

BILL NO. S-19-05-02

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving PROFESSIONAL ENGINEERING SERVICES FOR 3RPORT RUDISILL CONSOLIDATION SEWER DESIGN SERVICES DURING CONSTRUCTION (\$158,990.00) between BLACK & VEATCH CORPORATION and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

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

SECTION 1. That the PROFESSIONAL ENGINEERING SERVICES FOR 3RPORT RUDISILL CONSOLIDATION SEWER DESIGN SERVICES DURING CONSTRUCTION (\$158,990.00) by and between BLACK & VEATCH CORPORATION and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for Professional Services Agreement for Engineer to provide Design Services During Construction (DSDC) of the Project to ensure conformance with the Rudisill CS and Ext. to FPRS Contract Documents prepared by the Engineer, to provide a means of Contract Document interpretation, and to provide support to the City and Construction Contract Management (CCM) Team during construction. Also included are bid phase services;

involving a total cost of not to exceed ONE HUNDRED FIFTY-EIGHT THOUSAND NINE HUNDRED NINETY AND 00/100 DOLLARS - (\$158,990.00). A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

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

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

CU PSA 43019

PROFESSIONAL SERVICES AGREEMENT

For

**3RPORT RUDISILL CONSOLIDATION SEWER
DESIGN SERVICES DURING CONSTRUCTION ("Project")**

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, Indiana 46802

and

BLACK & VEATCH CORPORATION ("ENGINEER")

825 S. Barr Street
Third Floor
Fort Wayne, Indiana 46802

Who agree as follows:

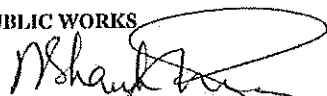
CITY hereby engages ENGINEER to perform the services set forth in Part I - Services ("Services") and ENGINEER agrees to perform the Services for the compensation set forth in Part III - Compensation ("Compensation"). ENGINEER shall be authorized to commence the Services upon execution of this Agreement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

APPROVALS

APPROVED FOR CITY

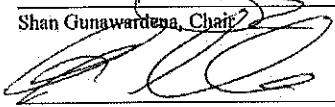
BOARD OF PUBLIC WORKS

BY:



Shan Gunawardena, Chair

BY:



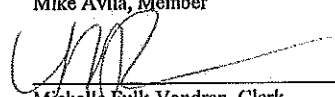
Kumar Menon, Member

BY:



Mike Avila, Member

ATTEST:



Michelle Fulk-Vondran, Clerk

DATE:

4-30-19

APPROVED FOR ENGINEER

BY:



Donnie Ginn, P.E. Vice President

DATE:

3/28/2019

PART I

SCOPE OF BASIC ENGINEERING SERVICES

A. GENERAL

ENGINEER shall provide CITY with professional engineering services in all phases of the project to which this scope of services applies. The services will include serving as CITY's professional representative for the Project, providing professional engineering consultation and advice, furnishing civil engineering services, and other customary services incidental thereto.

B. PROJECT DESCRIPTION

The City of Fort Wayne (CITY) has entered into a Consent Decree with the U.S. Environmental Protection Agency (EPA), U.S. Department of Justice (DOJ), and the Indiana Department of Environmental Management (IDEM) to implement a combined sewer overflow (CSO) Long-Term Control Plan (LTCP) to reduce the volume of combined sewage that is discharged into the waterways within the City of Fort Wayne. Control Measure Nos. 11 & 12 of the LTCP includes the Wayne Street and St. Marys Parallel Interceptors which has been renamed to the Three Rivers Protection & Overflow Reduction Tunnel (3RPORT). The proposed tunnel will receive flows from combined sewer outfalls to reduce combined sewer overflows to the St. Marys and Maumee Rivers to four overflow events within a typical year.

The combined sewer flow will be diverted to the tunnel by consolidation sewers which discharge to drop shafts connected to the tunnel. The Project consists of providing bidding and construction phase services for the consolidation sewer package titled Rudisill Consolidation Sewer (CS) and Extension (Ext.) to Foster Park Relief Sewer (FPRS) Connection.

