for both Developer and Capital projects each day of active construction
 - 2. Photos for construction progress (taken daily of relevant work activities) as well as for any potential claim situations-to be loaded into AssetHound each day of active construction
 - 3. Record on project drawings all field changes and daily production information
 - 4. Keep quantity records and accurate materials stored on site records for submittal to Contract Manager for progress payment reviews
 - 5. Keep detailed records on time and materials for work authorized as reimbursable
 - 6. Obtain and review all applicable easements required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in easement documents.
 - 7. Obtain and review all applicable permits required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in permits including limits of construction and ensure contractor stays out of restricted areas. Copies of permits are uploaded into the PMIS digital library by Contract Manager.
 - 8. Obtain and review traffic control plans and verify that all required traffic control devices are in place on a daily basis. Travel detour routes to verify appropriate signage is in place and other construction activities are not impeding traffic.
 - 9. Review compaction testing specifications (if applicable) and verify that compaction testing is being completed per specifications. Upload compaction test results into PMIS on a weekly basis.
- i. Inspect, at a minimum, the following:
 - 1. Bedding and backfill of stormwater and sanitary sewers and related structures
 - 2. Bedding, backfill and restraint of water mains, elbows, hydrants, valves, auxiliary valves, blow-offs, services and related appurtenances.
 - 3. Installation of manholes, lift stations and/or force mains
 - 4. Subgrade for horizontal and vertical alignment and compaction
 - 5. Rough and final grading of swales, ditches, and detention/retention facilities
 - 6. Testing of construction materials by private testing company may be called for on any of the above phases as required by the City Utilities Engineering Department or as requested by CITY.
 - 7. On-site verification of all required testing and as-built survey information.

8. Verification of invert elevations at each manhole during construction of sanitary and storm sewer main trunk lines to ensure design elevations (and associated design capacity) is being maintained.
 9. Electrical/mechanical, concrete, and/or structural infrastructure on Facility projects.
- h. Perform onsite evaluation and observation services for connections to City Utilities' infrastructure systems ("Service Connection").
- i. Inspect, at a minimum, the following
 1. Pipe bedding
 2. Pipe slope
 3. Pipe material, fittings, gaskets, boots, etc.
 4. Installation of cleanouts
 5. Connection of Service Connection at the building or to the existing building service line
 6. Non-wastewater water or materials do not and cannot flow into or infiltrate sewer pipes
 7. Connections to manholes, inlets, catch basins, or other structures on public infrastructure system are completed in compliance with approved plans, design and construction standards and specifications, and completed in a manner that does not adversely impact any structure.
 8. Drawing showing the location of the Service Connection on the property
 - ii. Upon receipt of CITY's Service Connection Evaluation request, FIRM shall dispatch and complete the on-site evaluation, and report deficiencies, if any, to CITY within (3) hours.
 - iii. Deliver completed tap record sheets (hard copy) to CITY by noon of the business day following completion of each evaluation.
- i. Furnish all equipment necessary to sample and test materials and/or provide on-site independent assurance testing of materials in accordance with standards and specifications of the Fort Wayne procedures and in accordance with current accepted practices, ordinances, and the most recent standards and specifications of the Division of Utilities, City Utilities Engineering Department as approved and adopted by the Board of Public Works.
- j. Verify that required testing has been accomplished and results of the testing are satisfactory
- k. Notify the Developer / Contractor and CITY in writing of any substandard work
- l. Consider and evaluate the Developer / Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to CITY'S assigned Contract Manager.
- m. Representative of the firm shall notify CITY of any additional work requested by the CONTRACTOR beyond the original approved design prior to the work occurring. Representatives are not empowered to make changes to projects; all changes must be approved by CITY staff.
- n. On the PMIS Inspectors Daily Report, record hours on the job site (both inspector & contractor(s)), weather conditions, field superintendent/foreman's name, crew size, list of visiting officials, decisions, details of interactions and communication with the public or property owners/renters, safety observations, general observations, and specific observations with regard to test procedures and results of testing – to be loaded into PMIS daily.
- o. Take notes during and provide meeting minutes of all construction related meetings.

- p. Assist City CM with management of contractor's request for interpretation (RFT's) on clarification and interpretations, field orders, change orders, allowance authorizations, and work change directives.
- q. Assist the City CM in reviewing the Contractor's monthly pay quantities and application
- r. Assist City CM in preparing and coordinating change management documents, issuing defective work notices, performing final inspection and reviewing final punch lists from Contractor.
- s. Assist City CM to coordinate any necessary vendor installation certifications as well as startup and training activities
- t. Assist City CM with final project closeout documentation and help ensure that compliance efforts are completed so that project can be accepted by CU and the Board of Public Works and final payment be made to Contractor.
- u. Provide timely invoices to CITY.
- v. Provide a scanned copy of Inspector marked up as-built drawings at substantial completion of the project. If unable to provide a scanned copy, furnish marked up as-built drawings to Contract Manager for City to scan. Scanned drawings to be uploaded into PMIS digital library by Contract Manager.
- w. Deliver the final project records to the Construction Manager and upload tap, valve, and hydrant cards on Water projects to PMIS within ten (10) calendar days after satisfactory completion of the project.
- x. Incident Reporting – Should an accident occur on the project, notify Contract Manager immediately, then document with photos and prepare a report of the incident including but not limited to: What happened, all parties on site when accident occurred, what parties responded to provide assistance to the accident involved parties (if police, name of officer or number on squad car), what inspector personally witnessed, what may have occurred that inspector did not witness. Photos and report to be submitted to City Manager of Engineering by noon the day following the incident.
- y. Assist City Manager at Facility projects to inspect areas within confined space areas. Inspector shall be confined space certified and may be required to enter facilities as a part of a construction firms confined space entry team.
- z. Upon request by the City, if GPS coordinates are not secured by Contractor, Design Engineering firm, or Survey, Inspector shall gather GPS information utilizing GPS equipment with sub-meter (sub-foot desired) accuracy. At a minimum, coordinates must be recorded for Hydrants, valves, curb stops, corporation stops, directional change fittings, connection fittings, manholes, clean-outs, sewer taps, and other appurtenances as agreed upon at project assignment. Deliverable format shall be confirmed with the CITY at project assignment.
- aa. Notify CM and document in daily report when utilities other than the ones being installed as part of the project are encountered and are in interference with proposed infrastructure or damaged by the contractor.
- bb. Work with the public to resolve any complaints that are the result of construction activities. If complaint cannot be immediately resolved by disclosing to the contractor, notify the CM for assistance, guidance, and follow-up.

C. KEY PERSONEL

FIRM shall provide a resume for all key personal that may be assigned to a project so that experience can be determined and appropriate compensation rate established.

FIRM'S key personal will be assigned on a project basis and as mutually agreed to by FIRM and CITY prior to the commencement of any work in accordance with this Agreement. On all projects, but specifically on Capital projects the City believes that continuity of RPR services is important to maintain quality and accountability. Upon assignment of a project to a FIRM and the FIRM'S proposed staff person(s) are confirmed, CU desires the staff person(s) be assigned to the project until completion. To accommodate the difficulties of FIRMS complying with this requirement under this on-call type arrangement, CU will allow (unless otherwise agreed upon during project assignment discussions) for the key staff person(s) to be substituted by other pre-approved staff person(s) a maximum of one incident or day per week.

City Utilities will also consider allowing RPR's with less experience than required (requirements noted above) for substitution on projects. These exceptions will need to be pre-approved on project by project basis.

D. SCHEDULE

Services under this contract are to be completed from date of NTP until **July 31, 2019**. This contract can be extended by amendment and approval of CITY and FIRM.

1. FIRM shall commence its services on assigned PROJECT upon notification by CITY.
2. FIRM shall attend a pre-construction meeting with the DEVELOPER/CONTRACTOR before commencement of construction.
3. Firm shall attend progress meetings during construction as requested.
4. Firm's Inspector shall attend a post-construction meeting with City and others to provide feedback on the execution of the project.

PART II

CITY'S RESPONSIBILITIES

CITY, at its expense, shall provide the following in a timely manner so as not to delay the Services.

A. INFORMATION AND REQUIREMENTS

1. Provide all criteria and full information as to CITY'S requirements for the Project, including without limitation, design objectives and constraints capacity and performance requirements, flexibility, the project scope, the comprehensive engineering report, the general and special provisions of the construction agreement/contract and any budgetary limitations; and furnish copies or notify FIRM of all design and construction standards which CITY will require to be included in the required reports and all other items as described in PART I.
2. CITY shall provide a CITY Representative with decision-making authority on all inquiries.
3. CITY shall supply FIRM with One (1) set of approved Sub-Division or Commercial Plans at least 2 calendar days prior to work.
4. CITY shall supply FIRM with One (1) set of approved Bid Documents (Plans & Specifications) at least 7 calendar days prior to a pre-construction meeting.

B. REPRESENTATIVE:

Designate representative for the project who shall have authority to transmit instructions, receive information, interpret and define CITY'S policies and make decisions with respect to the services.

Various Contract Managers representing City Utilities will be responsible for coordinating activities with specific FIRM representatives.

PART III

COMPENSATION, BILLING, PAYMENT AND SCHEDULE

A. COMPENSATION

FIRM'S COMPENSATION FOR SERVICES

1. For those services performed by FIRM, FIRM will be paid by CITY on the basis of actual hours of work performed by FIRM'S Inspector on this Agreement at the hourly rate listed below. This rate is inclusive of any clerical, project set-up or final project review by office personnel, and/or administrative/management cost by FIRM.
2. FIRM shall not include time spent commuting from office or home to and/or from a project site when computing hours worked on payment claims as outlined in Part 1. Costs for commuting between multiple projects will be compensated for in the following manner: Travel time between project A and B shall be charged to project B. Return travel time from project B to project A shall be charged to project A.
3. For those testing services performed by other than FIRM at the request of the CITY, FIRM shall be reimbursed by CITY for the actual invoice for the services performed by other than FIRM, provided that each such invoice shall be subject to approval as reasonable by CITY prior to any reimbursement therefore.

PRIVATE/DEVELOPER PROJECTS

City Private Developer projects are inspected approximately four hours per day during construction activities. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty five dollars (\$55.00) per hour** per Inspector per DEVELOPER/CONTRACTOR'S project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Private / Developer activities.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

SERVICE LATERAL CONNECTIONS

Service Lateral Connections are typically installed by private contractors and are inspected on a per connection basis. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty five dollars (\$55.00) per requested service connection evaluation** for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Service Lateral Connection Evaluation activities.

ALLEN COUNTY REGIONAL SEWER DISTRICT PROJECTS

ACRSD projects are typically inspected approximately four to eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty-five dollars (\$55.00) per hour** per Inspector per ACRSD project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for ACRSD activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to a higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

CAPITAL PROJECTS

City Capital projects are typically inspected approximately four to eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required. Experience with trenchless construction methods/technologies is also expected (CIPP lining, HDD, etc.) for certain projects.

1. FIRM shall be compensated at a rate of **sixty dollars (\$60.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Capital Project activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to the higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.
2. FIRM shall be compensated at a rate of **seventy dollars (\$70.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM that have a minimum of five years of experience for larger projects or projects with more complex work- such as projects with electrical/mechanical facilities such as lift stations. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to this higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

WATER POLLUTION CONTROL AND WATER FILTRATION PLANT PROJECTS

City Plant projects are typically inspected approximately eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of Facility projects is required.

1. FIRM shall be compensated at a rate of **ninety dollars (\$90.00) per hour** per Inspector per WATER POLLUTION CONTROL PLANT AND WATER FILTRATION PLANT project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM that have a minimum of ten years of experience for larger projects or projects with more complex work- such as projects with electrical/mechanical facilities such as lift stations. Inspectors that have less than ten years of experience but have exhibited competent knowledge for the project assignment may be waived to this higher pay level upon approval by the City. Staff with experience in electrical/mechanical , concrete, and/or structural disciplines typically will be required on facility projects.

PMIS TECHNICAL SUPPORT SERVICES

Purpose of this Service is to provide Technical Support with PMIS for the CITY.

1. FIRM shall be compensated at a rate of **Eighty Five dollars (\$85.00) per hour** per Individual for providing as-needed assistance with PMIS, system enhancements, training, and general technical support as directed. Additional services may be included if directed.
2. Services provided under this category shall require prior approval from the Deputy Director of Engineering or Manager of Engineering.

B. BILLING AND PAYMENT

METHOD OF PAYMENT

FIRM shall submit a properly itemized invoice to CITY on a monthly basis. CITY shall pay FIRM within forty five (45) days after receipt of such properly itemized claim forms, unless claim is objected to in writing, in which case claim shall be paid within 15 days of resolution. All required items must be uploaded into PMIS prior to Invoice approval. Some deliverables for Service Lateral Connection inspection may need to be scanned and emailed or hard copies delivered to appropriate CITY personnel.

**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.

Engineer or City, for purposes of convenience, may at any time by written notice terminate the services under this Agreement. In the event of such termination, Engineer shall be paid for all authorized services rendered prior to termination including reasonable profit and expenses relating thereto.

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
200 East Berry St., Suite #480
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 term, 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.

21. **CONSENT DECREE NOTIFICATION.** Engineer shall perform, or cause others to perform, all services undertaken in connection with this Agreement in a good and workman-like manner and in conformance with the terms of the Consent Decree entered in the U.S District Court on April 1, 2008 by the United States and State of Indiana. Engineer acknowledges that it has been provided a complete copy of the Consent Decree which can be viewed at:

http://www.cityoffortwayne.org/utilities/images/stories/docs/consent_decree/Consent_Decree.pdf

22. **DOCUMENT RETENTION.** Notwithstanding any other provision of this Agreement, Engineer agrees to preserve all non-identical copies of all documents, records and other information (whether in physical or electronic form) within Engineer's possession or control and which relate, in any manner, to the performance of the services undertaken in connection with this Agreement for a period of 1 year after the completion contemplated by the Agreement (the "Retention Period"). Prior to the end of the Retention Period, or at any earlier time if requested by the City, Engineer shall provide the City with complete copies of such documents, records and other information at no cost to the City. The copies shall be provided to the City on CD or DVD media, and individual files shall be in Adobe PDF format. The individual files shall be contained in a ZIP formatted file, and the filename of the ZIP shall include the name of the project and the Engineer. No part of any file shall be encrypted or protected from copying. Such copies shall be accompanied by a verified written statement from the Engineer attesting that it has provided the City with complete copies of all documents, records and other information which relates to the services contemplated by the Agreement.

PROFESSIONAL SERVICES AGREEMENT

City Utilities- Resident Project Representative / Inspection Services

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

By and through its

Board of Public Works
City of Fort Wayne
200 East Berry Street
Suite 210
Fort Wayne, IN 46802

and,

PROJECT ENGINEER ("FIRM"):

GAI Consultants, Inc.
1502 Magnavox, Way
Fort Wayne, IN 46804

Who agree as follows:

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

APPROVALS

APPROVED FOR CITY:

BOARD OF PUBLIC WORKS

BY: _____
Robert P. Kennedy, Chair

BY: _____
Kumar Menon, Member

BY: _____
Mike Avila, Member

ATTEST:

BY: _____
Lyndsey Richards, Clerk

APPROVED FOR FIRM: GAI CONSULTANTS, INC.

