

AN ORDINANCE certifying and approving the need for the services of a consultant to provide professional Wet Weather Pond Dredging Services – January 1, 2022 – December 31, 2023 to the Division of City Utilities through its Board of Public Works.

WHEREAS, the City of Fort Wayne through its Board of Public Works desires to provide professional Wet Weather Pond Dredging Services – January 1, 2022 – December 31, 2023 - to the Division of City Utilities for dredging, dewatering, and transportation of material removed from Pond 1 at the Water Pollution Control Plant Wet-Weather Storage Ponds; and

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

WHEREAS, the Board of Public Works believes that there is a need to employ Metropolitan Environmental Services, Inc., Merrill Bros, Inc., and Fox Contractors Corp. to perform these services; and

WHEREAS, it is anticipated that the amount to be paid to said consultants on an annual basis, will be in excess of \$150,000.00.

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

SECTION 1. The Common Council of the City of Fort Wayne hereby certifies and approves the need for the services of consultants to provide professional Wet Weather Pond Dredging Services – January 1, 2022 – December 31, 2023 - to the Division of City Utilities for dredging, dewatering, and transportation of material removed from Pond 1 at the Water Pollution Control Plant Wet-Weather Storage Ponds.

SECTION 2. 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

CITY UTILITIES WET WEATHER POND DREDGING SERVICES
REQUIREMENTS TO PROVIDE LABOR AND EQUIPMENT FOR
WET WEATHER POND DREDGING SERVICES TO FORT WAYNE UTILITY SYSTEMS

Scope of Work:

Fort Wayne Utilities is requesting time and material quotes for contracting various types of labor and equipment for dredging services located at the Water Pollution Control Plant Wet-Weather Storage Ponds, 2750 Lake Ave, Fort Wayne, IN 46805. Such work includes dredging, dewatering, and transportation of material removed from Pond 1.

The contractor can bid trucking on a per mile basis if capable. The trucking bid would be based on hauling full load to a set designation and heading directly back to the site. Example would be Hauling from Pond 1 at the Water Pollution Control Plant Wet-Weather Storage facility on Lake Avenue to the Landfill on Smith Road round trip. Price would be based on mileage from Lake Avenue to the Landfill. You would calculate your loaded cost and deadhead miles into price giving us a cost per mile for that hauling distance.

It is the intent of the Utility to select a single contractor for this work.

Term of agreement: January 1, 2022 through December 31, 2023, on an "as needed" basis. The Utility reserves the right to award work to multiple contractors based upon the availability of the contractor(s), projected costs of the project and the amount and type of work that needs to be performed.

Contractor Responsibilities:

The contractor shall furnish equipment as necessary to complete the dredging services outlined by the attached specifications and City Utilities Engineering. One or more pieces of fully operated equipment, as deemed necessary by the Utility including operator, complete maintenance, insurance, fuel and oil may be needed for the work to be performed. Equipment shall meet all requirements necessary for safe and efficient operation, under all weather conditions as determined by Utility Engineering staffs.

The contractor shall furnish experienced and competent operators, laborers, and supervisors having sufficient knowledge of Fort Wayne Utility Standards and Specifications and relevant experience in the dredging industry. Supervisors/forepersons shall be able to follow verbal and/or written instructions on the type of services required. Laborers shall be experienced with dredging and dewatering equipment. All operators shall be properly licensed.

The contractor shall indemnify and hold harmless the City of Fort Wayne, Indiana, its officers and employees, from all damages, claims, suits, and actions of any descriptions, for or resulting from injuries or damages received or sustained by any party or parties arising out of any act or failure to act, of said contractor, or his agents, in the execution of work under the contract.

The contractor shall be responsible for adherence to all OSHA regulations for trenching and shoring. In addition, contractor shall provide necessary traffic control, signage, barricades, etc., in compliance with City, County, and State traffic control regulations.

The contractor will be responsible for all restoration, including but not limited to the repair of all asphalt, concrete, curbing, sidewalk affected at the job site.

The contractor shall be responsible for all damages intentionally or unintentionally caused during the work.

Contractor shall halt work based on anticipated wet weather flows at the facility. Contractor shall not work in the system if the WPCP has exceeded 55 MGD unless written authorization is given by the City.

Statements of Conditions

Equipment owned by the contractor will be ordered out only when the Utility determines there is sufficient reason to warrant use of such equipment. Equipment not being utilized on the jobsite will not be considered during payment of work completed. All work shall follow the payment measurements outlined in the specifications.

Equipment and operation therefore shall comply with all Federal, State, County, and City regulations governing such equipment and its operation. The contractor shall not proceed with any work contrary to law. All equipment shall be in good mechanical condition when reporting for work. The Utility will not pay for any lost time due to mechanical defects or time spent performing necessary repairs. The contractor shall report all breakdowns immediately to the Utility supervisor. No payment will be made for the equipment while it is off the job for servicing, however, payment will continue during the time equipment is being fueled and oiled providing such service is performed on the site by a mobile service unit. Electrical power for equipment will be provided by the City through existing connection points. Contractor is required to provide all cabling and isolation for the equipment.

The City of Fort Wayne reserves the right to make a rigid inspection as to mechanical and safety features of any and all construction equipment dispatched to work sites at any time during the period of the contract. Such inspections shall in no way relieve the contractor of the responsibility to furnish equipment in compliance with all requirements of the specifications. All equipment which, in the opinion of the City of Fort Wayne, is in poor mechanical condition or otherwise does not comply with these specifications, will be rejected and shall not be used on any Utility project until repaired or replaced. No payment will be made by the Utility for time or labor expended by the Contractor if said equipment is rejected as a result of such an inspection, until repair or replacement is established to the Utility's satisfaction.

Equipment and its operation shall be subject to supervision by Utility supervisory personnel as to the work to be performed. The Utility will not instruct the operation of equipment in any way contrary to law or good equipment practice. The contractor and/or the operator shall be solely responsible for any and all damage to equipment while operating under this specification.

The contractor is responsible for providing the Utility, in writing, the names and telephone numbers (for day and night contact) which may be used to call regarding contract equipment.

Payment will be based on the daily rate bid for each piece of equipment under contract including operator and for laborer(s) on a daily basis. A day shall be considered a minimum of (8) hours, but not limited to. Travel time shall not be included in the 8 hours. Mobilization and Demobilization shall be a separate cost. A day shall also meet performance criteria outlined in the attached specifications. It is intended a weeks minimum of works will be completed when mobilization is requested. Cost saving options shall be outlined in the proposed work plan (example: if one operator can manage/monitor 3 pieces of equipment there is a cost savings for having three pieces of equipment onsite rather than one). The designated work site shall be specified by the Utility. Time clock for payment will terminate when equipment is released by the Utility. Payment is subject to an inspection of the work that has been completed. Payment for work performed and/or deductions from the guaranteed minimum payment will be computed to the nearest one-quarter hour. Payments will be made to the contractor within forty-five (45) days following receipt of invoice. Invoices may be sent to the Utility by the Utility's Project Management Information System (PMIS).

Pre-Bid Meeting

A pre-bid meeting will be held to discuss project information and answer any questions at the following time and location:

Citizens Square – 200 E. Berry St, Fort Wayne, IN; Suite 250 - Room 255

March 1, 2022 – 11:00am

Zoom Online also available to all Plan Holders.

Addenda

Any addenda will be posted on QuestCDN Online by the end of business day March 4, 2021. Contractor is responsible for checking Quest for any addenda posted.

Bids Due

Bids will ONLY be received by the Board of Public Works through its online bidding partner QuestCDN at www.questcdn.com, until 2:00 p.m. local time, on March 10, 2021. Bids submitted shall be publicly displayed at the Board of Public Works, 200 E. Berry Street, Suite 210, conference room 220 Fort Wayne, IN 46802 immediately following and posted for viewing at www.questcdn.com.

Contract Compliance

The contractor shall comply with requirements of the Fort Wayne Contract Compliance Department in regard to EBE Goals, and other documentation, if requested.

Award

Award of work shall be at the sole discretion of the Utility, with consideration for the following factors being part of the determination:

1. Lowest daily rates per unit price quote;
2. Proposed Work Plan
3. Expected tons/day of removal;
4. Availability when called. If contact cannot be made with the contractor, or if contractor does not have the necessary equipment and manpower available to perform this work within the time requested, further calling to the contractor for the specific job will not be mandatory;
5. Quality of equipment and efficiency of operation based on previous work observations by the Utility personnel;
6. Mobilization and Demobilization Cost;

This agreement may be terminated in part or in whole, if any work performed is not in accordance with the standards established by the Utility.

