

AN ORDINANCE approving PROFESSIONAL SERVICES AGREEMENT – ENERGY SUSTAINABILITY PROJECT PHASE II; PROGRAM MANAGEMENT SUPPORT SERVICES – (\$191,330.00) - RESOLUTION/WORK ORDER #76846 – between CDM SMITH INC. and the City of Fort Wayne, Indiana, by and through its Board of Public Works.

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

SECTION 1. That the PROFESSIONAL SERVICES AGREEMENT – ENERGY SUSTAINABILITY PROJECT PHASE II; PROGRAM MANAGEMENT SUPPORT SERVICES - between CDM SMITH INC. and the City of Fort Wayne, Indiana, by and through its Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for serving as City's professional representative for the Project, providing professional Engineering consultation and advice, and other customary services incidental thereto. Energy Sustainability Project Phase II; Program Management Support Services includes design, construction, operation and transfer of energy optimization and improvements at the treatment facilities to develop a sustainable infrastructure solution that shares energy resources across facilities, increases the use of renewable energy, reduces peak demands, increases overall reliability and resilience of the Project facilities, and limits future dependency on external suppliers. CDM Smith was selected to serve as the Program Manager for the Project to coordinate activities between the GM Development/Solential team and CU. This PSA covers program management services for Phase II of the project;

involving a total of ONE HUNDRED NINETY-ONE THOUSAND THREE HUNDRED THIRTY and 00/100 DOLLARS (\$191,330.00), the cost of which is being funded by Sewer Utility Bonds. A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

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

Council Member

APPROVED AS TO FORM AND LEGALITY

Malak Heiny, City Attorney

PROFESSIONAL SERVICES AGREEMENT

Energy Sustainability Project – Phase II Program Management Support Services

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

by and through its

Board of Public Works
City of Fort Wayne
200 E. Berry Street, Suite 240
Fort Wayne, IN 46802

and

CDM Smith Inc. (Engineer)

Who agree as follows:

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

APPROVALS

APPROVED FOR CITY

BOARD OF PUBLIC WORKS

BY: _____
Shan Gunawardena, Chair

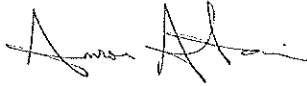
BY: _____
Kumar Menon, Member

BY: _____
Chris Guerrero, Member

ATTEST: _____
Michelle Fulk-Vondran, Clerk

DATE: _____

APPROVED FOR ENGINEER



BY: _____
Amrou Atassi, Vice President

DATE: _____
September 22, 2022

PART I

SCOPE OF BASIC ENGINEERING SERVICES

A. GENERAL

Engineer shall provide the City Professional Engineering services to which this scope of services applies. These services will include serving as City's professional representative for the Project, providing Professional Engineering consultation and advice, furnishing Engineering services and other customary services incidental thereto.

B. PROJECT DESCRIPTION

The City of Fort Wayne Division of Utilities (CU) issued a request for proposal (RFP #2021) for qualified parties to submit Proposals and Statements of Qualifications to design, obtain financing, construct, operate, and transfer improvements related to energy optimization and sustainability at the Three Rivers Water Filtration Plant, Water Pollution Control Plant, and Wet Weather Pumping Station (the "Project") under a build-operate-transfer program. The goal and intent of the Project is to develop a sustainable infrastructure solution that shares energy resources across facilities, increases the use of renewable energy, reduces peak demands, increases overall reliability and resiliency of the Project facilities, and limits future dependency on external suppliers. As part of the RFP, the GM Development/Solential team (Project Developer) was selected to move forward with the scoping phase.

CDM Smith was selected to serve as the Program Manager for the Project to coordinate activities between the GM Development/Solential team and CU. This PSA covers program management services for Phase II of the project, which is anticipated to span over a 14-month period.

C. SCOPE OF WORK

Professional engineering services as described herein, shall be provided by the Engineer to provide Program Management services for the Project. The Engineer shall provide the following services as directed by CU and up to the maximum number of hours allotted for each subtask. CDM Smith will provide updated employee hourly rate schedule for use with the Scope of Work herein in May 2023 and if necessary, May 2024.