BY: _____

PRINTED NAME _____

TITLE: _____

DATE: _____

PART I
FIRMS RESPONSIBILITIES

A. GENERAL RESPONSIBILITIES

FIRM Shall:

1. Certify and warrant that it has the capacity to perform the services required by CITY with high professional quality, ability and expertise and further certify and warrant that it has the capacity and authority to enter into this Agreement.
2. Perform Resident Project Representative (RPR) and inspection services during the construction of Water Pollution Control and Water Filtration Facility projects along with sanitary sewers, water mains, and stormwater sewer facilities in assigned projects, and perform onsite evaluation and observation services for lateral connections to CITY's infrastructure systems to determine whether said infrastructure/connections are constructed in substantial conformance with plans and specifications approved by Fort Wayne City Utilities Development Services or Engineering Department, City Utilities Design Standards Manual, and Chapters 51, 52 and 53 of the City Code of Fort Wayne, Indiana, as set forth in Service by Firm section included herein.
3. Maintain appropriate records and forms, as instructed by CITY and submit all records and forms to CITY as set forth in Services by Firm section.

B. SERVICES BY FIRM:

Services to be provided for the project are as follows:

1. FIRM shall have a designated person as a point of contact for RPR services oversight.
2. FIRM shall provide professional RPR, inspection, observation and testing services during the construction of facilities on assigned projects.
3. FIRM shall provide Inspection personnel as required for a period of time necessary to complete the construction project and prepare a final construction report.
 - a. The qualifications and experiences of personnel provided by FIRM are subject to approval by CITY. No personnel shall be assigned to the project until such approval is obtained.
 - b. The Inspector shall take directions from and report to CITY'S assigned Contract Manager (CM) on all matters concerning contract compliance and administration.
 - c. The Inspector shall coordinate project activities with CITY'S assigned Contract Manager.
4. FIRM shall also do the following:
 - a. FIRMS will be expected to fully utilize the Program Management Information System (PMIS), a web based system that will allow for FIRMS to submit inspection reports, photographs, and other various forms of project documentation electronically to City Utilities Engineering. When functionality becomes available, FIRMS shall submit invoices through PMIS.
 - b. FIRM will be expected to fully utilize AssetHound, a Mobile App to document daily construction activities (daily report), photos, and test reporting for uploading to PMIS.

- c. Serve as CITY'S Liaison with the Developer / Contractor, working principally through the Developer / Contractor's field superintendent or such other person in authority as designated by the Developer / Contractor. Acting in liaison capacity, the Inspector shall be thoroughly familiar with the plans and specifications applicable to the project and observe the construction for compliance with respect to all provisions therein.
- d. Review the NPDES Stormwater permit / plans and conduct on-site observations as a basis for determining that the project is proceeding in substantial conformance with the approved permit / plan requirements. Any deviation observed shall be reported in writing promptly to CITY by the Inspector.
- e. Review the construction schedule prepared by the Developer / Contractor and assist CITY in making sure schedule is being held to meet project milestones (ex. Substantial & Final Completion) and ensure schedule is updated monthly and submitted with pay application.
- f. Cooperate with CITY in dealing with the various local agencies having jurisdiction over the project.
- g. Provide observation of Capital, Developer, and ACRSD construction activities performed by the Contractor to ensure work complies with the contract documents and related project permits.
 - 1. Daily logs – to be loaded into AssetHound for both Developer and Capital projects each day of active construction
 - 2. Photos for construction progress (taken daily of relevant work activities) as well as for any potential claim situations-to be loaded into AssetHound each day of active construction
 - 3. Record on project drawings all field changes and daily production information
 - 4. Keep quantity records and accurate materials stored on site records for submittal to Contract Manager for progress payment reviews
 - 5. Keep detailed records on time and materials for work authorized as reimbursable
 - 6. Obtain and review all applicable easements required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in easement documents.
 - 7. Obtain and review all applicable permits required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in permits including limits of construction and ensure contractor stays out of restricted areas. Copies of permits are uploaded into the PMIS digital library by Contract Manager.
 - 8. Obtain and review traffic control plans and verify that all required traffic control devices are in place on a daily basis. Travel detour routes to verify appropriate signage is in place and other construction activities are not impeding traffic.
 - 9. Review compaction testing specifications (if applicable) and verify that compaction testing is being completed per specifications. Upload compaction test results into PMIS on a weekly basis.
- i. Inspect, at a minimum, the following:
 - 1. Bedding and backfill of stormwater and sanitary sewers and related structures
 - 2. Bedding, backfill and restraint of water mains, elbows, hydrants, valves, auxiliary valves, blow-offs, services and related appurtenances.
 - 3. Installation of manholes, lift stations and/or force mains
 - 4. Subgrade for horizontal and vertical alignment and compaction
 - 5. Rough and final grading of swales, ditches, and detention/retention facilities
 - 6. Testing of construction materials by private testing company may be called for on any of the above phases as required by the City Utilities Engineering Department or as requested by CITY.
 - 7. On-site verification of all required testing and as-built survey information.

8. Verification of invert elevations at each manhole during construction of sanitary and storm sewer main trunk lines to ensure design elevations (and associated design capacity) is being maintained.
 9. Electrical/mechanical, concrete, and/or structural infrastructure on Facility projects.
- h. Perform onsite evaluation and observation services for connections to City Utilities' infrastructure systems ("Service Connection").
 - i. Inspect, at a minimum, the following
 1. Pipe bedding
 2. Pipe slope
 3. Pipe material, fittings, gaskets, boots, etc.
 4. Installation of cleanouts
 5. Connection of Service Connection at the building or to the existing building service line
 6. Non-wastewater water or materials do not and cannot flow into or infiltrate sewer pipes
 7. Connections to manholes, inlets, catch basins, or other structures on public infrastructure system are completed in compliance with approved plans, design and construction standards and specifications, and completed in a manner that does not adversely impact any structure.
 8. Drawing showing the location of the Service Connection on the property
 - ii. Upon receipt of CITY's Service Connection Evaluation request, FIRM shall dispatch and complete the on-site evaluation, and report deficiencies, if any, to CITY within (3) hours.
 - iii. Deliver completed tap record sheets (hard copy) to CITY by noon of the business day following completion of each evaluation.
 - i. Furnish all equipment necessary to sample and test materials and/or provide on-site independent assurance testing of materials in accordance with standards and specifications of the Fort Wayne procedures and in accordance with current accepted practices, ordinances, and the most recent standards and specifications of the Division of Utilities, City Utilities Engineering Department as approved and adopted by the Board of Public Works.
 - j. Verify that required testing has been accomplished and results of the testing are satisfactory
 - k. Notify the Developer / Contractor and CITY in writing of any substandard work
 - l. Consider and evaluate the Developer / Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to CITY'S assigned Contract Manager.
 - m. Representative of the firm shall notify CITY of any additional work requested by the CONTRACTOR beyond the original approved design prior to the work occurring. Representatives are not empowered to make changes to projects; all changes must be approved by CITY staff.
 - n. On the PMIS Inspectors Daily Report, record hours on the job site (both inspector & contractor(s)), weather conditions, field superintendent/foreman's name, crew size, list of visiting officials, decisions, details of interactions and communication with the public or property owners/renters, safety observations, general observations, and specific observations with regard to test procedures and results of testing – to be loaded into PMIS daily.
 - o. Take notes during and provide meeting minutes of all construction related meetings.

- p. Assist City CM with management of contractor's request for interpretation (RFI's) on clarification and interpretations, field orders, change orders, allowance authorizations, and work change directives.
- q. Assist the City CM in reviewing the Contractor's monthly pay quantities and application
- r. Assist City CM in preparing and coordinating change management documents, issuing defective work notices, performing final inspection and reviewing final punch lists from Contractor.
- s. Assist City CM to coordinate any necessary vendor installation certifications as well as startup and training activities
- t. Assist City CM with final project closeout documentation and help ensure that compliance efforts are completed so that project can be accepted by CU and the Board of Public Works and final payment be made to Contractor.
- u. Provide timely invoices to CITY.
- v. Provide a scanned copy of Inspector marked up as-built drawings at substantial completion of the project. If unable to provide a scanned copy, furnish marked up as-built drawings to Contract Manager for City to scan. Scanned drawings to be uploaded into PMIS digital library by Contract Manager.
- w. Deliver the final project records to the Construction Manager and upload tap, valve, and hydrant cards on Water projects to PMIS within ten (10) calendar days after satisfactory completion of the project.
- x. Incident Reporting – Should an accident occur on the project, notify Contract Manager immediately, then document with photos and prepare a report of the incident including but not limited to: What happened, all parties on site when accident occurred, what parties responded to provide assistance to the accident involved parties (if police, name of officer or number on squad car), what inspector personally witnessed, what may have occurred that inspector did not witness. Photos and report to be submitted to City Manager of Engineering by noon the day following the incident.
- y. Assist City Manager at Facility projects to inspect areas within confined space areas. Inspector shall be confined space certified and may be required to enter facilities as a part of a construction firms confined space entry team.
- z. Upon request by the City, if GPS coordinates are not secured by Contractor, Design Engineering firm, or Survey, Inspector shall gather GPS information utilizing GPS equipment with sub-meter (sub-foot desired) accuracy. At a minimum, coordinates must be recorded for Hydrants, valves, curb stops, corporation stops, directional change fittings, connection fittings, manholes, clean-outs, sewer taps, and other appurtenances as agreed upon at project assignment. Deliverable format shall be confirmed with the CITY at project assignment.
- aa. Notify CM and document in daily report when utilities other than the ones being installed as part of the project are encountered and are in interference with proposed infrastructure or damaged by the contractor.
- bb. Work with the public to resolve any complaints that are the result of construction activities. If complaint cannot be immediately resolved by disclosing to the contractor, notify the CM for assistance, guidance, and follow-up.

C. KEY PERSONEL

FIRM shall provide a resume for all key personal that may be assigned to a project so that experience can be determined and appropriate compensation rate established.

FIRM'S key personal will be assigned on a project basis and as mutually agreed to by FIRM and CITY prior to the commencement of any work in accordance with this Agreement. On all projects, but specifically on Capital projects the City believes that continuity of RPR services is important to maintain quality and accountability. Upon assignment of a project to a FIRM and the FIRM'S proposed staff person(s) are confirmed, CU desires the staff person(s) be assigned to the project until completion. To accommodate the difficulties of FIRMS complying with this requirement under this on-call type arrangement, CU will allow (unless otherwise agreed upon during project assignment discussions) for the key staff person(s) to be substituted by other pre-approved staff person(s) a maximum of one incident or day per week.

City Utilities will also consider allowing RPR's with less experience than required (requirements noted above) for substitution on projects. These exceptions will need to be pre-approved on project by project basis.

D. SCHEDULE

Services under this contract are to be completed from date of NTP until **July 31, 2019**. This contract can be extended by amendment and approval of CITY and FIRM.

1. FIRM shall commence its services on assigned PROJECT upon notification by CITY.
2. FIRM shall attend a pre-construction meeting with the DEVELOPER/CONTRACTOR before commencement of construction.
3. Firm shall attend progress meetings during construction as requested.
4. Firm's Inspector shall attend a post-construction meeting with City and others to provide feedback on the execution of the project.

PART II

CITY'S RESPONSIBILITIES

CITY, at its expense, shall provide the following in a timely manner so as not to delay the Services.

A. INFORMATION AND REQUIREMENTS

1. Provide all criteria and full information as to CITY'S requirements for the Project, including without limitation, design objectives and constraints capacity and performance requirements, flexibility, the project scope, the comprehensive engineering report, the general and special provisions of the construction agreement/contract and any budgetary limitations; and furnish copies or notify FIRM of all design and construction standards which CITY will require to be included in the required reports and all other items as described in PART 1.
2. CITY shall provide a CITY Representative with decision-making authority on all inquiries.
3. CITY shall supply FIRM with One (1) set of approved Sub-Division or Commercial Plans at least 2 calendar days prior to work.
4. CITY shall supply FIRM with One (1) set of approved Bid Documents (Plans & Specifications) at least 7 calendar days prior to a pre-construction meeting.

B. REPRESENTATIVE:

Designate representative for the project who shall have authority to transmit instructions, receive information, interpret and define CITY'S policies and make decisions with respect to the services.

Various Contract Managers representing City Utilities will be responsible for coordinating activities with specific FIRM representatives.

PART III

COMPENSATION, BILLING, PAYMENT AND SCHEDULE

A. COMPENSATION

FIRM'S COMPENSATION FOR SERVICES

1. For those services performed by FIRM, FIRM will be paid by CITY on the basis of actual hours of work performed by FIRM'S Inspector on this Agreement at the hourly rate listed below. This rate is inclusive of any clerical, project set-up or final project review by office personnel, and/or administrative/management cost by FIRM.
2. FIRM shall not include time spent commuting from office or home to and/or from a project site when computing hours worked on payment claims as outlined in Part 1. Costs for commuting between multiple projects will be compensated for in the following manner: Travel time between project A and B shall be charged to project B. Return travel time from project B to project A shall be charged to project A.
3. For those testing services performed by other than FIRM at the request of the CITY, FIRM shall be reimbursed by CITY for the actual invoice for the services performed by other than FIRM, provided that each such invoice shall be subject to approval as reasonable by CITY prior to any reimbursement therefore.

PRIVATE/DEVELOPER PROJECTS

City Private Developer projects are inspected approximately four hours per day during construction activities. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty five dollars (\$55.00) per hour** per Inspector per DEVELOPER/CONTRACTOR'S project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Private / Developer activities.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

SERVICE LATERAL CONNECTIONS

Service Lateral Connections are typically installed by private contractors and are inspected on a per connection basis. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty five dollars (\$55.00) per requested service connection evaluation** for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Service Lateral Connection Evaluation activities.

ALLEN COUNTY REGIONAL SEWER DISTRICT PROJECTS

ACRSD projects are typically inspected approximately four to eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty-five dollars (\$55.00) per hour** per Inspector per ACRSD project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for ACRSD activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to a higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

CAPITAL PROJECTS

City Capital projects are typically inspected approximately four to eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required. Experience with trenchless construction methods/technologies is also expected (CIPP lining, HDD, etc.) for certain projects.

1. FIRM shall be compensated at a rate of **sixty dollars (\$60.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Capital Project activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to the higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.
2. FIRM shall be compensated at a rate of **seventy dollars (\$70.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM that have a minimum of five years of experience for larger projects or projects with more complex work- such as projects with electrical/mechanical facilities such as lift stations. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to this higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

WATER POLLUTION CONTROL AND WATER FILTRATION PLANT PROJECTS

City Plant projects are typically inspected approximately eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of Facility projects is required.

1. FIRM shall be compensated at a rate of ninety dollars (\$90.00) per hour per Inspector per WATER POLLUTION CONTROL PLANT AND WATER FILTRATION PLANT project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM that have a minimum of ten years of experience for larger projects or projects with more complex work- such as projects with electrical/mechanical facilities such as lift stations. Inspectors that have less than ten years of experience but have exhibited competent knowledge for the project assignment may be waived to this higher pay level upon approval by the City. Staff with experience in electrical/mechanical , concrete, and/or structural disciplines typically will be required on facility projects.

PMIS TECHNICAL SUPPORT SERVICES

Purpose of this Service is to provide Technical Support with PMIS for the CITY.

1. FIRM shall be compensated at a rate of Eighty Five dollars (\$85.00) per hour per Individual for providing as-needed assistance with PMIS, system enhancements, training, and general technical support as directed. Additional services may be included if directed.
2. Services provided under this category shall require prior approval from the Deputy Director of Engineering or Manager of Engineering.

B. BILLING AND PAYMENT

METHOD OF PAYMENT

FIRM shall submit a properly itemized invoice to CITY on a monthly basis. CITY shall pay FIRM within forty five (45) days after receipt of such properly itemized claim forms, unless claim is objected to in writing, in which case claim shall be paid within 15 days of resolution. All required items must be uploaded into PMIS prior to Invoice approval. Some deliverables for Service Lateral Connection inspection may need to be scanned and emailed or hard copies delivered to appropriate CITY personnel.