ADDITIONAL TERMS AND CONDITIONS

1. **SERVICES.** Contractor agrees to perform the Services beginning on the Begin Date and continuing until the Services are completed. Contractor warrants that the Services will be completed on or before the End Date. **TIME IS OF THE ESSENCE.** Contractor warrants that all Services shall conform to the Service Description, be of good quality and workmanship, and be free from defects. Contractor further warrants that all goods furnished in connection with the Services shall be merchantable and suitably safe and sufficient for the purpose for which they are normally used. Contractor warrants that it has good title to goods supplied hereunder and that they are free of all liens and encumbrances. These warranties are in addition to those implied in fact or in law. For the purposes of this Agreement, the term "Services" shall include any goods furnished in connection with the Services.
 2. **INVOICES.** Contractor shall invoice the City for Services performed according to the Rates, Billing Interval, and Invoice Address. Invoices shall be rendered in triplicate and shall itemize the Services performed, the Service Address, and the corresponding rates and taxes, if any. Payment shall be due within thirty (30) days after the invoice date or the date of completion of the invoiced Services, whichever occurs later, provided that the City shall not be obligated to make any payment to Contractor hereunder until Contractor has furnished proof satisfactory to the City of full payment for all labor, materials, supplies, machinery, and equipment furnished for or used in performance of this Agreement or has furnished all necessary waivers of lien supported by affidavits, all satisfactory to the City, establishing that all liens and rights to claim liens that could arise out of the performance of the Services have been waived. Payment of invoices shall not constitute acceptance of the Services, and invoices shall be subject to adjustment for defects in quality or any other failure of Contractor to meet the requirements of this Agreement. The City may at any time set off any amount owed by the City to Contractor against any amount owed by Contractor or any of its affiliated companies to the City.
 3. **INDEPENDENT CONTRACTOR RELATIONSHIP.** City and Contractor are and shall remain as independent contractors with respect to each other. The persons provided by Contractor to perform the Services shall be Contractor's employees and shall be under the sole and exclusive direction and control of Contractor. They shall not be considered employees of the City for any purpose. Contractor shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions, and payment of wages with respect to such persons. Contractor shall also be responsible for payment of taxes, including federal, state and municipal taxes chargeable or assessed with respect to its employees, such as Social Security, unemployment, Workers' Compensation, disability insurance, and federal and state withholding. Contractor shall also be responsible for providing such reasonable accommodations, including auxiliary aids and services, as may be required under the Americans With Disabilities Act, 42 U.S.C. 12101 et seq., so as to enable any disabled person furnished by Contractor to perform the essential functions of the job. Contractor agrees to defend, indemnify, and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained by reason of Contractor's failure to comply with this paragraph.
 4. **INDEMNITY.** Contractor shall defend, indemnify, and hold harmless the City (including its officers, employees, and agents) from all demands, damages, liabilities, costs, and expenses (including reasonable attorney's fees), judgments, settlements, and penalties of every kind arising out of its performance of Services including, without limitation, damages for personal injury or death or loss or damage to property due, or claimed to be due, to the negligence or willful misconduct of Contractor including such portion thereof due, or claimed to be due, to the negligence of the City except that Contractor shall have no duty to hold harmless the City for such portion of the foregoing proximately caused by negligence or misconduct of the City, and if any suit, claim, or demand was defended by Contractor, then the City will reimburse Contractor for its pro-rata share of its costs, expenses (including reasonable attorney's fees), and damages. The City may elect to participate in the defense of any suit, claim, or demand by employing attorneys at its own expense, without waiving Contractor's obligations to indemnify, defend, or hold harmless. Contractor shall not settle or compromise any claim, suit, or action, or consent to entry of judgment without the prior written consent of the City and without an unconditional release of all liability by each claimant or plaintiff to the City.
 5. **LIMITATION 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.
 6. **INSURANCE.** Contractor 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/ \$2,000,000 aggregate
(c)	Automobile Liability	\$1,000,000 minimum per occurrence
(d)	Products Liability	\$1,000,000 minimum 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 Street, Suite 490
Fort Wayne, IN 46802
7. **HAZARDOUS MATERIALS.** Contractor will provide to the City before performing any Services, a statement describing any Hazardous Materials intended and necessary for use in performing the Services. "Hazardous Materials" means any item which may be classified under federal, state, or local law, as hazardous or toxic. Contractor must comply with all federal, state, or local law in the use, transportation, and disposal of such Hazardous Materials.
 8. **PROGRESS REPORTS.** The Contractor shall submit progress reports to the City upon request. The report shall serve the purpose of assuring the City that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date. This contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.
 9. **CONFLICT OF INTEREST.** Contractor certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees which will participate in any way in the performance of the Contractor's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City of Fort Wayne or any of its departments, divisions, agencies, officers, directors or agents.
 10. **CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS, AND COPYRIGHT PROHIBITION.** Contractor further agrees that all information, data findings, recommendations, proposals, etc. by whatever name described and by whatever form therein secured, developed, written or produced by the Contractor in furtherance of this contract—shall be the property of the City. The Contractor shall take action as is necessary under law to preserve such property rights in and of the City while such property is within the control and/or custody of the Contractor. By this contract the Contractor specifically waives and/or releases to the City any cognizable property right of the Contractor to copyright, license, patent or other wise use such information, data findings, recommendations proposals, etc.
 11. **CONFIDENTIALITY OF CITY INFORMATION.** Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected data. Therefore, the Contractor promises and assures that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the City.
 12. **EMPLOYER CERTIFICATION.** In accordance with I.C. §22-5-1-7, Contractor understands and agrees to enroll and verify work eligibility status of all newly hired employees of the contractor through E-Verify program or any other system of legal residence verification as approved by the United States Department of Homeland Security or the department of homeland security. Contractor further understands that they are not required to verify work eligibility of status of newly hired employees of the Contractor through the E-Verify program if the E-Verify program no longer exists. Contractor certifies that they do not knowingly employ any unauthorized aliens.
 13. **COMPLIANCE WITH LAWS.** Contractor warrants that the Services shall be in strict conformity with all applicable local, state and federal laws including, but not limited to, the standards promulgated by the Occupational Safety and Health Act, Executive Order 11246, as amended, relative to Equal Employment Opportunity and all other applicable laws, rules, and regulations, including the Civil Rights Act of 1964 pertaining to equal opportunity, Section 503 of the Vocational Rehabilitation Act of 1973, the American with Disabilities Act, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and all applicable immigration laws and regulations including the 1986 Immigration Reform and Control Act et. seq. Contractor agrees to indemnify and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained because of Contractor's breach of such warranty.
 14. **DEFAULT.** In the event that (a) Contractor breaches any warranty contained herein; (b) Contractor fails to provide the insurance certificate required herein; (c) Contractor or Contractor's insurance carrier fails to defend, indemnify, or hold harmless the City as required herein; (d) Contractor's performance of the Services violates applicable law; (e) Contractor admits insolvency, makes an assignment for the benefit of creditors, or has a trustee appointed to take over all or a substantial part of its assets; or (f) Contractor fails to perform or comply with any other provision of this Agreement, such failure, breach, or violation shall constitute a default under this Agreement.
 15. **TERMINATION.** In the event of default by Contractor under this Agreement, the City reserves the right without liability, in addition to its other rights and remedies, to terminate this Agreement by notice to Contractor as to the portion of the Services not yet rendered and to purchase substitute services at Contractor's expense. Contractor shall reimburse the City for the cost of such substitute services upon Contractor's receipt of an invoice therefor.
 16. **WAIVER.** No action or inaction by the City shall constitute a waiver of any right or remedy.
 17. **CANCELLATION.** City may at any time cancel this Agreement in whole or in part for its sole convenience upon written notice to Contractor, and Contractor shall stop performing the Services on the date specified in such notice. The City shall have no liability as a result of such cancellation, except that the City will pay Contractor the Rates for completed Services accepted by the City and the actual incurred cost to Contractor for Services in progress. These payments shall not exceed the Aggregate Price.
 18. **FORCE MAJEURE.** Neither party shall be liable to the other or responsible for nonperformance of any of the terms of this Agreement due to unforeseeable causes beyond the reasonable control and without the fault or negligence of such party, including, but not restricted to acts of God or the public enemy, acts of government, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.