C. SCOPE OF SERVICES

The CITY hereby engages ENGINEER to provide Design Services During Construction (DSDC) of the Project to ensure conformance with the Rudisill CS and Ext. to FPRS Contract Documents prepared by the ENGINEER, to provide a means of Contract Document interpretation, and to provide support to the CITY and Construction Contract Management (CCM) Team during construction. Also included are bid phase services.

ENGINEER is part of a larger team working integrally for the bidding and construction phase services. The ENGINEER shall only be responsible for providing bidding and construction phase services associated to the items indicated in Table 1. The other firms on the team will be contracted separately with the CITY for their bidding and construction phase services; ENGINEER assumes no responsibility for the work of the other firms on the team.

Table 1 - Responsibility Matrix		
Contract Package	Item	Responsible Firm
Rudisill CS and Ext. to FPRS	Contract Documents ¹ Stamped by Professional Engineer employed by Black & Veatch	Black & Veatch
	Contract Documents ¹ Stamped by Professional Engineer employed by VS	VS
	Contract Documents ¹ Stamped by Professional Engineer employed by DLZ	DLZ
Notes:		
1. Contract Documents titled Rudisill Consolidation Sewer and Extension to Foster Park Relief Sewer Connection, dated January 31, 2019.		

Deliverables to the CITY that involve revisions to the Contract Documents such as addenda during bidding, conforming the Contract Documents to the contract, change orders, and conforming the Contract Documents to construction shall be coordinated by a team member as indicated in Table 2. The term Lead Firm refers to the firm that obtains information, based on coordination with Support Firms and direction provided by the CITY, from other team members and is responsible for final deliverable(s) to the CITY. The term Support Firm refers to the firm that provides information for incorporation by the Lead Firm into the final product.

Table 2 - Deliverables Involving Revisions to the Contract Documents		
Contract Package	Lead Firm	Support Firms
Rudisill CS and Ext. to FPRS	Black & Veatch	VS, DLZ

By performing these services, the ENGINEER shall not be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project. In addition, ENGINEER shall not be responsible for the failure of any contractor, subcontractor, vendor, or other project participant to fulfill contractual or other responsibilities to the CITY. ENGINEER shall notify the CITY of any failure of the Contractor to conform to the Contract Documents which becomes known to ENGINEER in performing ENGINEER's obligations hereunder.

PHASE 1 – BID PHASE SERVICES

ENGINEER will perform bidding services for the Project as follows:

TASK 101 – Bid Phase Services

ENGINEER shall provide engineering services during the Bid period. Bid phase services shall include the following services:

- **Interpret Construction Contract Documents.**
Interpret Construction Contract Documents, if necessary, to provide responses to questions from Bidders during the Bid period. Prepare up to four addenda to the Construction Contract Documents, if required. CITY will distribute the addenda.
- **Pre-Bid Meeting.**
Administer and attend a pre-bid conference with CITY and Bidders during the Bid period. Prepare pre-bid conference meeting summary. CITY will distribute the meeting summary with an addendum. The pre-bid conference will be attended by the Project Manager and Design Engineer.
- **Assist During Bid Opening.**
The Bid opening will be attended by the Project Manager. The ENGINEER shall review the preliminary Support of Excavation Plan and Water Control Plan submitted by the low bidder and provide comments to the CITY. The CITY will review and evaluate the Bid of the apparent successful Bidder and prepare a bid tabulation of the Bid results.
- **Review Insurance Certificates.**
Services shall include a cursory review of Contractor's insurance certificates. The ENGINEER's review of the insurance certificates is only for the purpose of determining if the Contractor has provided the general types and amounts of insurance required by the specifications and is not a legal review to determine if the Contractor's insurance coverage complies with all applicable requirements.

- Conform to Contract (CTC) of the Construction Contract Documents.
Prepare the Conformed to Contract (CTC) of the Construction Contract Documents. All addenda items and changes to the Construction Contract Documents will be updated by the ENGINEER. ENGINEER shall provide the files to CITY in PDF format and in original file format.