**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.

Engineer or City, for purposes of convenience, may at any time by written notice terminate the services under this Agreement. In the event of such termination, Engineer shall be paid for all authorized services rendered prior to termination including reasonable profit and expenses relating thereto.

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
200 East Berry St., Suite #480
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 term, 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.

21. CONSENT DECREE NOTIFICATION. Engineer shall perform, or cause others to perform, all services undertaken in connection with this Agreement in a good and workman-like manner and in conformance with the terms of the Consent Decree entered in the U.S District Court on April 1, 2008 by the United States and State of Indiana. Engineer acknowledges that it has been provided a complete copy of the Consent Decree which can be viewed at:

http://www.cityoffortwayne.org/utilities/images/stories/docs/consent_decree/Consent_Decree.pdf

22. DOCUMENT RETENTION. Notwithstanding any other provision of this Agreement, Engineer agrees to preserve all non-identical copies of all documents, records and other information (whether in physical or electronic form) within Engineer's possession or control and which relate, in any manner, to the performance of the services undertaken in connection with this Agreement for a period of 1 year after the completion contemplated by the Agreement (the "Retention Period"). Prior to the end of the Retention Period, or at any earlier time if requested by the City, Engineer shall provide the City with complete copies of such documents, records and other information at no cost to the City. The copies shall be provided to the City on CD or DVD media, and individual files shall be in Adobe PDF format. The individual files shall be contained in a ZIP formatted file, and the filename of the ZIP shall include the name of the project and the Engineer. No part of any file shall be encrypted or protected from copying. Such copies shall be accompanied by a verified written statement from the Engineer attesting that it has provided the City with complete copies of all documents, records and other information which relates to the services contemplated by the Agreement.

PROFESSIONAL SERVICES AGREEMENT

City Utilities- Resident Project Representative / Inspection Services

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

By and through its

Board of Public Works
City of Fort Wayne
200 East Berry Street
Suite 210
Fort Wayne, IN 46802

and,

PROJECT ENGINEER ("FIRM"):

VS Engineering, Inc.
10305-A Dawson's Creek Boulevard
Fort Wayne, IN 46825

Who agree as follows:

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

APPROVALS

APPROVED FOR CITY:

BOARD OF PUBLIC WORKS

BY: _____
Robert P. Kennedy, Chair

BY: _____
Kumar Menon, Member

BY: _____
Mike Avila, Member

ATTEST:

BY: _____
Lyndsey Richards, Clerk

APPROVED FOR FIRM: VS ENGINEERING, INC.

BY: _____

PRINTED NAME _____

TITLE: _____

DATE: _____

PART I
FIRMS RESPONSIBILITIES

A. GENERAL RESPONSIBILITIES

FIRM Shall:

1. Certify and warrant that it has the capacity to perform the services required by CITY with high professional quality, ability and expertise and further certify and warrant that it has the capacity and authority to enter into this Agreement.
2. Perform Resident Project Representative (RPR) and inspection services during the construction of Water Pollution Control and Water Filtration Facility projects along with sanitary sewers, water mains, and stormwater sewer facilities in assigned projects, and perform onsite evaluation and observation services for lateral connections to CITY's infrastructure systems to determine whether said infrastructure/connections are constructed in substantial conformance with plans and specifications approved by Fort Wayne City Utilities Development Services or Engineering Department, City Utilities Design Standards Manual, and Chapters 51, 52 and 53 of the City Code of Fort Wayne, Indiana, as set forth in Service by Firm section included herein.
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3. FIRM shall provide Inspection personnel as required for a period of time necessary to complete the construction project and prepare a final construction report.
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 - b. The Inspector shall take directions from and report to CITY'S assigned Contract Manager (CM) on all matters concerning contract compliance and administration.
 - c. The Inspector shall coordinate project activities with CITY'S assigned Contract Manager.
4. FIRM shall also do the following:
 - a. FIRMS will be expected to fully utilize the Program Management Information System (PMIS), a web based system that will allow for FIRMS to submit inspection reports, photographs, and other various forms of project documentation electronically to City Utilities Engineering. When functionality becomes available, FIRMS shall submit invoices through PMIS.
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- c. Serve as CITY'S Liaison with the Developer / Contractor, working principally through the Developer / Contractor's field superintendent or such other person in authority as designated by the Developer / Contractor. Acting in liaison capacity, the Inspector shall be thoroughly familiar with the plans and specifications applicable to the project and observe the construction for compliance with respect to all provisions therein.
- d. Review the NPDES Stormwater permit / plans and conduct on-site observations as a basis for determining that the project is proceeding in substantial conformance with the approved permit / plan requirements. Any deviation observed shall be reported in writing promptly to CITY by the Inspector.
- e. Review the construction schedule prepared by the Developer / Contractor and assist CITY in making sure schedule is being held to meet project milestones (ex. Substantial & Final Completion) and ensure schedule is updated monthly and submitted with pay application.
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 - 5. Keep detailed records on time and materials for work authorized as reimbursable
 - 6. Obtain and review all applicable easements required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in easement documents.
 - 7. Obtain and review all applicable permits required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in permits including limits of construction and ensure contractor stays out of restricted areas. Copies of permits are uploaded into the PMIS digital library by Contract Manager.
 - 8. Obtain and review traffic control plans and verify that all required traffic control devices are in place on a daily basis. Travel detour routes to verify appropriate signage is in place and other construction activities are not impeding traffic.
 - 9. Review compaction testing specifications (if applicable) and verify that compaction testing is being completed per specifications. Upload compaction test results into PMIS on a weekly basis.
- i. Inspect, at a minimum, the following:
 - 1. Bedding and backfill of stormwater and sanitary sewers and related structures
 - 2. Bedding, backfill and restraint of water mains, elbows, hydrants, valves, auxiliary valves, blow-offs, services and related appurtenances.
 - 3. Installation of manholes, lift stations and/or force mains
 - 4. Subgrade for horizontal and vertical alignment and compaction
 - 5. Rough and final grading of swales, ditches, and detention/retention facilities
 - 6. Testing of construction materials by private testing company may be called for on any of the above phases as required by the City Utilities Engineering Department or as requested by CITY.
 - 7. On-site verification of all required testing and as-built survey information.

8. Verification of invert elevations at each manhole during construction of sanitary and storm sewer main trunk lines to ensure design elevations (and associated design capacity) is being maintained.
 9. Electrical/mechanical, concrete, and/or structural infrastructure on Facility projects.
- h. Perform onsite evaluation and observation services for connections to City Utilities' infrastructure systems ("Service Connection").
- i. Inspect, at a minimum, the following
 1. Pipe bedding
 2. Pipe slope
 3. Pipe material, fittings, gaskets, boots, etc.
 4. Installation of cleanouts
 5. Connection of Service Connection at the building or to the existing building service line
 6. Non-wastewater water or materials do not and cannot flow into or infiltrate sewer pipes
 7. Connections to manholes, inlets, catch basins, or other structures on public infrastructure system are completed in compliance with approved plans, design and construction standards and specifications, and completed in a manner that does not adversely impact any structure.
 8. Drawing showing the location of the Service Connection on the property
 - ii. Upon receipt of CITY's Service Connection Evaluation request, FIRM shall dispatch and complete the on-site evaluation, and report deficiencies, if any, to CITY within (3) hours.
 - iii. Deliver completed tap record sheets (hard copy) to CITY by noon of the business day following completion of each evaluation.
- i. Furnish all equipment necessary to sample and test materials and/or provide on-site independent assurance testing of materials in accordance with standards and specifications of the Fort Wayne procedures and in accordance with current accepted practices, ordinances, and the most recent standards and specifications of the Division of Utilities, City Utilities Engineering Department as approved and adopted by the Board of Public Works.
- j. Verify that required testing has been accomplished and results of the testing are satisfactory
- k. Notify the Developer / Contractor and CITY in writing of any substandard work
- l. Consider and evaluate the Developer / Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to CITY'S assigned Contract Manager.
- m. Representative of the firm shall notify CITY of any additional work requested by the CONTRACTOR beyond the original approved design prior to the work occurring. Representatives are not empowered to make changes to projects; all changes must be approved by CITY staff.
- n. On the PMIS Inspectors Daily Report, record hours on the job site (both inspector & contractor(s)), weather conditions, field superintendent/foreman's name, crew size, list of visiting officials, decisions, details of interactions and communication with the public or property owners/renters, safety observations, general observations, and specific observations with regard to test procedures and results of testing – to be loaded into PMIS daily.
- o. Take notes during and provide meeting minutes of all construction related meetings.

- p. Assist City CM with management of contractor's request for interpretation (RFI's) on clarification and interpretations, field orders, change orders, allowance authorizations, and work change directives.
- q. Assist the City CM in reviewing the Contractor's monthly pay quantities and application
- r. Assist City CM in preparing and coordinating change management documents, issuing defective work notices, performing final inspection and reviewing final punch lists from Contractor.
- s. Assist City CM to coordinate any necessary vendor installation certifications as well as startup and training activities
- t. Assist City CM with final project closeout documentation and help ensure that compliance efforts are completed so that project can be accepted by CU and the Board of Public Works and final payment be made to Contractor.
- u. Provide timely invoices to CITY.
- v. Provide a scanned copy of Inspector marked up as-built drawings at substantial completion of the project. If unable to provide a scanned copy, furnish marked up as-built drawings to Contract Manager for City to scan. Scanned drawings to be uploaded into PMIS digital library by Contract Manager.
- w. Deliver the final project records to the Construction Manager and upload tap, valve, and hydrant cards on Water projects to PMIS within ten (10) calendar days after satisfactory completion of the project.
- x. Incident Reporting – Should an accident occur on the project, notify Contract Manager immediately, then document with photos and prepare a report of the incident including but not limited to: What happened, all parties on site when accident occurred, what parties responded to provide assistance to the accident involved parties (if police, name of officer or number on squad car), what inspector personally witnessed, what may have occurred that inspector did not witness. Photos and report to be submitted to City Manager of Engineering by noon the day following the incident.
- y. Assist City Manager at Facility projects to inspect areas within confined space areas. Inspector shall be confined space certified and may be required to enter facilities as a part of a construction firms confined space entry team.
- z. Upon request by the City, if GPS coordinates are not secured by Contractor, Design Engineering firm, or Survey, Inspector shall gather GPS information utilizing GPS equipment with sub-meter (sub-foot desired) accuracy. At a minimum, coordinates must be recorded for Hydrants, valves, curb stops, corporation stops, directional change fittings, connection fittings, manholes, clean-outs, sewer taps, and other appurtenances as agreed upon at project assignment. Deliverable format shall be confirmed with the CITY at project assignment.
- aa. Notify CM and document in daily report when utilities other than the ones being installed as part of the project are encountered and are in interference with proposed infrastructure or damaged by the contractor.
- bb. Work with the public to resolve any complaints that are the result of construction activities. If complaint cannot be immediately resolved by disclosing to the contractor, notify the CM for assistance, guidance, and follow-up.

C. KEY PERSONEL

FIRM shall provide a resume for all key personal that may be assigned to a project so that experience can be determined and appropriate compensation rate established.

FIRM'S key personal will be assigned on a project basis and as mutually agreed to by FIRM and CITY prior to the commencement of any work in accordance with this Agreement. On all projects, but specifically on Capital projects the City believes that continuity of RPR services is important to maintain quality and accountability. Upon assignment of a project to a FIRM and the FIRM'S proposed staff person(s) are confirmed, CU desires the staff person(s) be assigned to the project until completion. To accommodate the difficulties of FIRMS complying with this requirement under this on-call type arrangement, CU will allow (unless otherwise agreed upon during project assignment discussions) for the key staff person(s) to be substituted by other pre-approved staff person(s) a maximum of one incident or day per week.

City Utilities will also consider allowing RPR's with less experience than required (requirements noted above) for substitution on projects. These exceptions will need to be pre-approved on project by project basis.

D. SCHEDULE

Services under this contract are to be completed from date of NTP until **July 31, 2019**. This contract can be extended by amendment and approval of CITY and FIRM.

1. FIRM shall commence its services on assigned PROJECT upon notification by CITY.
2. FIRM shall attend a pre-construction meeting with the DEVELOPER/CONTRACTOR before commencement of construction.
3. Firm shall attend progress meetings during construction as requested.
4. Firm's Inspector shall attend a post-construction meeting with City and others to provide feedback on the execution of the project.

PART II

CITY'S RESPONSIBILITIES

CITY, at its expense, shall provide the following in a timely manner so as not to delay the Services.

A. INFORMATION AND REQUIREMENTS

1. Provide all criteria and full information as to CITY'S requirements for the Project, including without limitation, design objectives and constraints capacity and performance requirements, flexibility, the project scope, the comprehensive engineering report, the general and special provisions of the construction agreement/contract and any budgetary limitations; and furnish copies or notify FIRM of all design and construction standards which CITY will require to be included in the required reports and all other items as described in PART 1.
2. CITY shall provide a CITY Representative with decision-making authority on all inquiries.
3. CITY shall supply FIRM with One (1) set of approved Sub-Division or Commercial Plans at least 2 calendar days prior to work.
4. CITY shall supply FIRM with One (1) set of approved Bid Documents (Plans & Specifications) at least 7 calendar days prior to a pre-construction meeting.

B. REPRESENTATIVE:

Designate representative for the project who shall have authority to transmit instructions, receive information, interpret and define CITY'S policies and make decisions with respect to the services.

Various Contract Managers representing City Utilities will be responsible for coordinating activities with specific FIRM representatives.

PART III

COMPENSATION, BILLING, PAYMENT AND SCHEDULE

A. COMPENSATION

FIRM'S COMPENSATION FOR SERVICES

1. For those services performed by FIRM, FIRM will be paid by CITY on the basis of actual hours of work performed by FIRM'S Inspector on this Agreement at the hourly rate listed below. This rate is inclusive of any clerical, project set-up or final project review by office personnel, and/or administrative/management cost by FIRM.
2. FIRM shall not include time spent commuting from office or home to and/or from a project site when computing hours worked on payment claims as outlined in Part 1. Costs for commuting between multiple projects will be compensated for in the following manner: Travel time between project A and B shall be charged to project B. Return travel time from project B to project A shall be charged to project A.
3. For those testing services performed by other than FIRM at the request of the CITY, FIRM shall be reimbursed by CITY for the actual invoice for the services performed by other than FIRM, provided that each such invoice shall be subject to approval as reasonable by CITY prior to any reimbursement therefore.

PRIVATE/DEVELOPER PROJECTS

City Private Developer projects are inspected approximately four hours per day during construction activities. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty five dollars (\$55.00) per hour** per Inspector per DEVELOPER/CONTRACTOR'S project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Private / Developer activities.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

SERVICE LATERAL CONNECTIONS

Service Lateral Connections are typically installed by private contractors and are inspected on a per connection basis. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty five dollars (\$55.00) per requested service connection evaluation** for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Service Lateral Connection Evaluation activities.

ALLEN COUNTY REGIONAL SEWER DISTRICT PROJECTS

ACRSD projects are typically inspected approximately four to eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty-five dollars (\$55.00) per hour** per Inspector per ACRSD project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for ACRSD activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to a higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

CAPITAL PROJECTS

City Capital projects are typically inspected approximately four to eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required. Experience with trenchless construction methods/technologies is also expected (CIPP lining, HDD, etc.) for certain projects.

1. FIRM shall be compensated at a rate of **sixty dollars (\$60.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Capital Project activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to the higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.
2. FIRM shall be compensated at a rate of **seventy dollars (\$70.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM that have a minimum of five years of experience for larger projects or projects with more complex work- such as projects with electrical/mechanical facilities such as lift stations. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to this higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

WATER POLLUTION CONTROL AND WATER FILTRATION PLANT PROJECTS

City Plant projects are typically inspected approximately eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of Facility projects is required.