19. **NOTICES.** All notices required or permitted to be made or given hereunder by one party to the other party shall be in writing and shall be deemed to have been given when hand delivered, or on the date stated on the receipt if deposited in the United States mail in certified form, postage prepaid with return receipt requested, and addressed to such other party at its Notice Address or at such other address as may be specified by such other party by written notice sent or delivered in accordance herewith.
20. **ASSIGNMENT.** Any assignment, in whole or in part, of Contractor's rights or obligation under this Agreement without the prior written consent of the City shall be void. Contractor shall not use subcontractors to perform any part of the Services without the prior written consent of the City.
21. **DISPUTE RESOLUTION.** The City shall be the sole judge of the quality of services. In the event of any dispute or disagreement between the parties either with respect to the interpretation of any provision of this agreement, or with respect to the performance of either party hereunder, the dispute shall be resolved by the Director of Finance and Administration and will not be subject to arbitration.
22. **ACCESS TO RECORDS.** The Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred. They shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the City or by any other authorized representative of city government. Copies thereof shall be furnished at no cost to the City if requested.
23. **NONDISCRIMINATION.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this contract. The Contractor shall not discriminate with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
24. **MISCELLANEOUS.** If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected. This Agreement shall be governed by the laws of the state of Indiana and shall be subject to the exclusive jurisdiction of the courts therein. This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understanding, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. No agreement hereafter made shall be effective to modify or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the modification or discharge is sought. The paragraph headings are for convenience only and are not intended to affect the interpretation of the provisions hereof. This agreement shall be binding on the parties hereto and their respective personal and legal representatives, successors and assigns.

REQUIREMENTS TO PROVIDE LABOR AND EQUIPMENT FOR
WET WEATHER POND DREDGING SERVICES TO FORT WAYNE UTILITY SYSTEMS

The contractor hereby agrees that when notified by the Utility, the contractor will supply the equipment, manpower, and materials as necessary at the price indicated on exhibits "A, B, C, and D," attached hereto and made a part hereof and accepts the additional Terms and Conditions of the Contract.

Metropolitan Environmental Services, Inc.

Contractor's Name

5055 Nike Drive - Hilliard, OH 43026

Contractor's Address

Peter J. Hinders

Contractor Name's/Title (please print)

Peter J. Hinders

Contractor's Signature

March 7, 2022

(Date)

APPROVED THIS 22 DAY OF March, 2022.

BOARD OF PUBLIC WORKS

BY:

Shan Gunawardena
Shan Gunawardena, Chair

BY:

Kumar Menon
Kumar Menon, Member

BY:

Chris Guerrero
Chris Guerrero, Member

ATTEST:

Michelle Fulk-Vondran
Michelle Fulk-Vondran, Clerk

DATE:

3.22.2022

Contractor to complete below Exhibits: Add and edit as necessary EXHIBIT A - CONTRACTOR CONTACT INFORMATION

Authorized Contact	Cell Phone	Work Phone	Home Phone	Emergency Contact Number
Pete Hinders	614-778-3301	614-771-1881		800-860-7378
Russ Reynolds	614-207-4343	614-771-1881		
Erin Ziegler	614-348-1801	614-771-1881		800-860-7378
Ken Norman	614-207-4344	614-771-1881		800-860-7378
John Watson		614-771-1881		800-860-7378
Luke Barnhart	304-200-3550			
Bart Bunn	260-417-5222			

EXHIBIT B - CONTRACTOR EQUIPMENT INFORMATION

Equipment	Description		Quantity Available
Brand Name	Must include equipment limits such as reach, KW, Tons, etc.		
Dredging Equipment			
MUDCAT 815	15' cutter head depth, 2000 gpm, 400 cu. yds./day	385	1
Dewatering Equipment			
Charter Machine	2.2 meter belt press, 150 gpm, 100 wet tons per day	380	2
	additional equipment is available to reduce the processing days		2
Mix Tank	20,000 gallon mix tank w/shaker table	120	1
CAT 926	Front end loader w/3 yard bucket	215	1
Trucks & Vehicles			
	Trucking - Subcontractor 20 tons per load	16.50	per mile
	only applies if awarded the dredging and dewatering		

EXHIBIT C - MANPOWER / CREW INFORMATION

Normal	qu	Manpower Only Rates	Daily Rate
1		Project Manager Ken Norman	1,086.00
1		Supervisor John Watson	1,086.00
		Operator Tim Carte	
		Laborer Luke Barnhart	
		Truck Driver Trucking 20 tons per load	16.50/mile
		Mechanic/Welder	
		additional operators are available to reduce the processing days	

EXHIBIT D - OPERATOR AND SUPERVISOR INFORMATION

<u>Years Experienced</u>	<u>Name</u>	<u>Certifications</u>	<u>Rate</u>
35	Ken Norman	Dredge Loader, forklift, belt press, 30 hr OSHA	
20	John Watson	Loader, forklift, belt press, 30 hr OSHA	
4	Luke Barnhart	Loader, forklift, belt press, 30 hr OSHA	
4	Tim Carte	Loader, excavator, forklift, 30 hr OSHA	

Proposed Work plan is attached below rate sheets

Mobilization/Demobilization of equipment for 100 wet tons per day	\$22,630.00/each time
Set up/tear down of equipment for 100 wet tons per day	\$42,100.00/each time
Mobilization/Demobilization of crew only	\$570.00/man/time

Please see attached work plan with options for multiple equipment and operators.

CITY OF FORT WAYNE, INDIANA

Metropolitan Environmental Services, Inc.
(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% ☐

(ii) Distributable Income share exceeding 5% ☐

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

Name: _____ Name: _____

Address: _____ Address: _____

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

sole proprietorship ☐ stock ☐
partnership interest ☐ units (LLC) ☐
other (explain) _____

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

Name: _____ %

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 ☒ (N/A) _____

- 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 ☒ (N/A) _____

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years: Yes _____ No ☒ (N/A) _____

Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have current contracts (including leases) with the City? Yes _____ 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).

- b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes _____ 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).

-
- 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: _____

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

Metropolitan Environmental Services Inc. 5055 Nike Drive, Hilliard, OH 43026
(Name of Vendor) Address
(614) 771-1881
Telephone
j.aman@metenviro.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) James E. Aman Title VP - Finance
Signature [Signature] Date 4/7/22

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

CITY UTILITIES WET WEATHER POND DREDGING SERVICES
REQUIREMENTS TO PROVIDE LABOR AND EQUIPMENT FOR
WET WEATHER POND DREDGING SERVICES TO FORT WAYNE UTILITY SYSTEMS

Scope of Work:

Fort Wayne Utilities is requesting time and material quotes for contracting various types of labor and equipment for dredging services located at the Water Pollution Control Plant Wet-Weather Storage Ponds, 2750 Lake Ave, Fort Wayne, IN 46805. Such work includes dredging, dewatering, and transportation of material removed from Pond 1.

The contractor can bid trucking on a per mile basis if capable. The trucking bid would be based on hauling full load to a set designation and heading directly back to the site. Example would be Hauling from Pond 1 at the Water Pollution Control Plant Wet-Weather Storage facility on Lake Avenue to the Landfill on Smith Road round trip. Price would be based on mileage from Lake Avenue to the Landfill. You would calculate your loaded cost and deadhead miles into price giving us a cost per mile for that hauling distance.

It is the intent of the Utility to select a single contractor for this work.

Term of agreement: January 1, 2022 through December 31, 2023, on an "as needed" basis. The Utility reserves the right to award work to multiple contractors based upon the availability of the contractor(s), projected costs of the project and the amount and type of work that needs to be performed.

Contractor Responsibilities:

The contractor shall furnish equipment as necessary to complete the dredging services outlined by the attached specifications and City Utilities Engineering. One or more pieces of fully operated equipment, as deemed necessary by the Utility including operator, complete maintenance, insurance, fuel and oil may be needed for the work to be performed. Equipment shall meet all requirements necessary for safe and efficient operation, under all weather conditions as determined by Utility Engineering staffs.

The contractor shall furnish experienced and competent operators, laborers, and supervisors having sufficient knowledge of Fort Wayne Utility Standards and Specifications and relevant experience in the dredging industry. Supervisors/forepersons shall be able to follow verbal and/or written instructions on the type of services required. Laborers shall be experienced with dredging and dewatering equipment. All operators shall be properly licensed.

The contractor shall indemnify and hold harmless the City of Fort Wayne, Indiana, its officers and employees, from all damages, claims, suits, and actions of any descriptions, for or resulting from injuries or damages received or sustained by any party or parties arising out of any act or failure to act, of said contractor, or his agents, in the execution of work under the contract.