PHASE 2 – DESIGN SERVICES DURING CONSTRUCTION

The CITY will retain another firm to act as the CITY's representative, to assume all duties and responsibilities, and to have the rights and authority assigned to the Engineer in connection with the construction work to be performed in accordance with the Construction Contract Documents. During the construction phase, the ENGINEER providing design services will be referred to as the DESIGNER. The DESIGNER shall also provide professional engineering services during the construction phase. The DESIGNER shall consult with, advise, and assist the Engineer in connection with the completion of the work in the Construction Contract Documents.

Task 201 – Preconstruction Conference

At a date and time selected by the CITY and at a facility provided by the CITY, the ENGINEER will participate in the preconstruction conference facilitated by the CITY's CCM Team. The preconstruction conference will include a discussion of the Contractor's tentative schedules, procedures for transmittal and review of the Contractor's submittals, processing payment applications, critical work sequencing, change order procedures, record documents, and the Contractor's responsibilities for safety and first aid. The CCM Team will be responsible for preparing and distributing meeting notes. The preconstruction conference will be attended by the Project Manager and Engineering Manager.

Task 202 – Progress Meetings

Participate in monthly progress meetings, up to two hours each in duration, during onsite construction activities to review Contractor's progress of the Work, discuss upcoming Work, and consult with the CITY and Contractor concerning questions. The Contractor will preside at the meetings and the CCM Team will be responsible for preparing and distributing meeting notes. The Engineering Manager will attend up to 16 progress meetings and the Project Manager will participate in up to eight progress meetings by phone.

Task 203 – Construction Administration

The ENGINEER will perform construction administration services during construction of the Project. The following engineering services will be provided under this task:

- Review and comment on the Contractor's initial and revised initial construction schedule and advise the CITY as to acceptability. Analyze the Contractor's construction schedule, activity sequence, and construction procedures as applicable to the CITY's ability to keep existing facilities in operation and for conformance with the Contract Documents. Subsequent schedule reviews are the responsibility of the CCM Team.
- Respond to Requests for Information (RFIs) submitted by the CITY, CCM Team, or Contractor. ENGINEER will provide responses to RFIs from the Contractor within ten business days of receipt. Responses to requests that involve input from the CITY or CITY's CCM Team may extend longer than ten business days. Up to 20 RFI reviews are included. Additional responses can be provided as a supplemental service.
- Assist CITY with reviewing Work Change Directive (WCD) requests by the Contractor or CITY and assist in preparing proposal requests to the Contractor for changes in scope, if required. ENGINEER will review and provide comment to the CITY on up to four WCD request items. The CCM Team will prepare and process WCDs, if required.

- Assist CITY with reviewing Change Order requests by the Contractor. ENGINEER will review and provide comment to the CITY on up to two change order request items. The effort is limited to review and comment to the requested Change Order applicability only and does not include evaluation of alternatives and detailed investigations of the requests. Preparation of the Change Order documents will be the responsibility of the CCM Team.

Task 204 – Shop Drawings and Submittals Review

Review shop drawings and other data submitted by the Contractor as required by the Contract Documents. The ENGINEER's review shall be for general conformity to the Contract Documents for the Project and shall not relieve the Contractor of any of his contractual responsibilities. Such reviews shall not extend to means, methods, techniques, sequences, and procedures of construction, or to safety precautions and programs incident thereto. The Scope is based on review of up to a total of 80 combined submittals and resubmittals for the Project.

The distribution of general submittal review responsibility between the ENGINEER and other team members on the Project is provided in Table 3. The Primary Reviewer will conduct the initial review, followed by the Secondary Reviewer, followed by the Tertiary Reviewer. The Primary Reviewer will then be responsible for reviewing all comments and submitting the final, combined submittal response to the CCM Team.