1. FIRM shall be compensated at a rate of ninety dollars (\$90.00) per hour per Inspector per WATER POLLUTION CONTROL PLANT AND WATER FILTRATION PLANT project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM that have a minimum of ten years of experience for larger projects or projects with more complex work- such as projects with electrical/mechanical facilities such as lift stations. Inspectors that have less than ten years of experience but have exhibited competent knowledge for the project assignment may be waived to this higher pay level upon approval by the City. Staff with experience in electrical/mechanical , concrete, and/or structural disciplines typically will be required on facility projects.

PMIS TECHNICAL SUPPORT SERVICES

Purpose of this Service is to provide Technical Support with PMIS for the CITY.

1. FIRM shall be compensated at a rate of Eighty Five dollars (\$85.00) per hour per Individual for providing as-needed assistance with PMIS, system enhancements, training, and general technical support as directed. Additional services may be included if directed.
2. Services provided under this category shall require prior approval from the Deputy Director of Engineering or Manager of Engineering.

B. BILLING AND PAYMENT

METHOD OF PAYMENT

FIRM shall submit a properly itemized invoice to CITY on a monthly basis. CITY shall pay FIRM within forty five (45) days after receipt of such properly itemized claim forms, unless claim is objected to in writing, in which case claim shall be paid within 15 days of resolution. All required items must be uploaded into PMIS prior to Invoice approval. Some deliverables for Service Lateral Connection inspection may need to be scanned and emailed or hard copies delivered to appropriate CITY personnel.

**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.

Engineer or City, for purposes of convenience, may at any time by written notice terminate the services under this Agreement. In the event of such termination, Engineer shall be paid for all authorized services rendered prior to termination including reasonable profit and expenses relating thereto.

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
200 East Berry St., Suite #480
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 term, 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.

21. **CONSENT DECREE NOTIFICATION.** Engineer shall perform, or cause others to perform, all services undertaken in connection with this Agreement in a good and workman-like manner and in conformance with the terms of the Consent Decree entered in the U.S District Court on April 1, 2008 by the United States and State of Indiana. Engineer acknowledges that it has been provided a complete copy of the Consent Decree which can be viewed at:

http://www.cityoffortwayne.org/utilities/images/stories/docs/consent_decree/Consent_Decree.pdf

22. **DOCUMENT RETENTION.** Notwithstanding any other provision of this Agreement, Engineer agrees to preserve all non-identical copies of all documents, records and other information (whether in physical or electronic form) within Engineer's possession or control and which relate, in any manner, to the performance of the services undertaken in connection with this Agreement for a period of 1 year after the completion contemplated by the Agreement (the "Retention Period"). Prior to the end of the Retention Period, or at any earlier time if requested by the City, Engineer shall provide the City with complete copies of such documents, records and other information at no cost to the City. The copies shall be provided to the City on CD or DVD media, and individual files shall be in Adobe PDF format. The individual files shall be contained in a ZIP formatted file, and the filename of the ZIP shall include the name of the project and the Engineer. No part of any file shall be encrypted or protected from copying. Such copies shall be accompanied by a verified written statement from the Engineer attesting that it has provided the City with complete copies of all documents, records and other information which relates to the services contemplated by the Agreement.

PROFESSIONAL SERVICES AGREEMENT

City Utilities- Resident Project Representative / Inspection Services

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

By and through its

Board of Public Works
City of Fort Wayne
200 East Berry Street
Suite 210
Fort Wayne, IN 46802

and,

PROJECT ENGINEER ("FIRM"):

A & Z Engineering LLC
1220 Ruston Pass
Fort Wayne, IN 46825

Who agree as follows:

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

APPROVALS

APPROVED FOR CITY:

BOARD OF PUBLIC WORKS

BY: _____
Robert P. Kennedy, Chair

BY: _____
Kumar Menon, Member

BY: _____
Mike Avila, Member

ATTEST:

BY: _____
Lyndsey Richards, Clerk

APPROVED FOR FIRM: A & Z ENGINEERING LLC

BY: _____

PRINTED NAME _____

TITLE: _____

DATE: _____

PART I
FIRMS RESPONSIBILITIES

A. GENERAL RESPONSIBILITIES

FIRM Shall:

1. Certify and warrant that it has the capacity to perform the services required by CITY with high professional quality, ability and expertise and further certify and warrant that it has the capacity and authority to enter into this Agreement.
2. Perform Resident Project Representative (RPR) and inspection services during the construction of Water Pollution Control and Water Filtration Facility projects along with sanitary sewers, water mains, and stormwater sewer facilities in assigned projects, and perform onsite evaluation and observation services for lateral connections to CITY's infrastructure systems to determine whether said infrastructure/connections are constructed in substantial conformance with plans and specifications approved by Fort Wayne City Utilities Development Services or Engineering Department, City Utilities Design Standards Manual, and Chapters 51, 52 and 53 of the City Code of Fort Wayne, Indiana, as set forth in Service by Firm section included herein.
3. Maintain appropriate records and forms, as instructed by CITY and submit all records and forms to CITY as set forth in Services by Firm section.

B. SERVICES BY FIRM:

Services to be provided for the project are as follows:

1. FIRM shall have a designated person as a point of contact for RPR services oversight.
2. FIRM shall provide professional RPR, inspection, observation and testing services during the construction of facilities on assigned projects.
3. FIRM shall provide Inspection personnel as required for a period of time necessary to complete the construction project and prepare a final construction report.
 - a. The qualifications and experiences of personnel provided by FIRM are subject to approval by CITY. No personnel shall be assigned to the project until such approval is obtained.
 - b. The Inspector shall take directions from and report to CITY'S assigned Contract Manager (CM) on all matters concerning contract compliance and administration.
 - c. The Inspector shall coordinate project activities with CITY'S assigned Contract Manager.
4. FIRM shall also do the following:
 - a. FIRMS will be expected to fully utilize the Program Management Information System (PMIS), a web based system that will allow for FIRMS to submit inspection reports, photographs, and other various forms of project documentation electronically to City Utilities Engineering. When functionality becomes available, FIRMS shall submit invoices through PMIS.
 - b. FIRM will be expected to fully utilize AssetHound, a Mobile App to document daily construction activities (daily report), photos, and test reporting for uploading to PMIS.

- c. Serve as CITY'S Liaison with the Developer / Contractor, working principally through the Developer / Contractor's field superintendent or such other person in authority as designated by the Developer / Contractor. Acting in liaison capacity, the Inspector shall be thoroughly familiar with the plans and specifications applicable to the project and observe the construction for compliance with respect to all provisions therein.
- d. Review the NPDES Stormwater permit / plans and conduct on-site observations as a basis for determining that the project is proceeding in substantial conformance with the approved permit / plan requirements. Any deviation observed shall be reported in writing promptly to CITY by the Inspector.
- e. Review the construction schedule prepared by the Developer / Contractor and assist CITY in making sure schedule is being held to meet project milestones (ex. Substantial & Final Completion) and ensure schedule is updated monthly and submitted with pay application.
- f. Cooperate with CITY in dealing with the various local agencies having jurisdiction over the project.
- g. Provide observation of Capital, Developer, and ACRSD construction activities performed by the Contractor to ensure work complies with the contract documents and related project permits.
 - 1. Daily logs – to be loaded into AssetHound for both Developer and Capital projects each day of active construction
 - 2. Photos for construction progress (taken daily of relevant work activities) as well as for any potential claim situations-to be loaded into AssetHound each day of active construction
 - 3. Record on project drawings all field changes and daily production information
 - 4. Keep quantity records and accurate materials stored on site records for submittal to Contract Manager for progress payment reviews
 - 5. Keep detailed records on time and materials for work authorized as reimbursable
 - 6. Obtain and review all applicable easements required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in easement documents.
 - 7. Obtain and review all applicable permits required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in permits including limits of construction and ensure contractor stays out of restricted areas. Copies of permits are uploaded into the PMIS digital library by Contract Manager.
 - 8. Obtain and review traffic control plans and verify that all required traffic control devices are in place on a daily basis. Travel detour routes to verify appropriate signage is in place and other construction activities are not impeding traffic.
 - 9. Review compaction testing specifications (if applicable) and verify that compaction testing is being completed per specifications. Upload compaction test results into PMIS on a weekly basis.
- i. Inspect, at a minimum, the following:
 - 1. Bedding and backfill of stormwater and sanitary sewers and related structures
 - 2. Bedding, backfill and restraint of water mains, elbows, hydrants, valves, auxiliary valves, blow-offs, services and related appurtenances.
 - 3. Installation of manholes, lift stations and/or force mains
 - 4. Subgrade for horizontal and vertical alignment and compaction
 - 5. Rough and final grading of swales, ditches, and detention/retention facilities
 - 6. Testing of construction materials by private testing company may be called for on any of the above phases as required by the City Utilities Engineering Department or as requested by CITY.
 - 7. On-site verification of all required testing and as-built survey information.

8. Verification of invert elevations at each manhole during construction of sanitary and storm sewer main trunk lines to ensure design elevations (and associated design capacity) is being maintained.
 9. Electrical/mechanical, concrete, and/or structural infrastructure on Facility projects.
- h. Perform onsite evaluation and observation services for connections to City Utilities' infrastructure systems ("Service Connection").
- i. Inspect, at a minimum, the following
 1. Pipe bedding
 2. Pipe slope
 3. Pipe material, fittings, gaskets, boots, etc.
 4. Installation of cleanouts
 5. Connection of Service Connection at the building or to the existing building service line
 6. Non-wastewater water or materials do not and cannot flow into or infiltrate sewer pipes
 7. Connections to manholes, inlets, catch basins, or other structures on public infrastructure system are completed in compliance with approved plans, design and construction standards and specifications, and completed in a manner that does not adversely impact any structure.
 8. Drawing showing the location of the Service Connection on the property
 - ii. Upon receipt of CITY's Service Connection Evaluation request, FIRM shall dispatch and complete the on-site evaluation, and report deficiencies, if any, to CITY within (3) hours.
 - iii. Deliver completed tap record sheets (hard copy) to CITY by noon of the business day following completion of each evaluation.
- i. Furnish all equipment necessary to sample and test materials and/or provide on-site independent assurance testing of materials in accordance with standards and specifications of the Fort Wayne procedures and in accordance with current accepted practices, ordinances, and the most recent standards and specifications of the Division of Utilities, City Utilities Engineering Department as approved and adopted by the Board of Public Works.
- j. Verify that required testing has been accomplished and results of the testing are satisfactory
- k. Notify the Developer / Contractor and CITY in writing of any substandard work
- l. Consider and evaluate the Developer / Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to CITY'S assigned Contract Manager.
- m. Representative of the firm shall notify CITY of any additional work requested by the CONTRACTOR beyond the original approved design prior to the work occurring. Representatives are not empowered to make changes to projects; all changes must be approved by CITY staff.
- n. On the PMIS Inspectors Daily Report, record hours on the job site (both inspector & contractor(s)), weather conditions, field superintendent/foreman's name, crew size, list of visiting officials, decisions, details of interactions and communication with the public or property owners/renters, safety observations, general observations, and specific observations with regard to test procedures and results of testing – to be loaded into PMIS daily.
- o. Take notes during and provide meeting minutes of all construction related meetings.

- p. Assist City CM with management of contractor's request for interpretation (RFI's) on clarification and interpretations, field orders, change orders, allowance authorizations, and work change directives.
- q. Assist the City CM in reviewing the Contractor's monthly pay quantities and application
- r. Assist City CM in preparing and coordinating change management documents, issuing defective work notices, performing final inspection and reviewing final punch lists from Contractor.
- s. Assist City CM to coordinate any necessary vendor installation certifications as well as startup and training activities
- t. Assist City CM with final project closeout documentation and help ensure that compliance efforts are completed so that project can be accepted by CU and the Board of Public Works and final payment be made to Contractor.
- u. Provide timely invoices to CITY.
- v. Provide a scanned copy of Inspector marked up as-built drawings at substantial completion of the project. If unable to provide a scanned copy, furnish marked up as-built drawings to Contract Manager for City to scan. Scanned drawings to be uploaded into PMIS digital library by Contract Manager.
- w. Deliver the final project records to the Construction Manager and upload tap, valve, and hydrant cards on Water projects to PMIS within ten (10) calendar days after satisfactory completion of the project.
- x. Incident Reporting – Should an accident occur on the project, notify Contract Manager immediately, then document with photos and prepare a report of the incident including but not limited to: What happened, all parties on site when accident occurred, what parties responded to provide assistance to the accident involved parties (if police, name of officer or number on squad car), what inspector personally witnessed, what may have occurred that inspector did not witness. Photos and report to be submitted to City Manager of Engineering by noon the day following the incident.
- y. Assist City Manager at Facility projects to inspect areas within confined space areas. Inspector shall be confined space certified and may be required to enter facilities as a part of a construction firms confined space entry team.
- z. Upon request by the City, if GPS coordinates are not secured by Contractor, Design Engineering firm, or Survey, Inspector shall gather GPS information utilizing GPS equipment with sub-meter (sub-foot desired) accuracy. At a minimum, coordinates must be recorded for Hydrants, valves, curb stops, corporation stops, directional change fittings, connection fittings, manholes, clean-outs, sewer taps, and other appurtenances as agreed upon at project assignment. Deliverable format shall be confirmed with the CITY at project assignment.
- aa. Notify CM and document in daily report when utilities other than the ones being installed as part of the project are encountered and are in interference with proposed infrastructure or damaged by the contractor.
- bb. Work with the public to resolve any complaints that are the result of construction activities. If complaint cannot be immediately resolved by disclosing to the contractor, notify the CM for assistance, guidance, and follow-up.

C. KEY PERSONEL

FIRM shall provide a resume for all key personal that may be assigned to a project so that experience can be determined and appropriate compensation rate established.

FIRM'S key personal will be assigned on a project basis and as mutually agreed to by FIRM and CITY prior to the commencement of any work in accordance with this Agreement. On all projects, but specifically on Capital projects the City believes that continuity of RPR services is important to maintain quality and accountability. Upon assignment of a project to a FIRM and the FIRM'S proposed staff person(s) are confirmed, CU desires the staff person(s) be assigned to the project until completion. To accommodate the difficulties of FIRMS complying with this requirement under this on-call type arrangement, CU will allow (unless otherwise agreed upon during project assignment discussions) for the key staff person(s) to be substituted by other pre-approved staff person(s) a maximum of one incident or day per week.

City Utilities will also consider allowing RPR's with less experience than required (requirements noted above) for substitution on projects. These exceptions will need to be pre-approved on project by project basis.

D. SCHEDULE

Services under this contract are to be completed from date of NTP until **July 31, 2019**. This contract can be extended by amendment and approval of CITY and FIRM.

1. FIRM shall commence its services on assigned PROJECT upon notification by CITY.
2. FIRM shall attend a pre-construction meeting with the DEVELOPER/CONTRACTOR before commencement of construction.
3. Firm shall attend progress meetings during construction as requested.
4. Firm's Inspector shall attend a post-construction meeting with City and others to provide feedback on the execution of the project.

PART II

CITY'S RESPONSIBILITIES

CITY, at its expense, shall provide the following in a timely manner so as not to delay the Services.