The contractor shall be responsible for adherence to all OSHA regulations for trenching and shoring. In addition, contractor shall provide necessary traffic control, signage, barricades, etc., in compliance with City, County, and State traffic control regulations.

The contractor will be responsible for all restoration, including but not limited to the repair of all asphalt, concrete, curbing, sidewalk affected at the job site.

The contractor shall be responsible for all damages intentionally or unintentionally caused during the work.

Contractor shall halt work based on anticipated wet weather flows at the facility. Contractor shall not work in the system if the WPCP has exceeded 55 MGD unless written authorization is given by the City.

Statements of Conditions

Equipment owned by the contractor will be ordered out only when the Utility determines there is sufficient reason to warrant use of such equipment. Equipment not being utilized on the jobsite will not be considered during payment of work completed. All work shall follow the payment measurements outlined in the specifications.

Equipment and operation therefore shall comply with all Federal, State, County, and City regulations governing such equipment and its operation. The contractor shall not proceed with any work contrary to law. All equipment shall be in good mechanical condition when reporting for work. The Utility will not pay for any lost time due to mechanical defects or time spent performing necessary repairs. The contractor shall report all breakdowns immediately to the Utility supervisor. No payment will be made for the equipment while it is off the job for servicing, however, payment will continue during the time equipment is being fueled and oiled providing such service is performed on the site by a mobile service unit. Electrical power for equipment will be provided by the City through existing connection points. Contractor is required to provide all cabling and isolation for the equipment.

The City of Fort Wayne reserves the right to make a rigid inspection as to mechanical and safety features of any and all construction equipment dispatched to work sites at any time during the period of the contract. Such inspections shall in no way relieve the contractor of the responsibility to furnish equipment in compliance with all requirements of the specifications. All equipment which, in the opinion of the City of Fort Wayne, is in poor mechanical condition or otherwise does not comply with these specifications, will be rejected and shall not be used on any Utility project until repaired or replaced. No payment will be made by the Utility for time or labor expended by the Contractor if said equipment is rejected as a result of such an inspection, until repair or replacement is established to the Utility's satisfaction.

Equipment and its operation shall be subject to supervision by Utility supervisory personnel as to the work to be performed. The Utility will not instruct the operation of equipment in any way contrary to law or good equipment practice. The contractor and/or the operator shall be solely responsible for any and all damage to equipment while operating under this specification.

The contractor is responsible for providing the Utility, in writing, the names and telephone numbers (for day and night contact) which may be used to call regarding contract equipment.

Payment will be based on the daily rate bid for each piece of equipment under contract including operator and for laborer(s) on a daily basis. A day shall be considered a minimum of (8) hours, but not limited to. Travel time shall not be included in the 8 hours. Mobilization and Demobilization shall be a separate cost. A day shall also meet performance criteria outlined in the attached specifications. It is intended a weeks minimum of works will be completed when mobilization is requested. Cost saving options shall be outlined in the proposed work plan (example: if one operator can manage/monitor 3 pieces of equipment there is a cost savings for having three pieces of equipment onsite rather than one). The designated work site shall be specified by the Utility. Time clock for payment will terminate when equipment is released by the Utility. Payment is subject to an inspection of the work that has been completed. Payment for work performed and/or deductions from the guaranteed minimum payment will be computed to the nearest one-quarter hour. Payments will be made to the contractor within forty-five (45) days following receipt of invoice. Invoices may be sent to the Utility by the Utility's Project Management Information System (PMIS).

Pre-Bid Meeting

A pre-bid meeting will be held to discuss project information and answer any questions at the following time and location:

Citizens Square – 200 E. Berry St, Fort Wayne, IN; Suite 250 - Room 255

March 1, 2022 – 11:00am

Zoom Online also available to all Plan Holders.

Addenda

Any addenda will be posted on QuestCDN Online by the end of business day March 4, 2021. Contractor is responsible for checking Quest for any addenda posted.

Bids Due

Bids will ONLY be received by the Board of Public Works through its online bidding partner QuestCDN at www.questcdn.com, until 2:00 p.m. local time, on March 10, 2021. Bids submitted shall be publicly displayed at the Board of Public Works, 200 E. Berry Street, Suite 210, conference room 220 Fort Wayne, IN 46802 immediately following and posted for viewing at www.questcdn.com.

Contract Compliance

The contractor shall comply with requirements of the Fort Wayne Contract Compliance Department in regard to EBE Goals, and other documentation, if requested.

Award

Award of work shall be at the sole discretion of the Utility, with consideration for the following factors being part of the determination:

1. Lowest daily rates per unit price quote;
2. Proposed Work Plan
3. Expected tons/day of removal;
4. Availability when called. If contact cannot be made with the contractor, or if contractor does not have the necessary equipment and manpower available to perform this work within the time requested, further calling to the contractor for the specific job will not be mandatory;
5. Quality of equipment and efficiency of operation based on previous work observations by the Utility personnel;
6. Mobilization and Demobilization Cost;

This agreement may be terminated in part or in whole, if any work performed is not in accordance with the standards established by the Utility.