Task 1 - Project Management and Coordination

Task 1 scope and fee has been provided for the duration of the project (anticipated or assumed to be 14 months).

- 1.01 Project Management: The Engineer will perform project management tasks throughout the duration of this contract (14 months), including scope, schedule, and budget monitoring. The Engineer will coordinate and communicate with and provide assistance to CU's designated Project Manager (PM) during this assumed duration of Project phase. The Engineer will conduct a kickoff meeting with the designated CU PM. An allowance of hours has been included for Task 1 based on Phase I efforts.
- 1.02 Project Management System: The Engineer will establish a project management system to provide scope, schedule, and budget management, and be responsive to input from CU. The Engineer will coordinate communication, progress updates and meetings related to the project, as requested by CU.

Task 2 – Program Management Services and Meetings

Task 2 scope and fee has been provided for the duration of the project phase (anticipated or assumed to be 14 months).

- 2.01 Program Management: The Engineer will provide program management services for the Project.. Engineer will coordinate with the GM Development/Solential Team during this phase regarding the overall project objectives, schedule, and scope. An allowance of hours has been included for

Task 2 based on Phase I efforts. Engineer will maintain a log of action items and decisions for the Project.

- 2.02 Recurring Team Meetings: The Engineer will coordinate recurring meetings (participate virtually) with GM Development/Solential Team. For each meeting, Engineer will develop an agenda, meeting minutes, action items log, and decision items log.

Task 3 – Design Phase Services

Engineer is not responsible for any design or integration services on this Project. Services under this task are strictly support services as needed by CU for coordination with other parties. Services under Task 3 include the following design-related support services that are intended as allowance of hours to be used at the direction of CU:

- 3.01 Electrical Support Services: Engineer will assist CU with oversight of GM Development/Solential's proposed electrical interconnection in terms of project scope, technical approach, and coordination with CU. Engineer will assist with utility coordination for the Project, specifically regarding communication with AEP and NIPSCO. Engineer will provide limited technical review of submitted electrical analysis models. Engineer will coordinate comments and modifications with GM Development/Solential team for final submittal. It is understood that a detailed model review is not part of the Scope of Work.
- 3.02 Site Visits: Engineer will conduct one site visit of CU's facilities. One (1) site conducted by two (2) personnel from the project team is included.
- 3.03 Draft Agreement Exhibits: Engineer will review Draft Agreement Exhibits between the GM Development/Solential Team and CU for technical content only. Legal and administrative review of Agreements and associated terms and conditions will be performed by Others.
- 3.04 Design Deliverable Reviews: The Engineer will review the submitted 60% and 100% design deliverables from a high-level perspective for consistency based on previous meetings or comments. The design review is limited to verification of conformance to CU's design intent and does not cover detailed discipline reviews. Detailed review by senior technical advisors is scoped under Potential Optional Services.
- 3.05 Automation Support Services: Engineer will provide automation consulting services for the project as directed by CU based on an allowance of 80 hours. Automation consulting services will include supporting CU with establishing criteria for new SCADA (Supervisory Control and Data Acquisition) systems and communication systems to be integrated with the existing City SCADA systems at the Water Filtration Plant and Water Pollution Control Plant. Engineer will attend up to one (1) virtual workshop with CU's information technology and SCADA group and one (1) two-day site visits for one person. During the workshop, Engineer will discuss the existing network, modifications to extend communications to the new facilities, operational control strategies and integration requirements for integrating the new facilities into the existing human-machine interface (HMI) system. Engineer is not responsible for design of the microgrid controller or implementing any control changes.
- 3.06 Equipment Submittals: Engineer will assist with submittal reviews during the design phase as directed by CU. This may include review of the submitted arc flash study. The equipment submittals will be reviewed for compliance with the Developer's drawings and specifications. A total of 80 hours is included in this subtask as an allowance for equipment submittal review.

Task 4 – Potential Optional Services

CDM Smith can provide the following potential optional services listed below under "Potential Optional Services" to be tracked under Task 4 – Potential Optional Services.

