

BILL NO. S-24-04-24

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving SERVICE AGREEMENT
– TRANSMISSION MAIN CONDITION ASSESSMENT
- WORK ORDER/RESOLUTION #67416 between
PURE TECHNOLOGIES U.S. 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 SERVICE AGREEMENT - TRANSMISSION
MAIN CONDITION ASSESSMENT - WORK ORDER/RESOLUTION #67416
between PURE TECHNOLOGIES U.S. 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, EQUIPMENT, MATERIALS AND
POWER FOR THE COMPLETION OF THE PROJECT;
ORDERS THE INTERNAL INSPECTION OF 1.6 MILES OF
WATER TRANSMISSION MAINS;

involving a total cost of FOUR HUNDRED FORTY-EIGHT THOUSAND NINE
HUNDRED NINETY-THREE AND 70/100 DOLLARS - (\$448,993.70). 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

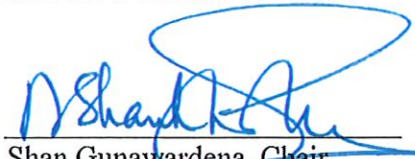
Malak Heiny, City Attorney

CU 10.10.23

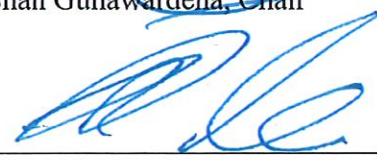
Approval of Services Agreement between the City of Fort Wayne and Pure Technologies for WO #67416, Transmission Main Condition Assessment. Compensation for services performed shall be \$448,993.70.

BOARD OF PUBLIC WORKS

BY:


Shan Gunawardena, Chair

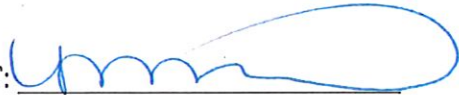
BY:


Kumar Menon, Member

BY:


Chris Guerrero, Member

ATTEST:


Michelle Fulk-Vondran, Clerk

Date: 10.10.23



SERVICE AGREEMENT: _____

SUPPLIER NAME Pure Technologies US Inc.		CITY DEPARTMENT City Utilities Engineering	
STREET ADDRESS 8920 State Route 108, Suite D		STREET ADDRESS 200 E. Berry Street, Suite 250	
CITY, STATE, ZIP CODE Columbia, MD 21045		CITY, STATE, ZIP CODE Fort Wayne, IN 46802	
ATTENTION Wayne Lindsay		INVOICE ADDRESS 200 E. Berry Street, Suite 250	
TELEPHONE 443-766-7873	FAX	CITY, STATE, ZIP CODE Fort Wayne, IN 46802	
REMIT-TO ADDRESS 8920 State Route 108, Suite D		ATTENTION Ben Gensic	
CITY, STATE, ZIP CODE Columbia, MD 21045		TELEPHONE 260-427-2709	FAX

Service Description	Rates
Transmission Pipeline Condition Assessment – Cohort C	As proposed in quote dated April 21, 2023
Aggregate Price	\$448,993.70

The following Attachments are part of this Agreement:

This Agreement is entered into between Supplier and the City as of _____. The additional terms and conditions on the reverse side hereof are part of this Agreement. Capitalized terms on this page are used as defined terms when the context so requires. The City may extend the Contract at its option, for an equivalent period, by written notice to the Supplier not less than thirty days prior to the expiration date.

SUPPLIER:		City of Fort Wayne	
By (Signature): 	By (Signature): SEE NEXT PAGE	By (Signature): SEE NEXT PAGE	
Printed Name: William J. Craven P.E.	Printed Name:	Printed Name:	
Title: Manager of Business Development, East Region	Title:	Title:	
Date: September 20, 2023	Date:	Date:	
FEDERAL TAX ID NUMBER: 86 - 0853190			