ADDITIONAL TERMS AND CONDITIONS

1. **SERVICES.** Contractor agrees to perform the Services beginning on the Begin Date and continuing until the Services are completed. Contractor warrants that the Services will be completed on or before the End Date. TIME IS OF THE ESSENCE. Contractor warrants that all Services shall conform to the Service Description, be of good quality and workmanship, and be free from defects. Contractor further warrants that all goods furnished in connection with the Services shall be merchantable and suitably safe and sufficient for the purpose for which they are normally used. Contractor warrants that it has good title to goods supplied hereunder and that they are free of all liens and encumbrances. These warranties are in addition to those implied in fact or in law. For the purposes of this Agreement, the term "Services" shall include any goods furnished in connection with the Services.
2. **INVOICES.** Contractor shall invoice the City for Services performed according to the Rates, Billing Interval, and Invoice Address. Invoices shall be rendered in triplicate and shall itemize the Services performed, the Service Address, and the corresponding rates and taxes, if any. Payment shall be due within thirty (30) days after the invoice date or the date of completion of the invoiced Services, whichever occurs later, provided that the City shall not be obligated to make any payment to Contractor hereunder until Contractor has furnished proof satisfactory to the City of full payment for all labor, materials, supplies, machinery, and equipment furnished for or used in performance of this Agreement or has furnished all necessary waivers of lien supported by affidavits, all satisfactory to the City, establishing that all liens and rights to claim liens that could arise out of the performance of the Services have been waived. Payment of invoices shall not constitute acceptance of the Services, and invoices shall be subject to adjustment for defects in quality or any other failure of Contractor to meet the requirements of this Agreement. The City may at any time set off any amount owed by the City to Contractor against any amount owed by Contractor or any of its affiliated companies to the City.
3. **INDEPENDENT CONTRACTOR RELATIONSHIP.** City and Contractor are and shall remain as independent contractors with respect to each other. The persons provided by Contractor to perform the Services shall be Contractor's employees and shall be under the sole and exclusive direction and control of Contractor. They shall not be considered employees of the City for any purpose. Contractor shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions, and payment of wages with respect to such persons. Contractor shall also be responsible for payment of taxes, including federal, state and municipal taxes chargeable or assessed with respect to its employees, such as Social Security, unemployment, Workers' Compensation, disability insurance, and federal and state withholding. Contractor shall also be responsible for providing such reasonable accommodations, including auxiliary aids and services, as may be required under the Americans With Disabilities Act, 42 U.S.C. (2101) et seq., so as to enable any disabled person furnished by Contractor to perform the essential functions of the job. Contractor agrees to defend, indemnify, and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained by reason of Contractor's failure to comply with this paragraph.
4. **INDEMNITY.** Contractor shall defend, indemnify, and hold harmless the City (including its officers, employees, and agents) from all demands, damages, liabilities, costs, and expenses (including reasonable attorney's fees), judgments, settlements, and penalties of every kind arising out of its performance of Services including, without limitation, damages for personal injury or death or loss or damage to property due, or claimed to be due, to the negligence or willful misconduct of Contractor including such portion thereof due, or claimed to be due, to the negligence of the City except that Contractor shall have no duty to hold harmless the City for such portion of the foregoing proximately caused by negligence or misconduct of the City, and if any suit, claim, or demand was defended by Contractor, then the City will reimburse Contractor for its pro-rata share of its costs, expenses (including reasonable attorney's fees), and damages. The City may elect to participate in the defense of any suit, claim, or demand by employing attorneys at its own expense, without waiving Contractor's obligations to indemnify, defend, or hold harmless. Contractor shall not settle or compromise any claim, suit, or action, or consent to entry of judgment without the prior written consent of the City and without an unconditional release of all liability by each claimant or plaintiff to the City.
5. **LIMITATION 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.
6. **INSURANCE.** Contractor 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/ \$2,000,000 aggregate
(c) Automobile Liability	\$1,000,000 minimum per occurrence
(d) Products Liability	\$1,000,000 minimum 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 Street, Suite 490
 Fort Wayne, IN 46802
7. **HAZARDOUS MATERIALS.** Contractor will provide to the City before performing any Services, a statement describing any Hazardous Materials intended and necessary for use in performing the Services. "Hazardous Materials" means any item which may be classified under federal, state, or local law, as hazardous or toxic. Contractor must comply with all federal, state, or local law in the use, transportation, and disposal of such Hazardous Materials.
8. **PROGRESS REPORTS.** The Contractor shall submit progress reports to the City upon request. The report shall serve the purpose of assuring the City that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date. This contract shall be deemed to the substantially performed only when fully performed according to its terms and conditions and any modification thereof.
9. **CONFLICT OF INTEREST.** Contractor certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees which will participate in any way in the performance of the Contractor's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City of Fort Wayne or any of its departments, divisions, agencies, officers, directors or agents.
10. **CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS, AND COPYRIGHT PROHIBITION.** Contractor further agrees that all information, data findings, recommendations, proposals, etc. by whatever name described and by whatever form therein secured, developed, written or produced by the Contractor in furtherance of this contract—shall be the property of the City. The Contractor shall take action as is necessary under law to preserve such property rights in and of the City while such property is within the control and/or custody of the Contractor. By this contract the Contractor specifically waives and/or releases to the City any cognizable property right of the Contractor to copyright, license, patent or otherwise use such information, data findings, recommendations proposals, etc.
11. **CONFIDENTIALITY OF CITY INFORMATION.** Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected data. Therefore, the Contractor promises and assures that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the City.
12. **EMPLOYER CERTIFICATION.** In accordance with I.C. §22-5-1-7, Contractor understands and agrees to enroll and verify work eligibility status of all newly hired employees of the contractor through E-Verify program or any other system of legal residence verification as approved by the United States Department of Homeland Security or the department of homeland security. Contractor further understands that they are not required to verify work eligibility of status of newly hired employees of the Contractor through the E-Verify program if the E-Verify program no longer exists. Contractor certifies that they do not knowingly employ any unauthorized aliens.
13. **COMPLIANCE WITH LAWS.** Contractor warrants that the Services shall be in strict conformity with all applicable local, state and federal laws including, but not limited to, the standards promulgated by the Occupational Safety and Health Act, Executive Order 11246, as amended, relative to Equal Employment Opportunity and all other applicable laws, rules, and regulations, including the Civil Rights Act of 1964 pertaining to equal opportunity, Section 503 of the Vocational Rehabilitation Act of 1973, the American with Disabilities Act, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and all applicable immigration laws and regulations including the 1986 Immigration Reform and Control Act et. seq. Contractor agrees to indemnify and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained because of Contractor's breach of such warranty.
14. **DEFAULT.** In the event that (a) Contractor breaches any warranty contained herein; (b) Contractor fails to provide the insurance certificate required herein; (c) Contractor or Contractor's insurance carrier fails to defend, indemnify, or hold harmless the City as required herein; (d) Contractor's performance of the Services violates applicable law; (e) Contractor admits insolvency, makes an assignment for the benefit of creditors, or has a trustee appointed to take over all or a substantial part of its assets; or (f) Contractor fails to perform or comply with any other provision of this Agreement, such failure, breach, or violation shall constitute a default under this Agreement.
15. **TERMINATION.** In the event of default by Contractor under this Agreement, the City reserves the right without liability, in addition to its other rights and remedies, to terminate this Agreement by notice to Contractor as to the portion of the Services not yet rendered and to purchase substitute services at Contractor's expense. Contractor shall reimburse the City for the cost of such substitute services upon Contractor's receipt of an invoice therefor.
16. **WAIVER.** No action or inaction by the City shall constitute a waiver of any right or remedy.
17. **CANCELLATION.** City may at any time cancel this Agreement in whole or in part for its sole convenience upon written notice to Contractor, and Contractor shall stop performing the Services on the date specified in such notice. The City shall have no liability as a result of such cancellation, except that the City will pay Contractor the Rates for completed Services accepted by the City and the actual incurred cost to Contractor for Services in progress. These payments shall not exceed the Aggregate Price.
18. **FORCE MAJEURE.** Neither party shall be liable to the other or responsible for nonperformance of any of the terms of this Agreement due to unforeseeable causes beyond the reasonable control and without the fault or negligence of such party, including, but not restricted to acts of God or the public enemy, acts of government, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.

19. **NOTICES.** All notices required or permitted to be made or given hereunder by one party to the other party shall be in writing and shall be deemed to have been given when hand delivered, or on the date stated on the receipt if deposited in the United States mail in certified form, postage prepaid with return receipt requested, and addressed to such other party at its Notice Address or at such other address as may be specified by such other party by written notice sent or delivered in accordance herewith.
20. **ASSIGNMENT.** Any assignment, in whole or in part, of Contractor's rights or obligation under this Agreement without the prior written consent of the City shall be void. Contractor shall not use subcontractors to perform any part of the Services without the prior written consent of the City.
21. **DISPUTE RESOLUTION.** The City shall be the sole judge of the quality of services. In the event of any dispute or disagreement between the parties either with respect to the interpretation of any provision of this agreement, or with respect to the performance of either party hereunder, the dispute shall be resolved by the Director of Finance and Administration and will not be subject to arbitration.
22. **ACCESS TO RECORDS.** The Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred. They shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the City or by any other authorized representative of city government. Copies thereof shall be furnished at no cost to the City if requested.
23. **NONDISCRIMINATION.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this contract. The Contractor shall not discriminate with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
24. **MISCELLANEOUS.** If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected. This Agreement shall be governed by the laws of the state of Indiana and shall be subject to the exclusive jurisdiction of the courts therein. This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understanding, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. No agreement hereafter made shall be effective to modify or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the modification or discharge is sought. The paragraph headings are for convenience only and are not intended to affect the interpretation of the provisions hereof. This agreement shall be binding on the parties hereto and their respective personal and legal representatives, successors and assigns.

REQUIREMENTS TO PROVIDE LABOR AND EQUIPMENT FOR
WET WEATHER POND DREDGING SERVICES TO FORT WAYNE UTILITY SYSTEMS

The contractor hereby agrees that when notified by the Utility, the contractor will supply the equipment, manpower, and materials as necessary at the price indicated on exhibits "A, B, C, and D," attached hereto and made a part hereof and accepts the additional Terms and Conditions of the Contract.

MERRELL BROS., INC.

Contractor's Name

8811 WEST 500 NORTH, KOKOMO, IN 46901

Contractor's Address

BRAYDEN MERRELL, SR EVENT PROJECT COORDINATOR

Contractor Name's/Title (please print)

Brayden Merrell

Contractor's Signature

03.08.2022

(Date)

APPROVED THIS 22 DAY OF March, 2022.