Exclusions / Assumptions

1. Engineer is acting as the Owner's representative and is not responsible for engineering design services, construction management and/or observation services, permitting, legal services, contract negotiations, and other related tasks. All those tasks are assumed to be the responsibility of others.
2. Engineer's fee is based on providing the above services and estimated project duration. If additional Program Management services are needed, the City will amend this PSA.
3. Distributed generation facilities including solar photovoltaics will be designed by others.
4. The application to interconnect with the power company will be initiated by Solential.
5. Engineer is not responsible for preparing permit applications or obtaining permits for this Project.
6. Fee is based on number of meetings and defined project duration. With the exception of in person site visits, meetings and workshops are considered virtual.
7. Electrical and automation support hours (Task 3) are considered allowances to be used as directed by CU and may need to be increased as needed based on involvement with automation training and electrical interconnection review.
8. Engineer is not responsible for the realization or actualization of energy and cost savings proposed by the GM Development/Solential team.
9. Engineer is not responsible for performance of energy systems designed, installed, and operated by the GM Development/Solential team.
10. Engineer is not responsible for energy systems, measurement and verification, or commissioning and startup activities.
11. GM Development/Solential team bare sole responsibility for energy systems operational availability, system performance, energy and cost savings, and project financials.

D. SCHEDULE

It is anticipated that Engineer will complete the above tasks during the contract period of 14 months from Notice to Proceed (October 1, 2022 through December 31, 2023). The schedule for project and associated activities will be established based on the Developer's schedule and milestone delivery dates. Engineer will work with CU's designated Project Manager to establish milestones for above tasks.

E. POTENTIAL OPTIONAL SERVICES (as authorized by CU PM):

The contingency tasks listed below are to be utilized as authorized by the CU PM. CDM Smith will provide updated employee hourly rate schedule for use with the optional services herein in May 2023 and if necessary May 2024. The following tasks are included as allowance items to be used as directed by CU and up to the maximum amount allotted as part of the contingency (\$25,000). The potential optional services will be billed on a time and materials basis until the contingency funds are exhausted.

Task 4 – Potential Optional Services

- 4.01 **Project Coordination Kickoff Workshop:** The Engineer will coordinate a Project Coordination Kickoff Workshop with the Project Team, including FWCU, GM Development, Solential, Trane, Wessler, and Spectrum. This workshop will define project critical success factors, clarify roles and communication protocols, and develop a project action plan.

- 4.02 Review Workshops: Engineer will conduct review workshops (assumed virtual) throughout the design phase. During each workshop, Engineer will review and provide input on technical aspects, schedule, risk, and cost estimate. Engineer will develop an agenda, meeting minutes, action items log, and decision items log for each workshop. Review workshops will be attended by program management team and electrical support team. Technical advisors will not attend review workshops.
- 4.03 Project Schedule Reviews: Engineer will perform monthly review of overall project schedule and coordinate schedule updates with CU and the GM Development/Solential Team.
- 4.04 Detailed Design Deliverable Reviews: For the 60% and 100% deliverables, Senior Technical Advisors will review the Drawings and Specifications. Reviews from site civil, fire protection, electrical, instrumentation, structural, and process personnel are included. Engineer will summarize comments in a tracking spreadsheet. Code analysis and calculation reviews are excluded.
- 4.05 Constructability Reviews: For the 60% and 100% deliverables, Engineer will review Drawings and Specifications for constructability and provide comments to the GM Development/Solential team in a tracking spreadsheet.
- 4.06 Cost Estimate Reviews: For the 60% and 100% deliverables, Engineer will review updated cost estimates from GM Development/Solential and summarize comments in a tracking spreadsheet.
- 4.07 Hardware in the Loop Validation Test: Engineer will contract with Typhoon Hil to conduct a Hardware in the Loop Validation Test. Typhoon Hill will build a virtual testbed for the microgrid control system, simulate operating scenarios, and validate performance of the microgrid controller in accordance with IEEE 2030.8.
- 4.08 Pre-Construction Conference: Engineer will schedule and facilitate a pre-construction conference with CU and all parties from the GM Development/Solential team. Engineer will prepare an agenda and meeting minutes.
- 4.09 Construction Submittals & RFIs: Engineer will assist with submittals and RFIs during construction as directed by CU. This may include review of the submitted arc flash study.
- 4.10 Change Management: Engineer will assist with change management by reviewing change proposals and change orders from the Contractor as directed by CU.
- 4.11 Project Schedule: Engineer will perform monthly review of overall project schedule and coordinate schedule updates with CU and the GM Development/Solential Team.
- 4.12 Substantial & Final Completion Walkthroughs: Engineer will attend the substantial completion and final completion walkthroughs. Two attendees are anticipated for two separate site visits.