A. INFORMATION AND REQUIREMENTS

1. Provide all criteria and full information as to CITY'S requirements for the Project, including without limitation, design objectives and constraints capacity and performance requirements, flexibility, the project scope, the comprehensive engineering report, the general and special provisions of the construction agreement/contract and any budgetary limitations; and furnish copies or notify FIRM of all design and construction standards which CITY will require to be included in the required reports and all other items as described in PART 1.
2. CITY shall provide a CITY Representative with decision-making authority on all inquiries.
3. CITY shall supply FIRM with One (1) set of approved Sub-Division or Commercial Plans at least 2 calendar days prior to work.
4. CITY shall supply FIRM with One (1) set of approved Bid Documents (Plans & Specifications) at least 7 calendar days prior to a pre-construction meeting.

B. REPRESENTATIVE:

Designate representative for the project who shall have authority to transmit instructions, receive information, interpret and define CITY'S policies and make decisions with respect to the services.

Various Contract Managers representing City Utilities will be responsible for coordinating activities with specific FIRM representatives.

PART III

COMPENSATION, BILLING, PAYMENT AND SCHEDULE

A. COMPENSATION

FIRM'S COMPENSATION FOR SERVICES

1. For those services performed by FIRM, FIRM will be paid by CITY on the basis of actual hours of work performed by FIRM'S Inspector on this Agreement at the hourly rate listed below. This rate is inclusive of any clerical, project set-up or final project review by office personnel, and/or administrative/management cost by FIRM.
2. FIRM shall not include time spent commuting from office or home to and/or from a project site when computing hours worked on payment claims as outlined in Part 1. Costs for commuting between multiple projects will be compensated for in the following manner: Travel time between project A and B shall be charged to project B. Return travel time from project B to project A shall be charged to project A.
3. For those testing services performed by other than FIRM at the request of the CITY, FIRM shall be reimbursed by CITY for the actual invoice for the services performed by other than FIRM, provided that each such invoice shall be subject to approval as reasonable by CITY prior to any reimbursement therefore.

PRIVATE/DEVELOPER PROJECTS

City Private Developer projects are inspected approximately four hours per day during construction activities. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty five dollars (\$55.00) per hour** per Inspector per DEVELOPER/CONTRACTOR'S project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Private / Developer activities.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

SERVICE LATERAL CONNECTIONS

Service Lateral Connections are typically installed by private contractors and are inspected on a per connection basis. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty five dollars (\$55.00) per requested service connection evaluation** for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Service Lateral Connection Evaluation activities.

ALLEN COUNTY REGIONAL SEWER DISTRICT PROJECTS

ACRSD projects are typically inspected approximately four to eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty-five dollars (\$55.00) per hour** per Inspector per ACRSD project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for ACRSD activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to a higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

CAPITAL PROJECTS

City Capital projects are typically inspected approximately four to eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required. Experience with trenchless construction methods/technologies is also expected (CIPP lining, HDD, etc.) for certain projects.

1. FIRM shall be compensated at a rate of **sixty dollars (\$60.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Capital Project activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to the higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.
2. FIRM shall be compensated at a rate of **seventy dollars (\$70.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM that have a minimum of five years of experience for larger projects or projects with more complex work- such as projects with electrical/mechanical facilities such as lift stations. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to this higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

WATER POLLUTION CONTROL AND WATER FILTRATION PLANT PROJECTS

City Plant projects are typically inspected approximately eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of Facility projects is required.

1. FIRM shall be compensated at a rate of ninety dollars (\$90.00) per hour per Inspector per WATER POLLUTION CONTROL PLANT AND WATER FILTRATION PLANT project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM that have a minimum of ten years of experience for larger projects or projects with more complex work- such as projects with electrical/mechanical facilities such as lift stations. Inspectors that have less than ten years of experience but have exhibited competent knowledge for the project assignment may be waived to this higher pay level upon approval by the City. Staff with experience in electrical/mechanical , concrete, and/or structural disciplines typically will be required on facility projects.

PMIS TECHNICAL SUPPORT SERVICES

Purpose of this Service is to provide Technical Support with PMIS for the CITY.

1. FIRM shall be compensated at a rate of Eighty Five dollars (\$85.00) per hour per Individual for providing as-needed assistance with PMIS, system enhancements, training, and general technical support as directed. Additional services may be included if directed.
2. Services provided under this category shall require prior approval from the Deputy Director of Engineering or Manager of Engineering.

B. BILLING AND PAYMENT

METHOD OF PAYMENT

FIRM shall submit a properly itemized invoice to CITY on a monthly basis. CITY shall pay FIRM within forty five (45) days after receipt of such properly itemized claim forms, unless claim is objected to in writing, in which case claim shall be paid within 15 days of resolution. All required items must be uploaded into PMIS prior to Invoice approval. Some deliverables for Service Lateral Connection inspection may need to be scanned and emailed or hard copies delivered to appropriate CITY personnel.

**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.

Engineer or City, for purposes of convenience, may at any time by written notice terminate the services under this Agreement. In the event of such termination, Engineer shall be paid for all authorized services rendered prior to termination including reasonable profit and expenses relating thereto.

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
200 East Berry St., Suite #480
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 term, 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.

21. **CONSENT DECREE NOTIFICATION.** Engineer shall perform, or cause others to perform, all services undertaken in connection with this Agreement in a good and workman-like manner and in conformance with the terms of the Consent Decree entered in the U.S District Court on April 1, 2008 by the United States and State of Indiana. Engineer acknowledges that it has been provided a complete copy of the Consent Decree which can be viewed at:

http://www.cityoffortwayne.org/utilities/images/stories/docs/consent_decree/Consent_Decree.pdf

22. **DOCUMENT RETENTION.** Notwithstanding any other provision of this Agreement, Engineer agrees to preserve all non-identical copies of all documents, records and other information (whether in physical or electronic form) within Engineer's possession or control and which relate, in any manner, to the performance of the services undertaken in connection with this Agreement for a period of 1 year after the completion contemplated by the Agreement (the "Retention Period"). Prior to the end of the Retention Period, or at any earlier time if requested by the City, Engineer shall provide the City with complete copies of such documents, records and other information at no cost to the City. The copies shall be provided to the City on CD or DVD media, and individual files shall be in Adobe PDF format. The individual files shall be contained in a ZIP formatted file, and the filename of the ZIP shall include the name of the project and the Engineer. No part of any file shall be encrypted or protected from copying. Such copies shall be accompanied by a verified written statement from the Engineer attesting that it has provided the City with complete copies of all documents, records and other information which relates to the services contemplated by the Agreement.

PROFESSIONAL SERVICES AGREEMENT

City Utilities- Resident Project Representative / Inspection Services

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

By and through its

Board of Public Works
City of Fort Wayne
200 East Berry Street
Suite 210
Fort Wayne, IN 46802

and,

PROJECT ENGINEER ("FIRM"):

Butler, Fairman & Seufert, Inc.
6401 Constitution Drive
Fort Wayne, IN 46804

Who agree as follows:

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

APPROVALS

APPROVED FOR CITY:

BOARD OF PUBLIC WORKS

BY: _____
Robert P. Kennedy, Chair

BY: _____
Kumar Menon, Member

BY: _____
Mike Avila, Member

ATTEST:

BY: _____
Lyndsey Richards, Clerk

APPROVED FOR FIRM: BUTLER, FAIRMAN & SEUFERT, INC.

BY: _____

PRINTED NAME _____

TITLE: _____

DATE: _____

PART I
FIRMS RESPONSIBILITIES

A. GENERAL RESPONSIBILITIES

FIRM Shall:

1. Certify and warrant that it has the capacity to perform the services required by CITY with high professional quality, ability and expertise and further certify and warrant that it has the capacity and authority to enter into this Agreement.
2. Perform Resident Project Representative (RPR) and inspection services during the construction of Water Pollution Control and Water Filtration Facility projects along with sanitary sewers, water mains, and stormwater sewer facilities in assigned projects, and perform onsite evaluation and observation services for lateral connections to CITY's infrastructure systems to determine whether said infrastructure/connections are constructed in substantial conformance with plans and specifications approved by Fort Wayne City Utilities Development Services or Engineering Department, City Utilities Design Standards Manual, and Chapters 51, 52 and 53 of the City Code of Fort Wayne, Indiana, as set forth in Service by Firm section included herein.
3. Maintain appropriate records and forms, as instructed by CITY and submit all records and forms to CITY as set forth in Services by Firm section.

B. SERVICES BY FIRM:

Services to be provided for the project are as follows:

1. FIRM shall have a designated person as a point of contact for RPR services oversight.
2. FIRM shall provide professional RPR, inspection, observation and testing services during the construction of facilities on assigned projects.
3. FIRM shall provide Inspection personnel as required for a period of time necessary to complete the construction project and prepare a final construction report.
 - a. The qualifications and experiences of personnel provided by FIRM are subject to approval by CITY. No personnel shall be assigned to the project until such approval is obtained.
 - b. The Inspector shall take directions from and report to CITY'S assigned Contract Manager (CM) on all matters concerning contract compliance and administration.
 - c. The Inspector shall coordinate project activities with CITY'S assigned Contract Manager.
4. FIRM shall also do the following:
 - a. FIRMS will be expected to fully utilize the Program Management Information System (PMIS), a web based system that will allow for FIRMS to submit inspection reports, photographs, and other various forms of project documentation electronically to City Utilities Engineering. When functionality becomes available, FIRMS shall submit invoices through PMIS.
 - b. FIRM will be expected to fully utilize AssetHound, a Mobile App to document daily construction activities (daily report), photos, and test reporting for uploading to PMIS.

- c. Serve as CITY'S Liaison with the Developer / Contractor, working principally through the Developer / Contractor's field superintendent or such other person in authority as designated by the Developer / Contractor. Acting in liaison capacity, the Inspector shall be thoroughly familiar with the plans and specifications applicable to the project and observe the construction for compliance with respect to all provisions therein.
- d. Review the NPDES Stormwater permit / plans and conduct on-site observations as a basis for determining that the project is proceeding in substantial conformance with the approved permit / plan requirements. Any deviation observed shall be reported in writing promptly to CITY by the Inspector.
- e. Review the construction schedule prepared by the Developer / Contractor and assist CITY in making sure schedule is being held to meet project milestones (ex. Substantial & Final Completion) and ensure schedule is updated monthly and submitted with pay application.
- f. Cooperate with CITY in dealing with the various local agencies having jurisdiction over the project.
- g. Provide observation of Capital, Developer, and ACRSD construction activities performed by the Contractor to ensure work complies with the contract documents and related project permits.
 - 1. Daily logs – to be loaded into AssetHound for both Developer and Capital projects each day of active construction
 - 2. Photos for construction progress (taken daily of relevant work activities) as well as for any potential claim situations-to be loaded into AssetHound each day of active construction
 - 3. Record on project drawings all field changes and daily production information
 - 4. Keep quantity records and accurate materials stored on site records for submittal to Contract Manager for progress payment reviews
 - 5. Keep detailed records on time and materials for work authorized as reimbursable
 - 6. Obtain and review all applicable easements required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in easement documents.
 - 7. Obtain and review all applicable permits required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in permits including limits of construction and ensure contractor stays out of restricted areas. Copies of permits are uploaded into the PMIS digital library by Contract Manager.
 - 8. Obtain and review traffic control plans and verify that all required traffic control devices are in place on a daily basis. Travel detour routes to verify appropriate signage is in place and other construction activities are not impeding traffic.
 - 9. Review compaction testing specifications (if applicable) and verify that compaction testing is being completed per specifications. Upload compaction test results into PMIS on a weekly basis.
- i. Inspect, at a minimum, the following:
 - 1. Bedding and backfill of stormwater and sanitary sewers and related structures
 - 2. Bedding, backfill and restraint of water mains, elbows, hydrants, valves, auxiliary valves, blow-offs, services and related appurtenances.
 - 3. Installation of manholes, lift stations and/or force mains
 - 4. Subgrade for horizontal and vertical alignment and compaction
 - 5. Rough and final grading of swales, ditches, and detention/retention facilities
 - 6. Testing of construction materials by private testing company may be called for on any of the above phases as required by the City Utilities Engineering Department or as requested by CITY.
 - 7. On-site verification of all required testing and as-built survey information.

8. Verification of invert elevations at each manhole during construction of sanitary and storm sewer main trunk lines to ensure design elevations (and associated design capacity) is being maintained.
 9. Electrical/mechanical, concrete, and/or structural infrastructure on Facility projects.
- h. Perform onsite evaluation and observation services for connections to City Utilities' infrastructure systems ("Service Connection").
- i. Inspect, at a minimum, the following
 1. Pipe bedding
 2. Pipe slope
 3. Pipe material, fittings, gaskets, boots, etc.
 4. Installation of cleanouts
 5. Connection of Service Connection at the building or to the existing building service line
 6. Non-wastewater water or materials do not and cannot flow into or infiltrate sewer pipes
 7. Connections to manholes, inlets, catch basins, or other structures on public infrastructure system are completed in compliance with approved plans, design and construction standards and specifications, and completed in a manner that does not adversely impact any structure.
 8. Drawing showing the location of the Service Connection on the property
 - ii. Upon receipt of CITY's Service Connection Evaluation request, FIRM shall dispatch and complete the on-site evaluation, and report deficiencies, if any, to CITY within (3) hours.
 - iii. Deliver completed tap record sheets (hard copy) to CITY by noon of the business day following completion of each evaluation.
- i. Furnish all equipment necessary to sample and test materials and/or provide on-site independent assurance testing of materials in accordance with standards and specifications of the Fort Wayne procedures and in accordance with current accepted practices, ordinances, and the most recent standards and specifications of the Division of Utilities, City Utilities Engineering Department as approved and adopted by the Board of Public Works.
- j. Verify that required testing has been accomplished and results of the testing are satisfactory
- k. Notify the Developer / Contractor and CITY in writing of any substandard work
- l. Consider and evaluate the Developer / Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to CITY'S assigned Contract Manager.
- m. Representative of the firm shall notify CITY of any additional work requested by the CONTRACTOR beyond the original approved design prior to the work occurring. Representatives are not empowered to make changes to projects; all changes must be approved by CITY staff.
- n. On the PMIS Inspectors Daily Report, record hours on the job site (both inspector & contractor(s)), weather conditions, field superintendent/foreman's name, crew size, list of visiting officials, decisions, details of interactions and communication with the public or property owners/renters, safety observations, general observations, and specific observations with regard to test procedures and results of testing – to be loaded into PMIS daily.
- o. Take notes during and provide meeting minutes of all construction related meetings.

- p. Assist City CM with management of contractor's request for interpretation (RFI's) on clarification and interpretations, field orders, change orders, allowance authorizations, and work change directives.
- q. Assist the City CM in reviewing the Contractor's monthly pay quantities and application
- r. Assist City CM in preparing and coordinating change management documents, issuing defective work notices, performing final inspection and reviewing final punch lists from Contractor.
- s. Assist City CM to coordinate any necessary vendor installation certifications as well as startup and training activities
- t. Assist City CM with final project closeout documentation and help ensure that compliance efforts are completed so that project can be accepted by CU and the Board of Public Works and final payment be made to Contractor.
- u. Provide timely invoices to CITY.
- v. Provide a scanned copy of Inspector marked up as-built drawings at substantial completion of the project. If unable to provide a scanned copy, furnish marked up as-built drawings to Contract Manager for City to scan. Scanned drawings to be uploaded into PMIS digital library by Contract Manager.
- w. Deliver the final project records to the Construction Manager and upload tap, valve, and hydrant cards on Water projects to PMIS within ten (10) calendar days after satisfactory completion of the project.
- x. Incident Reporting – Should an accident occur on the project, notify Contract Manager immediately, then document with photos and prepare a report of the incident including but not limited to: What happened, all parties on site when accident occurred, what parties responded to provide assistance to the accident involved parties (if police, name of officer or number on squad car), what inspector personally witnessed, what may have occurred that inspector did not witness. Photos and report to be submitted to City Manager of Engineering by noon the day following the incident.
- y. Assist City Manager at Facility projects to inspect areas within confined space areas. Inspector shall be confined space certified and may be required to enter facilities as a part of a construction firms confined space entry team.
- z. Upon request by the City, if GPS coordinates are not secured by Contractor, Design Engineering firm, or Survey, Inspector shall gather GPS information utilizing GPS equipment with sub-meter (sub-foot desired) accuracy. At a minimum, coordinates must be recorded for Hydrants, valves, curb stops, corporation stops, directional change fittings, connection fittings, manholes, clean-outs, sewer taps, and other appurtenances as agreed upon at project assignment. Deliverable format shall be confirmed with the CITY at project assignment.
- aa. Notify CM and document in daily report when utilities other than the ones being installed as part of the project are encountered and are in interference with proposed infrastructure or damaged by the contractor.
- bb. Work with the public to resolve any complaints that are the result of construction activities. If complaint cannot be immediately resolved by disclosing to the contractor, notify the CM for assistance, guidance, and follow-up.