BOARD OF PUBLIC WORKS

BY:

Shan Gunawardena, Chair

BY:

Kumar Menon, Member

BY:

Chris Guerrero, Member

ATTEST:

Michelle Fulk-Vondran, Clerk

DATE:

3.22.2022

76975 – City Utilities Wet Weather Pond Dredging Services
 QuestCDN eBidDoc/project number is # 8133093

Contractor to complete below Exhibits:
Add and edit as necessary

EXHIBIT A – CONTRACTOR CONTACT INFORMATION

<u>Authorized Contact</u>	<u>Cell Phone</u>	<u>Work Phone</u>	<u>Home Phone</u>	<u>Emergency Contact Number</u>
BRAYDEN MERRELL	(765) 438.6704	(574) 699.7782	(765) 438.6704	(765) 438.6704
DUSTIN SMITH	(765) 438.3152	(574) 699.7782	(765) 438.3152	(765) 438.3152

EXHIBIT B – CONTRACTOR EQUIPMENT INFORMATION

<u>Equipment</u>	<u>Description</u>	<u>Daily Rate</u>	<u>Quantity Available</u>
<i>Brand Name</i>	<i>Must include equipment limits such as reach, KW, Tons, etc.</i>		
Dredging Equipment			
IMS 5012 DREDGE	1033 YDS/HR 22 FT DREDGING DEPTH	\$1,283.00	1
OR			
MUDCAT 115D	681 YDS/HR 15 FT DREDGING DEPTH		
Dewatering Equipment			
ALPHA LAVAL 2.0 METER	2.0 METER PRESS BASED ON ~40 WET TONS PER 10-12 HR DAY	\$1,241.00	3
Trucks & Vehicles			
MACK QUAD DUMP	QUAD DUMP ~20-24 TONS HAULING	\$2,346.00	3*
OR			
MACK SEMI & TRINITY TRAILER	TRINITY TRAILER (WALKING FLOOR) ~20-24 TONS HAULING		
	*UP TO (3) TRUCKS AS NEEDED BASED ON PRODUCTION & ROUND TRIP TIMES TO LANDFILL		

EXHIBIT C – MANPOWER / CREW INFORMATION

<u>Normal quantity assigned</u>	<u>Manpower Only Rates</u>	<u>**RATES INCLUDE OVERNIGHTS, PER DIEM, NO PREVAILING WAGE RATES BASED ON (8) HOUR DAYS</u>	<u>Daily Rate</u>
1.0	50	Project Manager	\$400.00
		Supervisor	
2.0	42	Operator	\$672.00
1.0	32	Laborer (IF NEEDED, DON'T PLAN TO USE)	
1.0	40	Truck Driver	\$320.00
		Mechanic/Welder	

EXHIBIT D – OPERATOR AND SUPERVISOR INFORMATION

<u>Years Experience</u>	<u>Name</u>	<u>Certifications</u>	<u>Rate</u>
20	MICHAEL WOODS	OSHA & CONFINED SPACE, CDL A DRIVERS	N/A
29	GREG BELL	HUNDREDS OF PROJECTS COMPLETED BY THIS TEAM	
6	ERIC BLOK		
7	TAYLOR RICHARDSON		
12	JOHN METCALF		
3	JUSTIN BALLINGER		

Proposed Work plan is attached below rate sheets

TOTALS:

MOB/DEMOB: MOB/DEMOB OF DREDGE, (3) BELT PRESS UNITS, MIX TANK, POLYMER TRAILER, TRUCKS & VEHICLES, PIPE TRAILERS/HOSES, CRANE SERVICES, SITE RESTORATION/PREP, SET UP & TEAR DOWN	LS	\$34,942.00
DREDGING EQUIPMENT		\$ 1,283.00
(3) BELT PRESSES, DEWATERING EQUIPMENT		\$ 3,723.00
TRUCKS & VEHICLES (UP TO 3)		\$ 2,346.00
MANPOWER (4, AS SHOWN ABOVE)		\$ 1,392.00
TOTAL DAILY RATES		\$ 8,744.00*

*\$8,744.00 FIRST (30) WORKING DAYS
 *\$8,539.00 (30-60) WORKING DAYS
 *\$8,327.00 (60-90) WORKING DAYS
 *\$8,246.00 (90+) WORKING DAYS

CITY OF FORT WAYNE, INDIANA

MERRELL BROS., INC.

(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% ☒ (X)

(ii) Distributable income share exceeding 5% ☐

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

Name: TED & JEAN MERRELL

Name: TERRY & NIETA MERRELL

Address: 8577 WEST 500 NORTH, KOKOMO, IN 46901

Address: 8867 WEST 500 NORTH, KOKOMO, IN 46901

- 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) _____

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

Name: TED MERRELL 25 %
JEAN MERRELL 25

Name: TERRY MERRELL 25 %
NIETA MERRELL 25

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 _____ No X

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).

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

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).

-
- 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

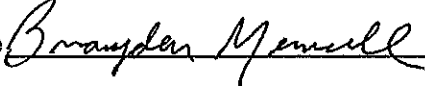
elements as the offense of bid-rigging or bid-rotating

- 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

<u>MERRELL BROS., INC.</u>	<u>8811 WEST 500 NORTH, KOKOMO, IN 46901</u>
(Name of Vendor)	Address
	<u>(574) 699.7782</u>
	Telephone
	<u>brayden@merrellbros.com</u>
	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)	<u>BRAYDEN MERRELL</u>	Title	<u>EVENT PROJECT SR. DIRECTOR</u>
Signature		Date	<u>04.07.2022</u>

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

CITY UTILITIES WET WEATHER POND DREDGING SERVICES
REQUIREMENTS TO PROVIDE LABOR AND EQUIPMENT FOR
WET WEATHER POND DREDGING SERVICES TO FORT WAYNE UTILITY SYSTEMS

Scope of Work:

Fort Wayne Utilities is requesting time and material quotes for contracting various types of labor and equipment for dredging services located at the Water Pollution Control Plant Wet-Weather Storage Ponds, 2750 Lake Ave, Fort Wayne, IN 46805. Such work includes dredging, dewatering, and transportation of material removed from Pond 1.

The contractor can bid trucking on a per mile basis if capable. The trucking bid would be based on hauling full load to a set designation and heading directly back to the site. Example would be Hauling from Pond 1 at the Water Pollution Control Plant Wet-Weather Storage facility on Lake Avenue to the Landfill on Smith Road round trip. Price would be based on mileage from Lake avenue to the Landfill. You would calculate your loaded cost and deadhead miles into price giving us a cost per mile for that hauling distance.

It is the intent of the Utility to select a single contractor for this work.

Term of agreement: January 1, 2022 through December 31, 2023, on an "as needed" basis. The Utility reserves the right to award work to multiple contractors based upon the availability of the contractor(s), projected costs of the project and the amount and type of work that needs to be performed.

Contractor Responsibilities:

The contractor shall furnish equipment as necessary to complete the dredging services outlined by the attached specifications and City Utilities Engineering. One or more pieces of fully operated equipment, as deemed necessary by the Utility including operator, complete maintenance, insurance, fuel and oil may be needed for the work to be performed. Equipment shall meet all requirements necessary for safe and efficient operation, under all weather conditions as determined by Utility Engineering staffs.

The contractor shall furnish experienced and competent operators, laborers, and supervisors having sufficient knowledge of Fort Wayne Utility Standards and Specifications and relevant experience in the dredging industry. Supervisors/forepersons shall be able to follow verbal and/or written instructions on the type of services required. Laborers shall be experienced with dredging and dewatering equipment. All operators shall be properly licensed.

The contractor shall indemnify and hold harmless the City of Fort Wayne, Indiana, its officers and employees, from all damages, claims, suits, and actions of any descriptions, for or resulting from injuries or damages received or sustained by any party or parties arising out of any act or failure to act, of said contractor, or his agents, in the execution of work under the contract.

The contractor shall be responsible for adherence to all OSHA regulations for trenching and shoring. In addition, contractor shall provide necessary traffic control, signage, barricades, etc., in compliance with City, County, and State traffic control regulations.

The contractor will be responsible for all restoration, including but not limited to the repair of all asphalt, concrete, curbing, sidewalk affected at the job site.

The contractor shall be responsible for all damages intentionally or unintentionally caused during the work.

Contractor shall halt work based on anticipated wet weather flows at the facility. Contractor shall not work in the system if the WPCP has exceeded 55 MGD unless written authorization is given by the City.

Statements of Conditions

Equipment owned by the contractor will be ordered out only when the Utility determines there is sufficient reason to warrant use of such equipment. Equipment not being utilized on the jobsite will not be considered during payment of work completed. All work shall follow the payment measurements outlined in the specifications.

Equipment and operation therefore shall comply with all Federal, State, County, and City regulations governing such equipment and its operation. The contractor shall not proceed with any work contrary to law. All equipment shall be in good mechanical condition when reporting for work. The Utility will not pay for any lost time due to mechanical defects or time spent performing necessary repairs. The contractor shall report all breakdowns immediately to the Utility supervisor. No payment will be made for the equipment while it is off the job for servicing, however, payment will continue during the time equipment is being fueled and oiled providing such service is performed on the site by a mobile service unit. Electrical power for equipment will be provided by the City through existing connection points. Contractor is required to provide all cabling and isolation for the equipment.