PART II

CITY'S RESPONSIBILITIES

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

A. INFORMATION REPORTS/DATA/DRAWINGS

Make available to Engineer Agreements and Proposals received, reports, studies, design documents, regulatory decisions and similar information relating to the Services that Engineer may rely upon without independent verification unless specifically identified as requiring such verification.

Make available any data, drawings, utility rates, or other process information that may be helpful in completing the analysis.

B. REPRESENTATIVE

Designate a representative for the project who shall have the authority to transmit instructions, receive information, interpret and define City's requirements and make decisions with respect to the Services. The City representative for this Agreement will be Zach Schortgen, P.E.

C. DECISIONS

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

D. PROPERTY OWNER NOTIFICATION – Not Used

PART III
COMPENSATION

A. COMPENSATION

Compensation for services performed in accordance with Part I – Scope of Basic Engineering Services of this Agreement will be based on hours actually spent and expenses actually incurred with a not-to-exceed Engineering fee of \$191,330 as summarized in Attachment 1.

Engineer's costs will be based on the hours incurred to complete the project times the hourly rates of the various personnel, per Attachment 2 – Hourly Rate Schedule. All Reimbursable costs incurred for the project will be invoiced at cost.

B. BILLING AND PAYMENT

1. Timing/Format

- a. Engineer shall invoice City monthly for Services completed at the time of billing. Such invoices shall be prepared in a form and supported by documentation as City may reasonably require, and shall include the employee name and title of all staff billing to project.
- b. City shall pay Engineer within 30 days of receipt of approved invoice.
- c. Engineer shall invoice City in whole dollar amounts on the grand total of each invoice. Rounding shall be implemented only on grand total amounts and not subtotals of individual tasks or fees. Contract amounts due to rounding may not exceed the not-to exceed amount.

2. Billing Records

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

PART IV STANDARD TERMS AND CONDITIONS

1. **STANDARD OF CARE.** Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the services are performed. No warranty or guarantee, express or implied, are provided, including warranties or guarantees contained in any uniform commercial code.

2. **CHANGE OF SCOPE.** The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by ENGINEER and CITY. ENGINEER will promptly notify CITY of any perceived changes of scope in writing and the parties shall negotiate modifications to this Agreement.

3. **SAFETY.** ENGINEER shall establish and maintain programs and procedures for the safety of its employees. ENGINEER specifically disclaims any authority or responsibility for general job site safety and safety of persons other than ENGINEER employees.

4. **DELAYS.** If events beyond the control of ENGINEER, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be extended for a period equal to the delay. In the event such delay exceeds 90 days, ENGINEER will be entitled to an equitable adjustment in compensation.

5. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party in the event of substantial failure by the other party to perform in accordance with its obligations under this Agreement through no fault of the terminating party. CITY shall pay ENGINEER for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination.

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

6. **REUSE OF PROJECT DELIVERABLES.** Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by CITY for any purpose other than that for which such documents or deliverables were originally prepared, or alternation of such documents or deliverables without written verification or adaptation by ENGINEER for the specific purpose intended, shall be at CITY's sole risk.

7. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by ENGINEER is supplied for the general guidance of the CITY only. Since ENGINEER has no control over competitive bidding or market conditions, ENGINEER cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CITY.

8. **RELATIONSHIP WITH CONTRACTORS.** ENGINEER shall serve as CITY's professional representative for the Services, and may make recommendations to CITY concerning actions relating to CITY's contractors, but ENGINEER specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CITY's contractors.

9. **MODIFICATION.** This Agreement, upon execution by both parties hereto, can be modified only by a written instrument signed by both parties.

10. **PROPRIETARY INFORMATION.** Information relating to the Project, unless in the public domain, shall be kept confidential by ENGINEER and shall not be made available to third parties without written consent of CITY.