C. KEY PERSONEL

FIRM shall provide a resume for all key personal that may be assigned to a project so that experience can be determined and appropriate compensation rate established.

FIRM'S key personal will be assigned on a project basis and as mutually agreed to by FIRM and CITY prior to the commencement of any work in accordance with this Agreement. On all projects, but specifically on Capital projects the City believes that continuity of RPR services is important to maintain quality and accountability. Upon assignment of a project to a FIRM and the FIRM'S proposed staff person(s) are confirmed, CU desires the staff person(s) be assigned to the project until completion. To accommodate the difficulties of FIRMS complying with this requirement under this on-call type arrangement, CU will allow (unless otherwise agreed upon during project assignment discussions) for the key staff person(s) to be substituted by other pre-approved staff person(s) a maximum of one incident or day per week.

City Utilities will also consider allowing RPR's with less experience than required (requirements noted above) for substitution on projects. These exceptions will need to be pre-approved on project by project basis.

D. SCHEDULE

Services under this contract are to be completed from date of NTP until **July 31, 2019**. This contract can be extended by amendment and approval of CITY and FIRM.

1. FIRM shall commence its services on assigned PROJECT upon notification by CITY.
2. FIRM shall attend a pre-construction meeting with the DEVELOPER/CONTRACTOR before commencement of construction.
3. Firm shall attend progress meetings during construction as requested.
4. Firm's Inspector shall attend a post-construction meeting with City and others to provide feedback on the execution of the project.

PART II

CITY'S RESPONSIBILITIES

CITY, at its expense, shall provide the following in a timely manner so as not to delay the Services.

A. INFORMATION AND REQUIREMENTS

1. Provide all criteria and full information as to CITY'S requirements for the Project, including without limitation, design objectives and constraints capacity and performance requirements, flexibility, the project scope, the comprehensive engineering report, the general and special provisions of the construction agreement/contract and any budgetary limitations; and furnish copies or notify FIRM of all design and construction standards which CITY will require to be included in the required reports and all other items as described in PART I.
2. CITY shall provide a CITY Representative with decision-making authority on all inquiries.
3. CITY shall supply FIRM with One (1) set of approved Sub-Division or Commercial Plans at least 2 calendar days prior to work.
4. CITY shall supply FIRM with One (1) set of approved Bid Documents (Plans & Specifications) at least 7 calendar days prior to a pre-construction meeting.

B. REPRESENTATIVE:

Designate representative for the project who shall have authority to transmit instructions, receive information, interpret and define CITY'S policies and make decisions with respect to the services.

Various Contract Managers representing City Utilities will be responsible for coordinating activities with specific FIRM representatives.

PART III

COMPENSATION, BILLING, PAYMENT AND SCHEDULE

A. COMPENSATION

FIRM'S COMPENSATION FOR SERVICES

1. For those services performed by FIRM, FIRM will be paid by CITY on the basis of actual hours of work performed by FIRM'S Inspector on this Agreement at the hourly rate listed below. This rate is inclusive of any clerical, project set-up or final project review by office personnel, and/or administrative/management cost by FIRM.
2. FIRM shall not include time spent commuting from office or home to and/or from a project site when computing hours worked on payment claims as outlined in Part 1. Costs for commuting between multiple projects will be compensated for in the following manner: Travel time between project A and B shall be charged to project B. Return travel time from project B to project A shall be charged to project A.
3. For those testing services performed by other than FIRM at the request of the CITY, FIRM shall be reimbursed by CITY for the actual invoice for the services performed by other than FIRM, provided that each such invoice shall be subject to approval as reasonable by CITY prior to any reimbursement therefore.

PRIVATE/DEVELOPER PROJECTS

City Private Developer projects are inspected approximately four hours per day during construction activities. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty five dollars (\$55.00) per hour** per Inspector per DEVELOPER/CONTRACTOR'S project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Private / Developer activities.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

SERVICE LATERAL CONNECTIONS

Service Lateral Connections are typically installed by private contractors and are inspected on a per connection basis. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty five dollars (\$55.00) per requested service connection evaluation** for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Service Lateral Connection Evaluation activities.

ALLEN COUNTY REGIONAL SEWER DISTRICT PROJECTS

ACRSD projects are typically inspected approximately four to eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty-five dollars (\$55.00) per hour** per Inspector per ACRSD project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for ACRSD activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to a higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

CAPITAL PROJECTS

City Capital projects are typically inspected approximately four to eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required. Experience with trenchless construction methods/technologies is also expected (CIPP lining, HDD, etc.) for certain projects.

1. FIRM shall be compensated at a rate of **sixty dollars (\$60.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Capital Project activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to the higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.
2. FIRM shall be compensated at a rate of **seventy dollars (\$70.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM that have a minimum of five years of experience for larger projects or projects with more complex work- such as projects with electrical/mechanical facilities such as lift stations. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to this higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

WATER POLLUTION CONTROL AND WATER FILTRATION PLANT PROJECTS

City Plant projects are typically inspected approximately eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of Facility projects is required.

1. FIRM shall be compensated at a rate of **ninety dollars (\$90.00) per hour** per Inspector per WATER POLLUTION CONTROL PLANT AND WATER FILTRATION PLANT project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM that have a minimum of ten years of experience for larger projects or projects with more complex work- such as projects with electrical/mechanical facilities such as lift stations. Inspectors that have less than ten years of experience but have exhibited competent knowledge for the project assignment may be waived to this higher pay level upon approval by the City. Staff with experience in electrical/mechanical , concrete, and/or structural disciplines typically will be required on facility projects.

PMIS TECHNICAL SUPPORT SERVICES

Purpose of this Service is to provide Technical Support with PMIS for the CITY.

1. FIRM shall be compensated at a rate of **Eighty Five dollars (\$85.00) per hour** per Individual for providing as-needed assistance with PMIS, system enhancements, training, and general technical support as directed. Additional services may be included if directed.
2. Services provided under this category shall require prior approval from the Deputy Director of Engineering or Manager of Engineering.

B. BILLING AND PAYMENT

METHOD OF PAYMENT

FIRM shall submit a properly itemized invoice to CITY on a monthly basis. CITY shall pay FIRM within forty five (45) days after receipt of such properly itemized claim forms, unless claim is objected to in writing, in which case claim shall be paid within 15 days of resolution. All required items must be uploaded into PMIS prior to Invoice approval. Some deliverables for Service Lateral Connection inspection may need to be scanned and emailed or hard copies delivered to appropriate CITY personnel.

**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.

Engineer or City, for purposes of convenience, may at any time by written notice terminate the services under this Agreement. In the event of such termination, Engineer shall be paid for all authorized services rendered prior to termination including reasonable profit and expenses relating thereto.

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
200 East Berry St., Suite #480
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 term, 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.

21. **CONSENT DECREE NOTIFICATION.** Engineer shall perform, or cause others to perform, all services undertaken in connection with this Agreement in a good and workman-like manner and in conformance with the terms of the Consent Decree entered in the U.S District Court on April 1, 2008 by the United States and State of Indiana. Engineer acknowledges that it has been provided a complete copy of the Consent Decree which can be viewed at:

http://www.cityoffortwayne.org/utilities/images/stories/docs/consent_decree/Consent_Decree.pdf

22. **DOCUMENT RETENTION.** Notwithstanding any other provision of this Agreement, Engineer agrees to preserve all non-identical copies of all documents, records and other information (whether in physical or electronic form) within Engineer's possession or control and which relate, in any manner, to the performance of the services undertaken in connection with this Agreement for a period of 1 year after the completion contemplated by the Agreement (the "Retention Period"). Prior to the end of the Retention Period, or at any earlier time if requested by the City, Engineer shall provide the City with complete copies of such documents, records and other information at no cost to the City. The copies shall be provided to the City on CD or DVD media, and individual files shall be in Adobe PDF format. The individual files shall be contained in a ZIP formatted file, and the filename of the ZIP shall include the name of the project and the Engineer. No part of any file shall be encrypted or protected from copying. Such copies shall be accompanied by a verified written statement from the Engineer attesting that it has provided the City with complete copies of all documents, records and other information which relates to the services contemplated by the Agreement.

PROFESSIONAL SERVICES AGREEMENT

City Utilities- Resident Project Representative / Inspection Services

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

By and through its

Board of Public Works
City of Fort Wayne
200 East Berry Street
Suite 210
Fort Wayne, IN 46802

and,

PROJECT ENGINEER ("FIRM"):

CH2M Hill Engineers, Inc.
2020 E. Washington Blvd., Suite 100
Fort Wayne, IN 46803

Who agree as follows:

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

APPROVALS

APPROVED FOR CITY:

BOARD OF PUBLIC WORKS

BY: _____
Robert P. Kennedy, Chair

BY: _____
Kumar Menon, Member

BY: _____
Mike Avila, Member

ATTEST:

BY: _____
Lyndsey Richards, Clerk

APPROVED FOR FIRM: CH2M HILL ENGINEERS, INC.

BY: _____

PRINTED NAME _____

TITLE: _____

DATE: _____

PART I
FIRMS RESPONSIBILITIES

A. GENERAL RESPONSIBILITIES

FIRM Shall:

1. Certify and warrant that it has the capacity to perform the services required by CITY with high professional quality, ability and expertise and further certify and warrant that it has the capacity and authority to enter into this Agreement.
2. Perform Resident Project Representative (RPR) and inspection services during the construction of Water Pollution Control and Water Filtration Facility projects along with sanitary sewers, water mains, and stormwater sewer facilities in assigned projects, and perform onsite evaluation and observation services for lateral connections to CITY's infrastructure systems to determine whether said infrastructure/connections are constructed in substantial conformance with plans and specifications approved by Fort Wayne City Utilities Development Services or Engineering Department, City Utilities Design Standards Manual, and Chapters 51, 52 and 53 of the City Code of Fort Wayne, Indiana, as set forth in Service by Firm section included herein.
3. Maintain appropriate records and forms, as instructed by CITY and submit all records and forms to CITY as set forth in Services by Firm section.

B. SERVICES BY FIRM:

Services to be provided for the project are as follows:

1. FIRM shall have a designated person as a point of contact for RPR services oversight.
2. FIRM shall provide professional RPR, inspection, observation and testing services during the construction of facilities on assigned projects.
3. FIRM shall provide Inspection personnel as required for a period of time necessary to complete the construction project and prepare a final construction report.
 - a. The qualifications and experiences of personnel provided by FIRM are subject to approval by CITY. No personnel shall be assigned to the project until such approval is obtained.
 - b. The Inspector shall take directions from and report to CITY'S assigned Contract Manager (CM) on all matters concerning contract compliance and administration.
 - c. The Inspector shall coordinate project activities with CITY'S assigned Contract Manager.
4. FIRM shall also do the following:
 - a. FIRMS will be expected to fully utilize the Program Management Information System (PMIS), a web based system that will allow for FIRMS to submit inspection reports, photographs, and other various forms of project documentation electronically to City Utilities Engineering. When functionality becomes available, FIRMS shall submit invoices through PMIS.
 - b. FIRM will be expected to fully utilize AssetHound, a Mobile App to document daily construction activities (daily report), photos, and test reporting for uploading to PMIS.

- c. Serve as CITY'S Liaison with the Developer / Contractor, working principally through the Developer / Contractor's field superintendent or such other person in authority as designated by the Developer / Contractor. Acting in liaison capacity, the Inspector shall be thoroughly familiar with the plans and specifications applicable to the project and observe the construction for compliance with respect to all provisions therein.
- d. Review the NPDES Stormwater permit / plans and conduct on-site observations as a basis for determining that the project is proceeding in substantial conformance with the approved permit / plan requirements. Any deviation observed shall be reported in writing promptly to CITY by the Inspector.
- e. Review the construction schedule prepared by the Developer / Contractor and assist CITY in making sure schedule is being held to meet project milestones (ex. Substantial & Final Completion) and ensure schedule is updated monthly and submitted with pay application.
- f. Cooperate with CITY in dealing with the various local agencies having jurisdiction over the project.
- g. Provide observation of Capital, Developer, and ACRSD construction activities performed by the Contractor to ensure work complies with the contract documents and related project permits.
 - 1. Daily logs – to be loaded into AssetHound for both Developer and Capital projects each day of active construction
 - 2. Photos for construction progress (taken daily of relevant work activities) as well as for any potential claim situations-to be loaded into AssetHound each day of active construction
 - 3. Record on project drawings all field changes and daily production information
 - 4. Keep quantity records and accurate materials stored on site records for submittal to Contract Manager for progress payment reviews
 - 5. Keep detailed records on time and materials for work authorized as reimbursable
 - 6. Obtain and review all applicable easements required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in easement documents.
 - 7. Obtain and review all applicable permits required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in permits including limits of construction and ensure contractor stays out of restricted areas. Copies of permits are uploaded into the PMIS digital library by Contract Manager.
 - 8. Obtain and review traffic control plans and verify that all required traffic control devices are in place on a daily basis. Travel detour routes to verify appropriate signage is in place and other construction activities are not impeding traffic.
 - 9. Review compaction testing specifications (if applicable) and verify that compaction testing is being completed per specifications. Upload compaction test results into PMIS on a weekly basis.
- i. Inspect, at a minimum, the following:
 - 1. Bedding and backfill of stormwater and sanitary sewers and related structures
 - 2. Bedding, backfill and restraint of water mains, elbows, hydrants, valves, auxiliary valves, blow-offs, services and related appurtenances.
 - 3. Installation of manholes, lift stations and/or force mains
 - 4. Subgrade for horizontal and vertical alignment and compaction
 - 5. Rough and final grading of swales, ditches, and detention/retention facilities
 - 6. Testing of construction materials by private testing company may be called for on any of the above phases as required by the City Utilities Engineering Department or as requested by CITY.
 - 7. On-site verification of all required testing and as-built survey information.