The City of Fort Wayne reserves the right to make a rigid inspection as to mechanical and safety features of any and all construction equipment dispatched to work sites at any time during the period of the contract. Such inspections shall in no way relieve the contractor of the responsibility to furnish equipment in compliance with all requirements of the specifications. All equipment which, in the opinion of the City of Fort Wayne, is in poor mechanical condition or otherwise does not comply with these specifications, will be rejected and shall not be used on any Utility project until repaired or replaced. No payment will be made by the Utility for time or labor expended by the Contractor if said equipment is rejected as a result of such an inspection, until repair or replacement is established to the Utility's satisfaction.

Equipment and its operation shall be subject to supervision by Utility supervisory personnel as to the work to be performed. The Utility will not instruct the operation of equipment in any way contrary to law or good equipment practice. The contractor and/or the operator shall be solely responsible for any and all damage to equipment while operating under this specification.

The contractor is responsible for providing the Utility, in writing, the names and telephone numbers (for day and night contact) which may be used to call regarding contract equipment.

Payment will be based on the daily rate bid for each piece of equipment under contract including operator and for laborer(s) on a daily basis. A day shall be considered a minimum of (8) hours, but not limited to. Travel time shall not be included in the 8 hours. Mobilization and Demobilization shall be a separate cost. A day shall also meet performance criteria outlined in the attached specifications. It is intended a weeks minimum of works will be completed when mobilization is requested. Cost saving options shall be outlined in the proposed work plan (example: if one operator can manage/monitor 3 pieces of equipment there is a cost savings for having three pieces of equipment onsite rather than one). The designated work site shall be specified by the Utility. Time clock for payment will terminate when equipment is released by the Utility. Payment is subject to an inspection of the work that has been completed. Payment for work performed and/or deductions from the guaranteed minimum payment will be computed to the nearest one-quarter hour. Payments will be made to the contractor within forty-five (45) days following receipt of invoice. Invoices may be sent to the Utility by the Utility's Project Management Information System (PMIS).

Pre-Bid Meeting

A pre-bid meeting will be held to discuss project information and answer any questions at the following time and location:

Citizens Square – 200 E. Berry St, Fort Wayne, IN; Suite 250 - Room 255

March 1, 2022 – 11:00am

Zoom Online also available to all Plan Holders.

ADDITIONAL TERMS AND CONDITIONS

1. **SERVICES.** Contractor agrees to perform the Services beginning on the Begin Date and continuing until the Services are completed. Contractor warrants that the Services will be completed on or before the End Date. **TIME IS OF THE ESSENCE.** Contractor warrants that all Services shall conform to the Service Description, be of good quality and workmanship, and be free from defects. Contractor further warrants that all goods furnished in connection with the Services shall be merchantable and suitably safe and sufficient for the purpose for which they are normally used. Contractor warrants that it has good title to goods supplied hereunder and that they are free of all liens and encumbrances. These warranties are in addition to those implied in fact or in law. For the purposes of this Agreement, the term "Services" shall include any goods furnished in connection with the Services.
 2. **INVOICES.** Contractor shall invoice the City for Services performed according to the Rates, Billing Interval, and Invoice Address. Invoices shall be rendered in triplicate and shall itemize the Services performed, the Service Address, and the corresponding rates and taxes, if any. Payment shall be due within thirty (30) days after the invoice date or the date of completion of the invoiced Services, whichever occurs later, provided that the City shall not be obligated to make any payment to Contractor hereunder until Contractor has furnished proof satisfactory to the City of full payment for all labor, materials, supplies, machinery, and equipment furnished for or used in performance of this Agreement or has furnished all necessary waivers of lien supported by affidavits, all satisfactory to the City, establishing that all liens and rights to claim liens that could arise out of the performance of the Services have been waived. Payment of invoices shall not constitute acceptance of the Services, and invoices shall be subject to adjustment for defects in quality or any other failure of Contractor to meet the requirements of this Agreement. The City may at any time set off any amount owed by the City to Contractor against any amount owed by Contractor or any of its affiliated companies to the City.
 3. **INDEPENDENT CONTRACTOR RELATIONSHIP.** City and Contractor are and shall remain as independent contractors with respect to each other. The persons provided by Contractor to perform the Services shall be Contractor's employees and shall be under the sole and exclusive direction and control of Contractor. They shall not be considered employees of the City for any purpose. Contractor shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions, and payment of wages with respect to such persons. Contractor shall also be responsible for payment of taxes, including federal, state and municipal taxes chargeable or assessed with respect to its employees, such as Social Security, unemployment, Workers' Compensation, disability insurance, and federal and state withholding. Contractor shall also be responsible for providing such reasonable accommodations, including auxiliary aids and services, as may be required under the Americans With Disabilities Act, 42 U.S.C. 12101 et seq., so as to enable any disabled person furnished by Contractor to perform the essential functions of the job. Contractor agrees to defend, indemnify, and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained by reason of Contractor's failure to comply with this paragraph.
 4. **INDEMNITY.** Contractor shall defend, indemnify, and hold harmless the City (including its officers, employees, and agents) from all demands, damages, liabilities, costs, and expenses (including reasonable attorney's fees), judgments, settlements, and penalties of every kind arising out of its performance of Services including, without limitation, damages for personal injury or death or loss or damage to property due, or claimed to be due, to the negligence or willful misconduct of Contractor including such portion thereof due, or claimed to be due, to the negligence of the City except that Contractor shall have no duty to hold harmless the City for such portion of the foregoing proximately caused by negligence or misconduct of the City, and if any suit, claim, or demand was defended by Contractor, then the City will reimburse Contractor for its pro-rata share of its costs, expenses (including reasonable attorney's fees), and damages. The City may elect to participate in the defense of any suit, claim, or demand by employing attorneys at its own expense, without waiving Contractor's obligations to indemnify, defend, or hold harmless. Contractor shall not settle or compromise any claim, suit, or action, or consent to entry of judgment without the prior written consent of the City and without an unconditional release of all liability by each claimant or plaintiff to the City.
 5. **LIMITATION 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.
 6. **INSURANCE.** Contractor 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/ \$2,000,000 aggregate
(c)	Automobile Liability	\$1,000,000 minimum per occurrence
(d)	Products Liability	\$1,000,000 minimum 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 Street, Suite 490
 Fort Wayne, IN 46802
7. **HAZARDOUS MATERIALS.** Contractor will provide to the City before performing any Services, a statement describing any Hazardous Materials intended and necessary for use in performing the Services. "Hazardous Materials" means any item which may be classified under federal, state, or local law, as hazardous or toxic. Contractor must comply with all federal, state, or local law in the use, transportation, and disposal of such Hazardous Materials.
 8. **PROGRESS REPORTS.** The Contractor shall submit progress reports to the City upon request. The report shall serve the purpose of assuring the City that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date. This contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.
 9. **CONFLICT OF INTEREST.** Contractor certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees which will participate in any way in the performance of the Contractor's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City of Fort Wayne or any of its departments, divisions, agencies, officers, directors or agents.
 10. **CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS, AND COPYRIGHT PROHIBITION.** Contractor further agrees that all information, data findings, recommendations, proposals, etc. by whatever name described and by whatever form therein secured, developed, written or produced by the Contractor in furtherance of this contract—shall be the property of the City. The Contractor shall take action as is necessary under law to preserve such property rights in and of the City while such property is within the control and/or custody of the Contractor. By this contract the Contractor specifically waives and/or releases to the City any cognizable property right of the Contractor to copyright, license, patent or other wise use such information, data findings, recommendations proposals, etc.
 11. **CONFIDENTIALITY OF CITY INFORMATION.** Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected data. Therefore, the Contractor promises and assures that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the City.
 12. **EMPLOYER CERTIFICATION.** In accordance with I.C. §22-5-1-7, Contractor understands and agrees to enroll and verify work eligibility status of all newly hired employees of the contractor through E-Verify program or any other system of legal residence verification as approved by the United States Department of Homeland Security or the department of homeland security. Contractor further understands that they are not required to verify work eligibility of status of newly hired employees of the Contractor through the E-Verify program if the E-Verify program no longer exists. Contractor certifies that they do not knowingly employ any unauthorized aliens.
 13. **COMPLIANCE WITH LAWS.** Contractor warrants that the Services shall be in strict conformity with all applicable local, state and federal laws including, but not limited to, the standards promulgated by the Occupational Safety and Health Act, Executive Order 11246, as amended, relative to Equal Employment Opportunity and all other applicable laws, rules, and regulations, including the Civil Rights Act of 1964 pertaining to equal opportunity, Section 503 of the Vocational Rehabilitation Act of 1973, the American with Disabilities Act, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and all applicable immigration laws and regulations including the 1986 Immigration Reform and Control Act et. seq. Contractor agrees to indemnify and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained because of Contractor's breach of such warranty.
 14. **DEFAULT.** In the event that (a) Contractor breaches any warranty contained herein; (b) Contractor fails to provide the insurance certificate required herein; (c) Contractor or Contractor's insurance carrier fails to defend, indemnify, or hold harmless the City as required herein; (d) Contractor's performance of the Services violates applicable law; (e) Contractor admits insolvency, makes an assignment for the benefit of creditors, or has a trustee appointed to take over all or a substantial part of its assets; or (f) Contractor fails to perform or comply with any other provision of this Agreement, such failure, breach, or violation shall constitute a default under this Agreement.
 15. **TERMINATION.** In the event of default by Contractor under this Agreement, the City reserves the right without liability, in addition to its other rights and remedies, to terminate this Agreement by notice to Contractor as to the portion of the Services not yet rendered and to purchase substitute services at Contractor's expense. Contractor shall reimburse the City for the cost of such substitute services upon Contractor's receipt of an invoice therefor.
 16. **WAIVER.** No action or inaction by the City shall constitute a waiver of any right or remedy.
 17. **CANCELLATION.** City may at any time cancel this Agreement in whole or in part for its sole convenience upon written notice to Contractor, and Contractor shall stop performing the Services on the date specified in such notice. The City shall have no liability as a result of such cancellation, except that the City will pay Contractor the Rates for completed Services accepted by the City and the actual incurred cost to Contractor for Services in progress. These payments shall not exceed the Aggregate Price.
 18. **FORCE MAJEURE.** Neither party shall be liable to the other or responsible for nonperformance of any of the terms of this Agreement due to unforeseeable causes beyond the reasonable control and without the fault or negligence of such party, including, but not restricted to acts of God or the public enemy, acts of government, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.