Table 3 – Submittal Review Responsibility for Project			
Submittal Topic	Primary Reviewer	Secondary Reviewer	Tertiary Reviewer
General Requirements	Black & Veatch		
Slide Gates	Black & Veatch		
Gate Actuator	Black & Veatch		
Coarse Screen	Black & Veatch		
Quality Work Plans			
Dewatering Plan	Black & Veatch	VS	
Diversion Structure	VS	DLZ	Black & Veatch
Screen & Gate Structure	Black & Veatch	DLZ	
Sewer Installation	VS	Black & Veatch	
Excavation Support	Black & Veatch	DLZ	
Concrete	DLZ	Black & Veatch	
Steel Reinforcement	DLZ	Black & Veatch	
Hatches/Metal Fab	Black & Veatch	VS	
Ductbank	Black & Veatch		
Air Vent Piping	Black & Veatch		
Site Fencing	Black & Veatch		
Backfill and Flowable Fill	Black & Veatch	DLZ	
Flap Gates	VS		
Fine Screen	VS		
Water Main	VS		
Traffic Signal	VS		
Road/Pavement	VS		

Table 3 – Submittal Review Responsibility for Project (cont.)			
Submittal Topic	Primary Reviewer	Secondary Reviewer	Tertiary Reviewer
Storm Sewers and Sanitary Sewers (Pipe and Manholes)	VS		
Box Culvert	Black & Veatch		
Maintenance of Traffic	DLZ	Black & Veatch	
Erosion Control	DLZ	VS	

Review of "Substitutes" requests by the Contractor shall follow the requirements of the General Conditions in the Contract Documents. The ENGINEER will perform such reviews as a supplemental service and will track the time and expenses separately for payment.

Task 205 – Site Visits

The ENGINEER will make periodic visits to the construction site when requested by the CITY to observe construction and confer with CITY, CCM Team, or Contractor concerning problems and/or progress of the Work. The Scope is based on 6 trips: two by the Project Manager, two by the Engineering Manager, and two by the Tunnel/Geotechnical Engineer. Each trip will include half-day site visits for one professional to review design-related questions and construction conflict or issue resolution plus preparation and coordination with the CITY and CCM Team. Additional trips may be provided as a supplemental service.

The ENGINEER shall not have responsibility for the superintendence of construction site conditions, safety, safe practices or unsafe practices or conditions, operation, equipment, or personnel other than employees of the ENGINEER. This service will in no way relieve the Contractor of complete supervision of the Work or the Contractor's obligation for complete compliance to the Contract Documents. The Contractor shall have sole responsibility for safety and for maintaining safe practices and avoiding unsafe practices or conditions.

Task 206 – Final Inspection

Upon notice of substantial completion from the Contractor, the Engineering Manager and Design Engineer shall conduct a half-day final inspection. Assist CCM Team with preparation of a punchlist of items to be completed or corrected by the Contractor before final completion of the Project. Submit list of items observed to CITY and CCM Team for incorporation into the punchlist. CITY and CCM Team will deliver the punchlist to Contractor. Additional inspections to verify completion of punchlist items may be provided as a supplemental service.

Task 207 – Revise Construction Contract Drawings

Upon completion of the project, revise the construction contract drawings to conform to the construction records. Revisions (red-lines) to the construction contract drawings will be provided by the Contractor. The CCM Team is responsible for reviewing and verifying the record drawings, provided by the Contractor, for accuracy and that all markups and documentation are included prior to submittal to ENGINEER. ENGINEER will submit one full size and three half size copies of the final conformed-to-construction drawing prints, a PDF version, and original file format to CITY within two months of receipt of Contractor's revisions.

Task 208 – Project Administration and Management

Provide project supervision, direction, and coordination with the CITY management and staff. Project administration and management also includes budget and schedule control, client management support, document control, coordination of activities, monthly progress reports, monthly invoicing and project close-out. ENGINEER

will maintain a change register of any scope changes affecting the project budget or schedule and review it with the CITY on a monthly basis. ENGINEER shall discuss and receive written approval for any scope changes from CITY prior to proceeding.