8. Verification of invert elevations at each manhole during construction of sanitary and storm sewer main trunk lines to ensure design elevations (and associated design capacity) is being maintained.
 9. Electrical/mechanical, concrete, and/or structural infrastructure on Facility projects.
- h. Perform onsite evaluation and observation services for connections to City Utilities' infrastructure systems ("Service Connection").
- i. Inspect, at a minimum, the following
 1. Pipe bedding
 2. Pipe slope
 3. Pipe material, fittings, gaskets, boots, etc.
 4. Installation of cleanouts
 5. Connection of Service Connection at the building or to the existing building service line
 6. Non-wastewater water or materials do not and cannot flow into or infiltrate sewer pipes
 7. Connections to manholes, inlets, catch basins, or other structures on public infrastructure system are completed in compliance with approved plans, design and construction standards and specifications, and completed in a manner that does not adversely impact any structure.
 8. Drawing showing the location of the Service Connection on the property
 - ii. Upon receipt of CITY's Service Connection Evaluation request, FIRM shall dispatch and complete the on-site evaluation, and report deficiencies, if any, to CITY within (3) hours.
 - iii. Deliver completed tap record sheets (hard copy) to CITY by noon of the business day following completion of each evaluation.
- i. Furnish all equipment necessary to sample and test materials and/or provide on-site independent assurance testing of materials in accordance with standards and specifications of the Fort Wayne procedures and in accordance with current accepted practices, ordinances, and the most recent standards and specifications of the Division of Utilities, City Utilities Engineering Department as approved and adopted by the Board of Public Works.
- j. Verify that required testing has been accomplished and results of the testing are satisfactory
- k. Notify the Developer / Contractor and CITY in writing of any substandard work
- l. Consider and evaluate the Developer / Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to CITY'S assigned Contract Manager.
- m. Representative of the firm shall notify CITY of any additional work requested by the CONTRACTOR beyond the original approved design prior to the work occurring. Representatives are not empowered to make changes to projects; all changes must be approved by CITY staff.
- n. On the PMIS Inspectors Daily Report, record hours on the job site (both inspector & contractor(s)), weather conditions, field superintendent/foreman's name, crew size, list of visiting officials, decisions, details of interactions and communication with the public or property owners/renters, safety observations, general observations, and specific observations with regard to test procedures and results of testing – to be loaded into PMIS daily.
- o. Take notes during and provide meeting minutes of all construction related meetings.

- p. Assist City CM with management of contractor's request for interpretation (RFI's) on clarification and interpretations, field orders, change orders, allowance authorizations, and work change directives.
- q. Assist the City CM in reviewing the Contractor's monthly pay quantities and application
- r. Assist City CM in preparing and coordinating change management documents, issuing defective work notices, performing final inspection and reviewing final punch lists from Contractor.
- s. Assist City CM to coordinate any necessary vendor installation certifications as well as startup and training activities
- t. Assist City CM with final project closeout documentation and help ensure that compliance efforts are completed so that project can be accepted by CU and the Board of Public Works and final payment be made to Contractor.
- u. Provide timely invoices to CITY.
- v. Provide a scanned copy of Inspector marked up as-built drawings at substantial completion of the project. If unable to provide a scanned copy, furnish marked up as-built drawings to Contract Manager for City to scan. Scanned drawings to be uploaded into PMIS digital library by Contract Manager.
- w. Deliver the final project records to the Construction Manager and upload tap, valve, and hydrant cards on Water projects to PMIS within ten (10) calendar days after satisfactory completion of the project.
- x. Incident Reporting – Should an accident occur on the project, notify Contract Manager immediately, then document with photos and prepare a report of the incident including but not limited to: What happened, all parties on site when accident occurred, what parties responded to provide assistance to the accident involved parties (if police, name of officer or number on squad car), what inspector personally witnessed, what may have occurred that inspector did not witness. Photos and report to be submitted to City Manager of Engineering by noon the day following the incident.
- y. Assist City Manager at Facility projects to inspect areas within confined space areas. Inspector shall be confined space certified and may be required to enter facilities as a part of a construction firms confined space entry team.
- z. Upon request by the City, if GPS coordinates are not secured by Contractor, Design Engineering firm, or Survey, Inspector shall gather GPS information utilizing GPS equipment with sub-meter (sub-foot desired) accuracy. At a minimum, coordinates must be recorded for Hydrants, valves, curb stops, corporation stops, directional change fittings, connection fittings, manholes, clean-outs, sewer taps, and other appurtenances as agreed upon at project assignment. Deliverable format shall be confirmed with the CITY at project assignment.
- aa. Notify CM and document in daily report when utilities other than the ones being installed as part of the project are encountered and are in interference with proposed infrastructure or damaged by the contractor.
- bb. Work with the public to resolve any complaints that are the result of construction activities. If complaint cannot be immediately resolved by disclosing to the contractor, notify the CM for assistance, guidance, and follow-up.

C. KEY PERSONEL

FIRM shall provide a resume for all key personal that may be assigned to a project so that experience can be determined and appropriate compensation rate established.

FIRM'S key personal will be assigned on a project basis and as mutually agreed to by FIRM and CITY prior to the commencement of any work in accordance with this Agreement. On all projects, but specifically on Capital projects the City believes that continuity of RPR services is important to maintain quality and accountability. Upon assignment of a project to a FIRM and the FIRM'S proposed staff person(s) are confirmed, CU desires the staff person(s) be assigned to the project until completion. To accommodate the difficulties of FIRMS complying with this requirement under this on-call type arrangement, CU will allow (unless otherwise agreed upon during project assignment discussions) for the key staff person(s) to be substituted by other pre-approved staff person(s) a maximum of one incident or day per week.

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Designate representative for the project who shall have authority to transmit instructions, receive information, interpret and define CITY'S policies and make decisions with respect to the services.

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1. For those services performed by FIRM, FIRM will be paid by CITY on the basis of actual hours of work performed by FIRM'S Inspector on this Agreement at the hourly rate listed below. This rate is inclusive of any clerical, project set-up or final project review by office personnel, and/or administrative/management cost by FIRM.
2. FIRM shall not include time spent commuting from office or home to and/or from a project site when computing hours worked on payment claims as outlined in Part 1. Costs for commuting between multiple projects will be compensated for in the following manner: Travel time between project A and B shall be charged to project B. Return travel time from project B to project A shall be charged to project A.
3. For those testing services performed by other than FIRM at the request of the CITY, FIRM shall be reimbursed by CITY for the actual invoice for the services performed by other than FIRM, provided that each such invoice shall be subject to approval as reasonable by CITY prior to any reimbursement therefore.

PRIVATE/DEVELOPER PROJECTS

City Private Developer projects are inspected approximately four hours per day during construction activities. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty five dollars (\$55.00) per hour** per Inspector per DEVELOPER/CONTRACTOR'S project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Private / Developer activities.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

SERVICE LATERAL CONNECTIONS

Service Lateral Connections are typically installed by private contractors and are inspected on a per connection basis. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty five dollars (\$55.00) per requested service connection evaluation** for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Service Lateral Connection Evaluation activities.

ALLEN COUNTY REGIONAL SEWER DISTRICT PROJECTS

ACRSD projects are typically inspected approximately four to eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty-five dollars (\$55.00) per hour** per Inspector per ACRSD project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for ACRSD activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to a higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

CAPITAL PROJECTS

City Capital projects are typically inspected approximately four to eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required. Experience with trenchless construction methods/technologies is also expected (CIPP lining, HDD, etc.) for certain projects.

1. FIRM shall be compensated at a rate of **sixty dollars (\$60.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Capital Project activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to the higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.
2. FIRM shall be compensated at a rate of **seventy dollars (\$70.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM that have a minimum of five years of experience for larger projects or projects with more complex work- such as projects with electrical/mechanical facilities such as lift stations. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to this higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

WATER POLLUTION CONTROL AND WATER FILTRATION PLANT PROJECTS

City Plant projects are typically inspected approximately eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of Facility projects is required.

1. FIRM shall be compensated at a rate of **ninety dollars (\$90.00) per hour** per Inspector per WATER POLLUTION CONTROL PLANT AND WATER FILTRATION PLANT project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM that have a minimum of ten years of experience for larger projects or projects with more complex work- such as projects with electrical/mechanical facilities such as lift stations. Inspectors that have less than ten years of experience but have exhibited competent knowledge for the project assignment may be waived to this higher pay level upon approval by the City. Staff with experience in electrical/mechanical , concrete, and/or structural disciplines typically will be required on facility projects.

PMIS TECHNICAL SUPPORT SERVICES

Purpose of this Service is to provide Technical Support with PMIS for the CITY.

1. FIRM shall be compensated at a rate of **Eighty Five dollars (\$85.00) per hour** per Individual for providing as-needed assistance with PMIS, system enhancements, training, and general technical support as directed. Additional services may be included if directed.
2. Services provided under this category shall require prior approval from the Deputy Director of Engineering or Manager of Engineering.

B. BILLING AND PAYMENT

METHOD OF PAYMENT

FIRM shall submit a properly itemized invoice to CITY on a monthly basis. CITY shall pay FIRM within forty five (45) days after receipt of such properly itemized claim forms, unless claim is objected to in writing, in which case claim shall be paid within 15 days of resolution. All required items must be uploaded into PMIS prior to Invoice approval. Some deliverables for Service Lateral Connection inspection may need to be scanned and emailed or hard copies delivered to appropriate CITY personnel.

**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.

Engineer or City, for purposes of convenience, may at any time by written notice terminate the services under this Agreement. In the event of such termination, Engineer shall be paid for all authorized services rendered prior to termination including reasonable profit and expenses relating thereto.

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 alternation 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
200 East Berry St., Suite #480
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 term, 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.

21. **CONSENT DECREE NOTIFICATION.** Engineer shall perform, or cause others to perform, all services undertaken in connection with this Agreement in a good and workman-like manner and in conformance with the terms of the Consent Decree entered in the U.S District Court on April 1, 2008 by the United States and State of Indiana. Engineer acknowledges that it has been provided a complete copy of the Consent Decree which can be viewed at:

http://www.cityoffortwayne.org/utilities/images/stories/docs/consent_decree/Consent_Decree.pdf

22. **DOCUMENT RETENTION.** Notwithstanding any other provision of this Agreement, Engineer agrees to preserve all non-identical copies of all documents, records and other information (whether in physical or electronic form) within Engineer's possession or control and which relate, in any manner, to the performance of the services undertaken in connection with this Agreement for a period of 1 year after the completion contemplated by the Agreement (the "Retention Period"). Prior to the end of the Retention Period, or at any earlier time if requested by the City, Engineer shall provide the City with complete copies of such documents, records and other information at no cost to the City. The copies shall be provided to the City on CD or DVD media, and individual files shall be in Adobe PDF format. The individual files shall be contained in a ZIP formatted file, and the filename of the ZIP shall include the name of the project and the Engineer. No part of any file shall be encrypted or protected from copying. Such copies shall be accompanied by a verified written statement from the Engineer attesting that it has provided the City with complete copies of all documents, records and other information which relates to the services contemplated by the Agreement.

PROFESSIONAL SERVICES AGREEMENT

City Utilities- Resident Project Representative / Inspection Services

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

By and through its

Board of Public Works
City of Fort Wayne
200 East Berry Street
Suite 210
Fort Wayne, IN 46802

and,

PROJECT ENGINEER ("FIRM"):

Construction Support Services, Inc.
P.O. Box 85048
Fort Wayne, IN 46885-5048

Who agree as follows:

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

APPROVALS

APPROVED FOR CITY:

BOARD OF PUBLIC WORKS

BY: _____
Robert P. Kennedy, Chair

BY: _____
Kumar Menon, Member

BY: _____
Mike Avila, Member

ATTEST:

BY: _____
Lyndsey Richards, Clerk

APPROVED FOR FIRM: CONSTRUCTION SUPPORT SERVICES, INC.

BY: _____

PRINTED NAME _____

TITLE: _____

DATE: _____

PART I
FIRMS RESPONSIBILITIES

A. GENERAL RESPONSIBILITIES

FIRM Shall:

1. Certify and warrant that it has the capacity to perform the services required by CITY with high professional quality, ability and expertise and further certify and warrant that it has the capacity and authority to enter into this Agreement.
2. Perform Resident Project Representative (RPR) and inspection services during the construction of Water Pollution Control and Water Filtration Facility projects along with sanitary sewers, water mains, and stormwater sewer facilities in assigned projects, and perform onsite evaluation and observation services for lateral connections to CITY's infrastructure systems to determine whether said infrastructure/connections are constructed in substantial conformance with plans and specifications approved by Fort Wayne City Utilities Development Services or Engineering Department, City Utilities Design Standards Manual, and Chapters 51, 52 and 53 of the City Code of Fort Wayne, Indiana, as set forth in Service by Firm section included herein.
3. Maintain appropriate records and forms, as instructed by CITY and submit all records and forms to CITY as set forth in Services by Firm section.

B. SERVICES BY FIRM:

Services to be provided for the project are as follows:

1. FIRM shall have a designated person as a point of contact for RPR services oversight.
2. FIRM shall provide professional RPR, inspection, observation and testing services during the construction of facilities on assigned projects.
3. FIRM shall provide Inspection personnel as required for a period of time necessary to complete the construction project and prepare a final construction report.
 - a. The qualifications and experiences of personnel provided by FIRM are subject to approval by CITY. No personnel shall be assigned to the project until such approval is obtained.
 - b. The Inspector shall take directions from and report to CITY'S assigned Contract Manager (CM) on all matters concerning contract compliance and administration.
 - c. The Inspector shall coordinate project activities with CITY'S assigned Contract Manager.
4. FIRM shall also do the following:
 - a. FIRMS will be expected to fully utilize the Program Management Information System (PMIS), a web based system that will allow for FIRMS to submit inspection reports, photographs, and other various forms of project documentation electronically to City Utilities Engineering. When functionality becomes available, FIRMS shall submit invoices through PMIS.
 - b. FIRM will be expected to fully utilize AssetHound, a Mobile App to document daily construction activities (daily report), photos, and test reporting for uploading to PMIS.

- c. Serve as CITY'S Liaison with the Developer / Contractor, working principally through the Developer / Contractor's field superintendent or such other person in authority as designated by the Developer / Contractor. Acting in liaison capacity, the Inspector shall be thoroughly familiar with the plans and specifications applicable to the project and observe the construction for compliance with respect to all provisions therein.
- d. Review the NPDES Stormwater permit / plans and conduct on-site observations as a basis for determining that the project is proceeding in substantial conformance with the approved permit / plan requirements. Any deviation observed shall be reported in writing promptly to CITY by the Inspector.
- e. Review the construction schedule prepared by the Developer / Contractor and assist CITY in making sure schedule is being held to meet project milestones (ex. Substantial & Final Completion) and ensure schedule is updated monthly and submitted with pay application.
- f. Cooperate with CITY in dealing with the various local agencies having jurisdiction over the project.
- g. Provide observation of Capital, Developer, and ACRSD construction activities performed by the Contractor to ensure work complies with the contract documents and related project permits.
 - 1. Daily logs – to be loaded into AssetHound for both Developer and Capital projects each day of active construction
 - 2. Photos for construction progress (taken daily of relevant work activities) as well as for any potential claim situations-to be loaded into AssetHound each day of active construction
 - 3. Record on project drawings all field changes and daily production information
 - 4. Keep quantity records and accurate materials stored on site records for submittal to Contract Manager for progress payment reviews
 - 5. Keep detailed records on time and materials for work authorized as reimbursable
 - 6. Obtain and review all applicable easements required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in easement documents.
 - 7. Obtain and review all applicable permits required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in permits including limits of construction and ensure contractor stays out of restricted areas. Copies of permits are uploaded into the PMIS digital library by Contract Manager.
 - 8. Obtain and review traffic control plans and verify that all required traffic control devices are in place on a daily basis. Travel detour routes to verify appropriate signage is in place and other construction activities are not impeding traffic.
 - 9. Review compaction testing specifications (if applicable) and verify that compaction testing is being completed per specifications. Upload compaction test results into PMIS on a weekly basis.
- i. Inspect, at a minimum, the following:
 - 1. Bedding and backfill of stormwater and sanitary sewers and related structures
 - 2. Bedding, backfill and restraint of water mains, elbows, hydrants, valves, auxiliary valves, blow-offs, services and related appurtenances.
 - 3. Installation of manholes, lift stations and/or force mains
 - 4. Subgrade for horizontal and vertical alignment and compaction
 - 5. Rough and final grading of swales, ditches, and detention/retention facilities
 - 6. Testing of construction materials by private testing company may be called for on any of the above phases as required by the City Utilities Engineering Department or as requested by CITY.
 - 7. On-site verification of all required testing and as-built survey information.