19. **NOTICES.** All notices required or permitted to be made or given hereunder by one party to the other party shall be in writing and shall be deemed to have been given when hand delivered, or on the date stated on the receipt if deposited in the United States mail in certified form, postage prepaid with return receipt requested, and addressed to such other party at its Notice Address or at such other address as may be specified by such other party by written notice sent or delivered in accordance herewith.
20. **ASSIGNMENT.** Any assignment, in whole or in part, of Contractor's rights or obligation under this Agreement without the prior written consent of the City shall be void. Contractor shall not use subcontractors to perform any part of the Services without the prior written consent of the City.
21. **DISPUTE RESOLUTION.** The City shall be the sole judge of the quality of services. In the event of any dispute or disagreement between the parties either with respect to the interpretation of any provision of this agreement, or with respect to the performance of either party hereunder, the dispute shall be resolved by the Director of Finance and Administration and will not be subject to arbitration.
22. **ACCESS TO RECORDS.** The Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred. They shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the City or by any other authorized representative of city government. Copies thereof shall be furnished at no cost to the City if requested.
23. **NONDISCRIMINATION.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this contract. The Contractor shall not discriminate with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
24. **MISCELLANEOUS.** If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected. This Agreement shall be governed by the laws of the state of Indiana and shall be subject to the exclusive jurisdiction of the courts therein. This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understanding, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. No agreement hereafter made shall be effective to modify or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the modification or discharge is sought. The paragraph headings are for convenience only and are not intended to affect the interpretation of the provisions hereof. This agreement shall be binding on the parties hereto and their respective personal and legal representatives, successors and assigns.

REQUIREMENTS TO PROVIDE LABOR AND EQUIPMENT FOR
WET WEATHER POND DREDGING SERVICES TO FORT WAYNE UTILITY SYSTEMS

The contractor hereby agrees that when notified by the Utility, the contractor will supply the equipment, manpower, and materials as necessary at the price indicated on exhibits "A, B, C, and D," attached hereto and made a part hereof and accepts the additional Terms and Conditions of the Contract.

Fox Contractors Corp.
Contractor's Name
5430 W. Ferguson Rd; Fort Wayne, IN 46809
Contractor's Address
Dallas D. Day, President
Contractor Name's/Title (please print)
Contractor's Signature
March 10, 2022
(Date)

APPROVED THIS 22 DAY OF March, 2022.

BOARD OF PUBLIC WORKS

BY:

Shan Gunawardena, Chair

BY:

Kumar Menon, Member

BY:

Chris Guerrero, Member

ATTEST:

Michelle Fulk-Vondran, Clerk

DATE:

3.22.2022

76975 – City Utilities Wet Weather Pond Dredging Services
 QuestCDN eBidDoc/project number is # 8133093

Contractor to complete below Exhibits:
Add and edit as necessary

EXHIBIT A – CONTRACTOR CONTACT INFORMATION

<u>Authorized Contact</u>	<u>Cell Phone</u>	<u>Work Phone</u>	<u>Home Phone</u>	<u>Emergency Contact Number</u>
Jay Gearhart	260-410-5899	260-755-7945	260-410-5899	260-410-5899
Steve Baker	260-494-4202	260-494-4202	260-494-4202	260-494-4202

EXHIBIT B – CONTRACTOR EQUIPMENT INFORMATION

<u>Equipment</u>	<u>Description</u>	<u>Daily Rate</u>	<u>Quantity Available</u>
<i>Brand Name</i>	<i>Must include equipment limits such as reach, KW, Tons, etc.</i>		
Dredging Equipment		NA	
Dewatering Equipment		NA	
Trucks & Vehicles			
	Hauling Cost from Lake Avenue to the Landfill on Smith Road Round Trip	\$ 17.70	per mile

EXHIBIT C – MANPOWER / CREW INFORMATION

<u>Normal quantity assigned</u>	<u>Manpower Only Rates</u>		<u>Daily Rate</u>
	\$ 85.00 per hr.	Project Manager	\$ 680.00
	\$ 85.00 per hr.	Supervisor	\$ 680.00
	\$ 82.00 per hr.	Operator	\$ 656.00
	\$ 65.00 per hr.	Laborer	\$ 520.00
	\$ 73.00 per hr.	Truck Driver	\$ 584.00
	\$ 82.00 per hr.	Mechanic/Welder	\$ 656.00

EXHIBIT D – OPERATOR AND SUPERVISOR INFORMATION

<u>Years Experience</u>	<u>Name</u>	<u>Certifications</u>	<u>Rate</u>
Over 15 Years	Steve Baker		\$ 65.00 per hr.
	Union Operators (Local 103 Indiana Operators)		

Proposed Work plan is attached below rate sheets

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).

Biosolids location - Contract Period 1-1-18 - 12-31-22

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

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).

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.). - NO

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

<u>Fox Contractors Corp.</u>	<u>5430 W. Ferguson Rd, Ft. Wayne, IN 46809</u>
(Name of Vendor)	Address
	<u>() (260) 747-7461</u>
	Telephone
	<u>tclark@foxcontractors.com</u>
	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) <u>Dallas D. Day</u>	Title <u>President</u>
Signature <u><i>Dallas D. Day</i></u>	Date <u>Jan. 4, 2022</u>

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

Interoffice Memo

Date: April 06, 2022
To: Common Council Members
From: Michael Kiester, Manager, City Utilities Engineering
RE: **City Utilities Wet Weather Pond Dredging Services**

Council District #: All

City Utilities has utilized on-call service agreements to assist with various work located at the Water Pollution Control Plant for many years.

This ordinance for dredging the wet-weather ponds at the Water Pollution Control Plant includes daily rates for three firms: Metropolitan Environmental Services, Merrell Brothers Inc., and Fox Contracting. All these firms have the necessary equipment and expertise to assist with some portion of the work associated with the removal of the sediment currently located in the wet weather pond.

The rates associated with this type of work are unique to each firm's means and methods of removing the material. The rates provided are being honored until the end of 2023. These rates include labor and equipment required to ensure productive sediment removal.

Due to the quantity of material currently settled in the pond, it is anticipated that the compensation to these firms will exceed \$150,000 for a year; therefore, we are asking Council to approve this ordinance.

Implications of not being approved:

The pond at the Water Pollution Control Plant provides storage of wet weather flows during rain events in the city. Sediment has settled in the grit capturing basin of the pond and limits the capacity of the ponds storage if not removed from the system. By removing the sediment, we will restore the necessary capacity of the system and will be able to manage wet-weather events more effectively.

Council Suspension of Rules: N/A

The cost of said services is funded by the Sewer Utilities Revenue.

Council Introduction Date: April 12, 2022

CC: Matthew Wirtz
Jill Helfrich
File