D. SCHEDULE

ENGINEER shall be authorized to commence Services set forth herein upon Notice to Proceed issued by the CITY and for the duration as generally noted below. The effort and fee for the Design Services During Construction are time dependent. The effort and fee for the Scope of Services indicated herein is based on a 21 month period from approximately March 2019 to December 2020. In the event that the contract period is extended, the contract amount shall be increased to a mutually agreed amount for ENGINEER's services. The schedule for the services is included in Attachment 2 -- Project Schedule.

E. SUPPLEMENTAL SERVICES

Upon separate written authorization by the CITY and negotiated fees, ENGINEER may provide additional services as indicated in Attachment 1 -- Supplemental Services.

PART II
CITY'S RESPONSIBILITIES

In addition to other responsibilities set forth in this Agreement, CITY shall, at its expense, do the following in a timely manner so as not to delay the Services:

A. CITY'S REPRESENTATIVE

CITY will designate a representative for the Project who shall have the authority to act as the CITY's representative to respond to questions, transmit instructions, receive information, interpret and define CITY's requirements, serve as liaison with the ENGINEER and make decisions with respect to the Services. The CITY's representatives for this Agreement will be Kristen Buell.

B. DATA

CITY will provide available information, including previous reports, environmental assessments, investigations and other studies in the possession of CITY relevant to the design of the Project.

C. DECISIONS

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

D. MEETINGS

CITY will attend Project meetings identified within the Scope of Services. CITY will review and provide comments on project meeting notes.

E. DOCUMENT REVIEWS

CITY will examine documents submitted by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as CITY deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

F. ACCESS

CITY will provide access to Project premises for ENGINEER and the ENGINEER's representatives and/or subconsultants to provide services as defined under this Agreement.

G. OTHER CONSULTANTS

CITY will advise ENGINEER of the Scope of Services of any independent consultants employed by CITY to perform or furnish services in regard to the Project.

H. PROJECT MANAGEMENT INFORMATION SYSTEM (PMIS)

CITY will provide access and support for the CITY's Project Management Information System (PMIS) for duration of Project.

I. PROJECT DEVELOPMENTS

CITY will give prompt written notice to ENGINEER whenever the CITY becomes aware of any event, occurrence, condition or circumstance which may affect the ENGINEER's performance of Services, or any defect or nonconformance in ENGINEER's Services, the Work, or in the performance of any Contractor.

PART III
COMPENSATION

A. COMPENSATION

Compensation for Services performed in accordance with Part I – Scope of Basic Engineering Services and referenced Exhibits of this Agreement will be based on hours actually spent and expenses actually incurred with a not-to-exceed fee of \$158,990.

The Scope of Basic Engineering Services will be performed at the request of the City on an hourly basis up to the not-to-exceed fee. The not-to-exceed fee may be increased by Amendment if the not-to-exceed fee is met and the City requires continued services.

ENGINEER's costs will be based on the hours incurred to complete the Project times the hourly rates of the various personnel, per Attachment 4 – Hourly Rate Schedule. All reimbursable costs incurred for the Project will be invoiced at cost.

Payment for outside consulting and/or professional services or legal services performed by a Subconsultant will be billed at actual cost to ENGINEER plus 5 percent for administrative costs. An invoice supporting Subconsultant services and charges will be provided as backup, when requested. The ENGINEER will obtain written CITY approval before authorizing these services.

B. BILLING AND PAYMENT

1. Timing/Format

- a. ENGINEER shall invoice CITY monthly for Services completed at the time of billing. Such invoices shall be prepared in a form and supported by documentation as CITY may reasonably require.
- b. CITY will pay ENGINEER within 30 days of receipt of approved invoice.

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 this Agreement. 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 inure 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:

<https://www.cityoffortwayne.org/utilities/162-clean-river-tcamp/3207-consent-decree.html>

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.

ATTACHMENT 1
SUPPLEMENTAL SERVICES

For

3RPORT RUDISILL CONSOLIDATION SEWER
DESIGN SERVICES DURING CONSTRUCTION

SUPPLEMENTAL SERVICES

Any Services requested by the CITY which are not included in the tasks as described herein will be considered a Supplemental Service to this Professional Services Agreement and may be added to the Scope upon mutual agreement to an increase in the engineering fee.