8. Verification of invert elevations at each manhole during construction of sanitary and storm sewer main trunk lines to ensure design elevations (and associated design capacity) is being maintained.
 9. Electrical/mechanical, concrete, and/or structural infrastructure on Facility projects.
- h. Perform onsite evaluation and observation services for connections to City Utilities' infrastructure systems ("Service Connection").
- i. Inspect, at a minimum, the following
 1. Pipe bedding
 2. Pipe slope
 3. Pipe material, fittings, gaskets, boots, etc.
 4. Installation of cleanouts
 5. Connection of Service Connection at the building or to the existing building service line
 6. Non-wastewater water or materials do not and cannot flow into or infiltrate sewer pipes
 7. Connections to manholes, inlets, catch basins, or other structures on public infrastructure system are completed in compliance with approved plans, design and construction standards and specifications, and completed in a manner that does not adversely impact any structure.
 8. Drawing showing the location of the Service Connection on the property
 - ii. Upon receipt of CITY's Service Connection Evaluation request, FIRM shall dispatch and complete the on-site evaluation, and report deficiencies, if any, to CITY within (3) hours.
 - iii. Deliver completed tap record sheets (hard copy) to CITY by noon of the business day following completion of each evaluation.
- i. Furnish all equipment necessary to sample and test materials and/or provide on-site independent assurance testing of materials in accordance with standards and specifications of the Fort Wayne procedures and in accordance with current accepted practices, ordinances, and the most recent standards and specifications of the Division of Utilities, City Utilities Engineering Department as approved and adopted by the Board of Public Works.
- j. Verify that required testing has been accomplished and results of the testing are satisfactory
- k. Notify the Developer / Contractor and CITY in writing of any substandard work
- l. Consider and evaluate the Developer / Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to CITY'S assigned Contract Manager.
- m. Representative of the firm shall notify CITY of any additional work requested by the CONTRACTOR beyond the original approved design prior to the work occurring. Representatives are not empowered to make changes to projects; all changes must be approved by CITY staff.
- n. On the PMIS Inspectors Daily Report, record hours on the job site (both inspector & contractor(s)), weather conditions, field superintendent/foreman's name, crew size, list of visiting officials, decisions, details of interactions and communication with the public or property owners/renters, safety observations, general observations, and specific observations with regard to test procedures and results of testing – to be loaded into PMIS daily.
- o. Take notes during and provide meeting minutes of all construction related meetings.

- p. Assist City CM with management of contractor's request for interpretation (RFI's) on clarification and interpretations, field orders, change orders, allowance authorizations, and work change directives.
- q. Assist the City CM in reviewing the Contractor's monthly pay quantities and application
- r. Assist City CM in preparing and coordinating change management documents, issuing defective work notices, performing final inspection and reviewing final punch lists from Contractor.
- s. Assist City CM to coordinate any necessary vendor installation certifications as well as startup and training activities
- t. Assist City CM with final project closeout documentation and help ensure that compliance efforts are completed so that project can be accepted by CU and the Board of Public Works and final payment be made to Contractor.
- u. Provide timely invoices to CITY.
- v. Provide a scanned copy of Inspector marked up as-built drawings at substantial completion of the project. If unable to provide a scanned copy, furnish marked up as-built drawings to Contract Manager for City to scan. Scanned drawings to be uploaded into PMIS digital library by Contract Manager.
- w. Deliver the final project records to the Construction Manager and upload tap, valve, and hydrant cards on Water projects to PMIS within ten (10) calendar days after satisfactory completion of the project.
- x. Incident Reporting – Should an accident occur on the project, notify Contract Manager immediately, then document with photos and prepare a report of the incident including but not limited to: What happened, all parties on site when accident occurred, what parties responded to provide assistance to the accident involved parties (if police, name of officer or number on squad car), what inspector personally witnessed, what may have occurred that inspector did not witness. Photos and report to be submitted to City Manager of Engineering by noon the day following the incident.
- y. Assist City Manager at Facility projects to inspect areas within confined space areas. Inspector shall be confined space certified and may be required to enter facilities as a part of a construction firms confined space entry team.
- z. Upon request by the City, if GPS coordinates are not secured by Contractor, Design Engineering firm, or Survey, Inspector shall gather GPS information utilizing GPS equipment with sub-meter (sub-foot desired) accuracy. At a minimum, coordinates must be recorded for Hydrants, valves, curb stops, corporation stops, directional change fittings, connection fittings, manholes, clean-outs, sewer taps, and other appurtenances as agreed upon at project assignment. Deliverable format shall be confirmed with the CITY at project assignment.
- aa. Notify CM and document in daily report when utilities other than the ones being installed as part of the project are encountered and are in interference with proposed infrastructure or damaged by the contractor.
- bb. Work with the public to resolve any complaints that are the result of construction activities. If complaint cannot be immediately resolved by disclosing to the contractor, notify the CM for assistance, guidance, and follow-up.

C. KEY PERSONNEL

FIRM shall provide a resume for all key personnel that may be assigned to a project so that experience can be determined and appropriate compensation rate established.

FIRM'S key personnel will be assigned on a project basis and as mutually agreed to by FIRM and CITY prior to the commencement of any work in accordance with this Agreement. On all projects, but specifically on Capital projects the City believes that continuity of RPR services is important to maintain quality and accountability. Upon assignment of a project to a FIRM and the FIRM'S proposed staff person(s) are confirmed, CU desires the staff person(s) be assigned to the project until completion. To accommodate the difficulties of FIRMS complying with this requirement under this on-call type arrangement, CU will allow (unless otherwise agreed upon during project assignment discussions) for the key staff person(s) to be substituted by other pre-approved staff person(s) a maximum of one incident or day per week.

City Utilities will also consider allowing RPR's with less experience than required (requirements noted above) for substitution on projects. These exceptions will need to be pre-approved on project by project basis.

D. SCHEDULE

Services under this contract are to be completed from date of NTP until **July 31, 2019**. This contract can be extended by amendment and approval of CITY and FIRM.

1. FIRM shall commence its services on assigned PROJECT upon notification by CITY.
2. FIRM shall attend a pre-construction meeting with the DEVELOPER/CONTRACTOR before commencement of construction.
3. Firm shall attend progress meetings during construction as requested.
4. Firm's Inspector shall attend a post-construction meeting with City and others to provide feedback on the execution of the project.

PART II

CITY'S RESPONSIBILITIES

CITY, at its expense, shall provide the following in a timely manner so as not to delay the Services.

A. INFORMATION AND REQUIREMENTS

1. Provide all criteria and full information as to CITY'S requirements for the Project, including without limitation, design objectives and constraints capacity and performance requirements, flexibility, the project scope, the comprehensive engineering report, the general and special provisions of the construction agreement/contract and any budgetary limitations; and furnish copies or notify FIRM of all design and construction standards which CITY will require to be included in the required reports and all other items as described in PART 1.
2. CITY shall provide a CITY Representative with decision-making authority on all inquiries.
3. CITY shall supply FIRM with One (1) set of approved Sub-Division or Commercial Plans at least 2 calendar days prior to work.
4. CITY shall supply FIRM with One (1) set of approved Bid Documents (Plans & Specifications) at least 7 calendar days prior to a pre-construction meeting.

B. REPRESENTATIVE:

Designate representative for the project who shall have authority to transmit instructions, receive information, interpret and define CITY'S policies and make decisions with respect to the services.

Various Contract Managers representing City Utilities will be responsible for coordinating activities with specific FIRM representatives.

PART III

COMPENSATION, BILLING, PAYMENT AND SCHEDULE

A. COMPENSATION

FIRM'S COMPENSATION FOR SERVICES

1. For those services performed by FIRM, FIRM will be paid by CITY on the basis of actual hours of work performed by FIRM'S Inspector on this Agreement at the hourly rate listed below. This rate is inclusive of any clerical, project set-up or final project review by office personnel, and/or administrative/management cost by FIRM.
2. FIRM shall not include time spent commuting from office or home to and/or from a project site when computing hours worked on payment claims as outlined in Part 1. Costs for commuting between multiple projects will be compensated for in the following manner: Travel time between project A and B shall be charged to project B. Return travel time from project B to project A shall be charged to project A.
3. For those testing services performed by other than FIRM at the request of the CITY, FIRM shall be reimbursed by CITY for the actual invoice for the services performed by other than FIRM, provided that each such invoice shall be subject to approval as reasonable by CITY prior to any reimbursement therefore.

PRIVATE/DEVELOPER PROJECTS

City Private Developer projects are inspected approximately four hours per day during construction activities. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty five dollars (\$55.00) per hour** per Inspector per DEVELOPER/CONTRACTOR'S project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Private / Developer activities.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

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Service Lateral Connections are typically installed by private contractors and are inspected on a per connection basis. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

1. FIRM shall be compensated at a rate of **fifty five dollars (\$55.00) per requested service connection evaluation** for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Service Lateral Connection Evaluation activities.

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ACRSD projects are typically inspected approximately four to eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required.

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CAPITAL PROJECTS

City Capital projects are typically inspected approximately four to eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of sanitary/stormwater collection systems and water distribution systems is required. Experience with trenchless construction methods/technologies is also expected (CIPP lining, HDD, etc.) for certain projects.

1. FIRM shall be compensated at a rate of **sixty dollars (\$60.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Capital Project activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to the higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.
2. FIRM shall be compensated at a rate of **seventy dollars (\$70.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM that have a minimum of five years of experience for larger projects or projects with more complex work- such as projects with electrical/mechanical facilities such as lift stations. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to this higher pay level upon approval by the City.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

WATER POLLUTION CONTROL AND WATER FILTRATION PLANT PROJECTS

City Plant projects are typically inspected approximately eight hours per day depending on phase of construction. Staff with relevant inspection experience in construction of Facility projects is required.

1. FIRM shall be compensated at a rate of **ninety dollars (\$90.00) per hour** per Inspector per WATER POLLUTION CONTROL PLANT AND WATER FILTRATION PLANT project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM that have a minimum of ten years of experience for larger projects or projects with more complex work- such as projects with electrical/mechanical facilities such as lift stations. Inspectors that have less than ten years of experience but have exhibited competent knowledge for the project assignment may be waived to this higher pay level upon approval by the City. Staff with experience in electrical/mechanical, concrete, and/or structural disciplines typically will be required on facility projects.

PMIS TECHNICAL SUPPORT SERVICES

Purpose of this Service is to provide Technical Support with PMIS for the CITY.

1. FIRM shall be compensated at a rate of **Eighty Five dollars (\$85.00) per hour** per Individual for providing as-needed assistance with PMIS, system enhancements, training, and general technical support as directed. Additional services may be included if directed.
2. Services provided under this category shall require prior approval from the Deputy Director of Engineering or Manager of Engineering.

B. BILLING AND PAYMENT

METHOD OF PAYMENT

FIRM shall submit a properly itemized invoice to CITY on a monthly basis. CITY shall pay FIRM within forty five (45) days after receipt of such properly itemized claim forms, unless claim is objected to in writing, in which case claim shall be paid within 15 days of resolution. All required items must be uploaded into PMIS prior to Invoice approval. Some deliverables for Service Lateral Connection inspection may need to be scanned and emailed or hard copies delivered to appropriate CITY personnel.

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.

Engineer or City, for purposes of convenience, may at any time by written notice terminate the services under this Agreement. In the event of such termination, Engineer shall be paid for all authorized services rendered prior to termination including reasonable profit and expenses relating thereto.

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 alternation 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
200 East Berry St., Suite #480
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 term, 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.

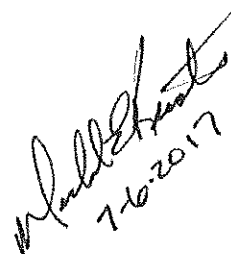
21. CONSENT DECREE NOTIFICATION. Engineer shall perform, or cause others to perform, all services undertaken in connection with this Agreement in a good and workman-like manner and in conformance with the terms of the Consent Decree entered in the U.S District Court on April 1, 2008 by the United States and State of Indiana. Engineer acknowledges that it has been provided a complete copy of the Consent Decree which can be viewed at:

http://www.cityoffortwayne.org/utilities/images/stories/docs/consent_decree/Consent_Decree.pdf

22. DOCUMENT RETENTION. Notwithstanding any other provision of this Agreement, Engineer agrees to preserve all non-identical copies of all documents, records and other information (whether in physical or electronic form) within Engineer's possession or control and which relate, in any manner, to the performance of the services undertaken in connection with this Agreement for a period of 1 year after the completion contemplated by the Agreement (the "Retention Period"). Prior to the end of the Retention Period, or at any earlier time if requested by the City, Engineer shall provide the City with complete copies of such documents, records and other information at no cost to the City. The copies shall be provided to the City on CD or DVD media, and individual files shall be in Adobe PDF format. The individual files shall be contained in a ZIP formatted file, and the filename of the ZIP shall include the name of the project and the Engineer. No part of any file shall be encrypted or protected from copying. Such copies shall be accompanied by a verified written statement from the Engineer attesting that it has provided the City with complete copies of all documents, records and other information which relates to the services contemplated by the Agreement.

Interoffice Memo

Date: July 6, 2017
To: Common Council Members
From: Michael Kiester, Manager, City Utilities Engineering
RE: **City Utilities-On Call Resident Project Representative/Inspection Services**



City Utilities has utilized the services of outside consultants for inspection services for many years. With the fluctuation of construction activity levels throughout the year, having a fixed in-house staff does not meet the needs of the construction program. By utilizing consultant firms for these services, the Utility is able to meet the fluctuation of high construction activity during the summer months, low construction during the winter months by relying on the consultant firms for the flexibility of staff.

The ordinance for inspection services includes the same six firms that have been utilized since 2011; GAI Consultants, Construction Support Services, DLZ of Indiana, Butler, Fairman & Seufert, A&Z Engineering and VS Engineering, Inc. along with CH2M Hill since 2015. All seven of these firms have a local Fort Wayne office.

The hourly rate for these services will be the same with the exception of the Developer Project Inspection rate increasing slightly by \$2.50 from the previous 2015 level. The hourly rate for Developer Project Inspection will be \$55.00 per hour and the hourly rate for the Capital Project Inspection will be tiered at \$60.00 and \$70.00 per hour. Allen County Regional Sewer District projects will be \$55.00 per hour and Water Pollution Control Plant and Water Filtration Plant projects will be \$90.00 per hour. These are straight time hourly rates with no travel time paid and no premium for hours worked beyond the normal 8-hour day. Also, the Service Lateral Inspection has been returned to this agreement at a flat rate of \$55.00 per inspection.

In 2015, consultants provided 22,775 hours of service for a total of \$1,401,792 and in 2016 consultants provided 24,044 hours of service for a total of \$1,482,754.

As a result of increased construction activity, it is anticipated that the compensation to these firms could exceed \$100,000 for the year; therefore we are asking Council to approve this ordinance.

What Are The Implications If Not Approved?

The Utility will not be able to provide adequate construction oversight on projects without the use of these consultant services without increasing staff. It would take a minimum of eleven additional staff members to cover projects if workload was constant. With the fluctuation of construction activities, personnel requirements would be greater in the summer months and reduced during the winter.

If Prior Approval Is Being Requested, Justify:

Prior approval NOT requested

The cost of said services is funded by the Water, Sewer, and Storm Utilities.

Council Introduction Date: July 11, 2017

CC: BOW
Matthew Wirtz
Diane Brown
Chrono
File