11. **INSURANCE.** ENGINEER shall maintain in full force and effect during the performance of the Services the following insurance coverage; provided, however, that if a High Risk Insurance Attachment is attached hereto, the requirements of the High Risk Insurance Attachment shall be substituted in lieu of the following requirements;

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

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

City of Fort Wayne Purchasing Department
200 East Berry St., Suite #480
Fort Wayne, IN 46802

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

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

14. **ASSIGNMENT.** The rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and insure to the benefit of any permitted assigns.

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

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

17. **NO WAIVER.** No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate another section of this Agreement or operate as a waiver of any future default, whether like or different in character.

18. **SEVERABILITY.** The various term, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

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

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

ATTACHMENT #1

SUMMARY SHEET

SCOPE OF BASIC ENGINEERING SERVICES FEE PROPOSAL

Task 1

For Services outlined in Task 1 not to exceed fee of: **\$24,270**

Task 2

For Services outlined in Task 2 not to exceed fee of: **\$46,620**

Task 3

For Services outlined in Task 3 not to exceed fee of: **\$95,440**

TASK 1-3 NOT TO EXCEED FEE: \$166,330

Contingency Allowance (Task 4) - As authorized by CU PM

**For Additional Services and tasks required during the performance
of the work, but not specifically described herein, a sum not to exceed of : **\$ 25,000****

TOTAL NOT TO EXCEED FEE: \$191,330

ATTACHMENT #2

EMPLOYEE HOURLY RATE SCHEDULE (Valid Until April 2023)

<u>EMPLOYEE/SERVICE DESCRIPTION</u>	<u>RATE</u>
Portfolio Leader	\$275
Senior Technical Advisors (Average Rate)	\$325
Technical Advisor	\$250
Program Manager	\$160-\$235
Senior Engineer	\$205-\$225
Engineer II	\$170-\$200
Engineer I	\$140-\$165
Junior Engineer	\$110-\$135
Administration	\$100-\$115

Interoffice Memo

Date: September 28, 2022
To: Common Council Members
From: Mike Kiester, City Utilities Engineering
RE: Energy Sustainability Project Phase II; Program Management Support Services
Res. 76846, W.O. # 76846

Council District # N/A – At Plants

Engineer shall provide the City professional Engineering services in all phases of the Project to which the scope of services applies. These services will include serving as City's professional representative for the Project, providing professional Engineering consultation and advice, and other customary services incidental thereto. Energy Sustainability Project Phase II; Program Management Support Services. The project includes design, construction, operation and transfer of energy optimization and improvements at the treatment facilities to develop a sustainable infrastructure solution that shares energy resources across facilities, increases the use of renewable energy, reduces peak demands, increases overall reliability and resiliency of the Project facilities, and limits future dependency on external suppliers. CDM Smith was selected to serve as the Program Manager for the Project to coordinate activities between the GM Development/Solential team and CU. This PSA covers program management services for Phase II of the project.

Implications of not being approved: The scale and complexity of this project requires support from CDM Smith to provide program management and coordination support for CU. If not approved, CU will not have adequate staff and expertise required to successfully deliver this project and continue to deliver on other priority initiatives. CU can efficiently utilize CDM expertise as needed throughout the full implementation of this project.

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

Selection and Approval Process:

The consultant was selected through the Competitive Sealed Proposal (CSP) process. The RFQ announcement was sent to over 100 firms and posted on the City website, and 9 firms submitted a statement of qualifications. Utilities Engineering staff reviewed the qualifications of all interested firms, established a short list of consultants. A request for proposals was then developed and sent to the selected shortlisted firms. 3 shortlisted firms submitted Competitive Sealed Proposals. A scoring matrix was used to score all firms based on responses to the RFQ and RFP's. RFP scoring was based on expertise, prior work experiences, qualifications, proposed scope of work and fee. Using this process, Utilities Engineering selected CDM Smith for this project and finds their scope and fee to be the best value for this project. The Board of Public Works approved the contract on October 4, 2022.

The cost of said project funded by Sewer Utility Bonds

Council Introduction Date: October 11, 2022

CC: BOW
 Matthew Wirtz
 Jill Helfrich
 Construction Manager
 Chrono
 File