Supplemental Services shall include, but are not limited to:

- A. Design services.
- B. Additional meetings beyond those in the Scope of Services.
- C. Bid phase services beyond those in the Scope of Services.
- D. Design services during construction beyond those in the Scope of Services.
- E. Any meetings with local, State, or Federal agencies or utilities, or other affected parties to discuss the Project, other than those specifically noted.
- F. Any appearances at any public hearings or before special boards, other than those listed.
- G. Special consultants or independent professional associates requested or authorized by CITY.
- H. Review of "Substitutes" requests.
- I. Start-up services, other than those specifically noted.
- J. Review of contractor claims and associated research and investigations.
- K. Preparation for litigation, arbitration, or other legal or administrative proceedings; and appearances in court or at arbitration sessions in connection with the Project.
- L. Provisions, through a subcontract, to provide photographs or videotapes of the site's topographic and infrastructure features.
- M. An environmental assessment report and/or environmental impact statement as requested by CITY or required by review agencies.
- N. Provisions, through a subcontract, to provide any special reports or studies on materials and equipment requested by CITY.
- O. Monitoring site or adjacent sites for air quality and/or noise.
- P. Provisions to prepare or conduct confined space evaluation or permits.
- Q. Providing written procedures, training, physical assessment, or any other Health and Safety provisions that may be required in the event hazardous materials are encountered.
- R. Development of hazardous waste treatment, mitigation or reduction systems for handling hazardous materials found or generated on the Project.
- S. Review of additional submittals, requests for information and change order requests beyond those included in the Scope of Services.
- T. Additional site visits beyond those included in the Scope of Services.

U. Revisions to additional CITY drawings other than those specifically noted.

**ATTACHMENT 2
PROJECT SCHEDULE**

For

**3RPORT RUDISILL CONSOLIDATION SEWER
DESIGN SERVICES DURING CONSTRUCTION**

The Project target milestones and schedule:

<u>Milestone</u>	<u>Milestone Date</u>
Bid Opening	March 2019
Construction Notice-to-Proceed	April 2019
Construction Completion	October 2020

**ATTACHMENT 3
SCOPE OF SERVICES FEE PROPOSAL**

For

**3RPORT RUDISILL CONSOLIDATION SEWER
DESIGN SERVICES DURING CONSTRUCTION**

Phase 1 – Bid Phase Services	\$ <u>39,350</u>
Phase 2 – Design Services During Construction	\$ <u>119,640</u>
Total Not to Exceed Fee	\$ <u>158,990</u>

**ATTACHMENT 4
HOURLY RATE SCHEDULE**

For

**3RPORT RUDISILL CONSOLIDATION SEWER
DESIGN SERVICES DURING CONSTRUCTION**

1. Payment of actual hourly rates for Services rendered by ENGINEER's employees in each billing class working directly on the Project. The rates shall include the cost of customary and statutory benefits, general and administrative overhead and profit. Hourly rates will be in accordance with the following schedule:

<u>EMPLOYEE CLASSIFICATIONS</u>	<u>RATE</u>
Project Director	\$285
Project Manager	\$210
Engineering Manager	\$185
Technical / QC Specialist	\$255
Tunnel/Geotechnical Engineer	\$195
Senior Electrical / I&C Engineer	\$220
Project Electrical / I&C Engineer	\$175
Project Engineer	\$160
Design Engineer	\$130
Sr. CAD / GIS Technician	\$140
CAD / GIS Technician	\$125
Project Assistant	\$95

The employee hourly rates above are an average rate valid between January 1, 2019 and December 31, 2020. After that time, updated rates with justification for the adjustments may be submitted to the CITY for approval. Adjustment of the rates will be permitted only once each subsequent calendar year. If the CITY does not approve the rates, the Agreement may be terminated for convenience.

2. Payment for reimbursable costs, as authorized by the CITY, will be invoiced at cost. These items may include, but are not limited to: shipping charges; in-house printing services; special supplies not furnished by the CITY; or traveling and lodging expenses, as required, to perform project management, design and design services during construction. Mileage for travel will be billed at the IRS business rate per mile for automobile transportation.