ADDITIONAL TERMS AND CONDITIONS

1. **SERVICES.** Supplier agrees to perform the Services beginning on the Begin Date and continuing until the Services are completed. Supplier warrants that the Services will be completed on or before the End Date. TIME IS OF THE ESSENCE. Supplier warrants that all Services shall conform to the Service Description, be of good quality and workmanship, and be free from defects. Supplier 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. Supplier 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.** Supplier 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 Supplier hereunder until Supplier 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 Supplier to meet the requirements of this Agreement. The City may at any time set off any amount owed by the City to supplier against any amount owed by Supplier or any of its affiliated companies to the City.
3. **INDEPENDENT CONTRACTOR RELATIONSHIP.** City and Supplier are and shall remain as independent contractors with respect to each other. The persons provided by Supplier to perform the Services shall be Supplier's employees and shall be under the sole and exclusive direction and control of Supplier. They shall not be considered employees of the City for any purpose. Supplier 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. Supplier 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. Supplier 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 Supplier to perform the essential functions of the job. Supplier 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 Supplier's failure to comply with this paragraph.
4. **INDEMNITY.** Supplier 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 Supplier including such portion thereof due, or claimed to be due, to the negligence of the City except that Supplier 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 Supplier, then the City will reimburse Supplier 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 Supplier's obligations to indemnify, defend, or hold harmless. Supplier 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.** Supplier 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.** Supplier 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. Supplier must comply with all federal, state, or local law in the use, transportation, and disposal of such Hazardous Materials.
8. **PROGRESS REPORTS.** The Supplier 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.** Supplier 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 Supplier'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.** Supplier 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 Supplier in furtherance of this contract—shall be the property of the City. The Supplier 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 Supplier. By this contract the Supplier specifically waives and/or releases to the City any cognizable property right of the Supplier to copyright, license, patent or other wise use such information, data findings, recommendations proposals, etc.
11. **CONFIDENTIALITY OF CITY INFORMATION.** Supplier understands and agrees that data, materials, and information disclosed to Supplier may contain confidential and protected data. Therefore, the Supplier promises and assures that data, material, and information gathered, based upon or disclosed to the Supplier 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, Supplier 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. Supplier further understands that they are not required to verify work eligibility of status of newly hired employees of the Supplier through the E-Verify program if the E-Verify program no longer exists. Supplier certifies that they do not knowingly employ any unauthorized aliens.
13. **COMPLIANCE WITH LAWS.** Supplier 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. Supplier 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 Supplier's breach of such warranty.
14. **DEFAULT.** In the event that (a) Supplier breaches any warranty contained herein; (b) Supplier fails to provide the insurance certificate required herein; (c) Supplier or Supplier's insurance carrier fails to defend, indemnify, or hold harmless the City as required herein; (d) Supplier's performance of the Services violates applicable law; (e) Supplier 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) Supplier 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 Supplier 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 Supplier as to the portion of the Services not yet rendered and to purchase substitute services at Supplier's expense. Supplier shall reimburse the City for the cost of such substitute services upon Supplier'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 Supplier, and Supplier 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 Supplier the Rates for completed Services accepted by the City and the actual incurred cost to Supplier 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 Supplier's rights or obligation under this Agreement without the prior written consent of the City shall be void. Supplier 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 Supplier 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, Supplier and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this contract. The Supplier 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.

PRICE SCHEDULE - COHORT 'C'					
ITEM #	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	AMOUNT

Area 6 - Monroe Avenue (Water Filtration Plant to Lewis Street)					
21	Inspection of the Transmission Main (48" & 54", Ductile Iron* & Prestressed Concrete)	LF	3,730	\$37.91	\$141,404.30
22	Data Analysis for Transmission Main (48" & 54", Ductile Iron* & Prestressed Concrete)	LF	3,730	\$9.48	\$35,360.40
23	Mobilization (Cohort 'C' - Area 6)	EA	1	\$34,785.00	\$34,785.00
24	Planning Report Preparation (Cohort 'C' - Area 6)	LS	1	\$23,190.00	\$23,190.00
Area 7 - Lake Avenue					
25	Inspection of the Transmission Main (30" Prestressed Concrete)	LF	4,765	\$22.88	\$109,023.20
26	Data Analysis for Transmission Main (30" Prestressed Concrete)	LF	4,765	\$5.72	\$27,255.80
27	Mobilization (Cohort 'C' - Area 7)	EA	1	\$34,785.00	\$34,785.00
28	Planning Report Preparation (Cohort 'C' - Area 7)	LS	1	\$23,190.00	\$23,190.00
29	Allowance (Cohort 'C')	LS	1	\$20,000.00	\$20,000.00
SUBTOTAL					\$448,993.70

*For Area 6, DI shown as possible material in some pipe sections. Assume PC for this proposal. City Utilities is confirming material.

Non-Collusion Affidavit

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He/She further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee gift, commission or thing of value on account of such sale.

OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID ARE TRUE AND CORRECT.

Pure Technologies U.S. Inc.

Name of Company

William J. Craven P.E.

Printed Name of Person Signing

Manager of Business Development, East Region

Title



Signature

September 20, 2023

Date

Interoffice Memo

Date: April 11, 2024
To: Common Council Members
From: Michael Kiester, Manager, City Utilities Engineering
RE: Transmission Main Condition Assessment
Work Order / Resolution 67416

Michael Kiester
4.12.2024

Council District # 2 & 5

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project: Orders the internal inspection of 1.6 miles of water transmission mains.

Implications of not being approved These water transmission mains deliver water from the Water Filtration Plant to the distribution system and are important assets for the city's drinking water supply. There are multiple water transmission main segments to be inspected. This includes multiple river crossings and transmission mains. Inspection of these mains is important for continued reliability of the city's water supply.

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

Selection and Approval Process:

In 2019, an outside consulting firm, ISLE Inc was retained to seek out viable inspection technologies for water mains of this type and size. Isle's initial research netted a total of 58 technologies that perform some form of pipeline inspections. From that initial list, the City and ISLE narrowed the list down to 5 different technologies, with 4 companies. These technologies were piloted as part of the initial phase of the transmission main condition assessment program by performing assessments on the St Joe Dam raw water mains and Beacon Street 24-inch water main.

For this next phase of inspections, a Request for Proposal (RFP) was made publicly available. Four companies provided proposals and City Utilities staff scored these proposals and selected Pure Technologies as having the best scope and fee to perform the pipeline inspections on cohort C transmission mains. Pure's estimated cost for inspection work is \$448,993.70.

The cost of said project is funded by Utility Revenue

Council Introduction Date: April 23, 2024

CC: BOW
Matthew Wirtz
Jill Helfrich
File