CITY OF FORT WAYNE, INDIANA

Black & Veatch Corporation
(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

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

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

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$50,000 or more. Vendors shall disclose their financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the Vendor's contract, bid, proposal or offer.

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

Section 1: Disclosure of Financial Interest in Vendor

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

(i) Equity ownership exceeding 5% (See Below)

Black & Veatch Corporation is a wholly owned subsidiary of BVH, Inc. (the Company). BVH, Inc. is 100% owned by the Black & Veatch Retirement Program, an Employee Stock Ownership Program (ESOP). The ESOP Shares are held in trust for its 8,000 participants by the Program's trustee, GreatBanc Trust Company. Individual beneficial holder data within the ESOP is confidential; however, shareholdings are broadly dispersed among 8,000 employees and former employee participants and no individual has beneficial holdings approaching 5%.

(ii) Distributable income share exceeding 5% ()

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

Name: _____ Name: _____

Address: _____ Address: _____

- b. For each individual listed in Section 1a. show his/her type of equity ownership:

sole proprietorship () stock (X)
partnership interest () units (LLC) ()
other (explain) See Above 1.a

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

Name: See Above 1.a _____ %

Name: _____ %

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

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

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

- b. City employment of "Member of Immediate Family" (defined herein as: *Spouse, Child, Step Child, Parent or Step Parent, Father-in-law or Mother-in-law, Brother or Sister, Step Brother or Step Sister, Half Brother or Half Sister, Brother-in-law or Sister-in-law, Son-in-law or Daughter-in-law, Grandparent or Step Grandparent, Grandparent or Step Grandparent of Spouse, Grandchild*)
Including contractual employment for services in the previous 3 years:
Yes _____ No X

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years: Yes _____ No X

Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

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

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

See Attached. _____

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

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

City Utilities – TRFP Chemical Control Room Improvements Design Services During Construction, Christos

Kyrou; City Utilities – Resource Recovery Program Phase III: Biogas Utilization Analysis, Zachary Schortgen;

City Utilities – 3RPORT Construction Support Phase 2, T.J. Short

- c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

Yes No X

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms:

Name / Position / Payment Terms:

Name / Position / Payment Terms:

- d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.).

Company / Name / Payment Terms: N/A

Company / Name / Payment Terms: _____

Section 4: CERTIFICATION OF DISCLOSURES

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

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

Statement, had one or more public transactions (federal, state or local) terminated for cause or default;

- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same elements as the offense of bid-rigging or bid-rotating
- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

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

Black & Veatch Corporation
(Name of Vendor)

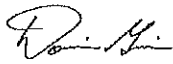
825 S. Barr Street, Third FL, Fort Wayne, IN 46802
Address

(260) 420-2411
Telephone

GinnDH@bv.com
E-Mail Address

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

Name (Printed) Donnie Ginn Title Vice President

Signature  Date 3/28/19

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

Attachment for Section 3.a.

Disclosure of Other Contract and Procurement Related Information

- City Utilities -- 3RPORT Final Planning and Design, T.J. Short;
- City Utilities -- On-Call Services for WPCP and TRFP Process Instrumentation and System, Jon Welrick;
- City Utilities -- Green Infrastructure On-Call, Anne Marie Smrcek;
- City Utilities -- 3RPORT Design Services During Construction, T.J. Short;
- City Utilities -- CFD Modeling for 3RPORT Diversion Structures for DS01 and DS09, Kristen Buell;
- City Utilities -- WPCP Biological Phosphorus Removal Optimization, Zachary Schortgen; and
- City Utilities -- 3RPORT Construction Support, T.J. Short

CONTRIBUTION STATEMENT BY A BUSINESS ENTITY

I, Donnie Ginn, under the penalties of perjury,
affirm and state as follows:

1. I am over the age of eighteen (18) years old.
2. I am an officer or party of the below named company/firm, a business entity within the meaning of Section 37.28 of the Fort Wayne Municipal Code of Ordinances (the "City Code").
3. As an officer or party of the below named company/firm, I am authorized to execute this *Contribution Statement by a Business Entity* on behalf of said business entity.
4. Since March 28, 2018, neither the below named company/firm, nor any of its covered principals, partners, officers, subsidiaries, or other individuals as defined in Section 37.28 has made a contribution to any City of Fort Wayne candidate or holder of public office, whether directly or indirectly by contribution to such candidate's or holder of public office's campaign committee, a City or Allen County party committee or a political action committee that regularly engages in the support of municipal elections and/or municipal parties in the City of Fort Wayne, which would prohibit the City of Fort Wayne from negotiating or entering into a contract with the below named company/firm under Section 37.28 of the City Code.
5. This *Contribution Statement by a Business Entity* is made pursuant to Section 37.28 of the City Code to support approval of a contract between the City of Fort Wayne, Indiana and the below named company/firm.

Black & Veatch Corporation
Company/Firm

3/28/2019
Date

By: 

Printed: Donnie Ginn

Title: Vice President

Interoffice Memo

Date: May 8, 2019
To: Common Council Members
From: Kristen Buell, City Utilities Engineering
RE: **3RPORT Rudisill Consolidation Sewer
Res. #76480, W.O. # 76480**

Council District # District 5

Engineer shall provide the City professional Engineering services during construction of the Project to which the scope of services applies. These services will include serving as City's professional representative for the Project, providing professional Engineering consultation and advice, and other customary services incidental thereto. Rudisill Consolidation Sewer and Extension to Foster Park Relief Sewer Connection as follows: Rudisill Consolidation Sewer includes the construction of a diversion structure, screen and gate structure, relocation of various existing utilities and related appurtenances. This project is to connect Combined Sewer Outfalls 18 and 19 to the 3RPORT tunnel system at Drop Shaft 01. The Work includes, but is not limited to, the following: a 30 foot by 34 foot diversion structure, approximately 60 feet of 84 inch by 84 inch consolidation sewer, a 27 foot by 37 foot screen and gate structure, 120 inch by 120 inch flap gate replacement, existing sewer and watermain relocation, and associated site restoration.

Implications of not being approved: This project is one part of compliance with the Consent Decree to reduce combined sewer overflow to the St Mary's River. If not constructed, Combined Sewer Overflows will continue to discharge to the St. Mary's River, thus violating our Consent Decree and commitment to reducing overflows to the rivers.

If Prior Approval is being Requested, Justify: N/A

Selection and Approval Process:

The consultant was selected through the Competitive Sealed Proposal (CSP) process. Request for Qualifications in 2014. The process started in October 2013 when the request was sent to over 120 firms soliciting teams and individual firms for the design of 3RPORT tunnel system. Two full teams submitted on the RFQ which was comprised of 19 firms altogether, and eleven separate specialty submittals were also received. Proposals were evaluated by a multi-disciplinary team from Fort Wayne Utilities and based on the strength of the qualifications, both teams were shortlisted, interviewed and costs proposals received. The key items that the review team was looking for in the proposals were: a project team that had experience in similar projects, tunnel and consolidation sewer design professionals who are at the top of their field, a strong approach to the project itself and inclusion of local partners. Using this procedure,

Utilities Engineering found Black & Veatch's proposal to be the best value. Today as we are finalizing the designs of the consolidation sewers, the selected consultant Black and Veatch Corporation is continuing to lead the consolidation sewer designs. Their support is needed through the construction process to complete submittal reviews, interpret construction contract documents, respond to contractor questions during construction, assist with work change directives, change order request and provide final record drawings. City Utilities negotiated with Black and Veatch for the best value to provide the professional services needed to construct a project of this size and complexity The Board of Public Works approved the contract on April 30, 2019.

The cost of said project funded by State Revolving Fund.

Council Introduction Date: May 14, 2019

CC: BOW
Matthew Wirtz
Diane Brown
Construction Manager
Chrono
File