

3 **AN ORDINANCE** certifying and approving the need
4 for the services of a consultant to provide
5 professional On-Call Resident Project
6 Representative/Inspection Services – 2015/2016
7 to the Division of City Utilities through its Board
8 of Public Works.

9 **WHEREAS**, the City of Fort Wayne through its Board of Public Works desires to
10 provide professional On-Call Resident Project Representative/Inspection Services – 2015/2016- to
11 the Division of City Utilities for new sanitary sewers, water mains and stormwater facilities on
12 private developments and Utility funded Capital Improvement projects; and

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

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

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


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

22 **SECTION 1.** The Common Council of the City of Fort Wayne hereby certifies and
23 approves the need for the services of consultants to provide professional On-Call Resident Project
24 Representative/Inspection Services – 2015/2016 - to the Division of City Utilities for new sanitary
25 sewers, water mains and stormwater facilities on private developments and Utility Funded Capital
26 Improvement project.

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

29 
Council Member

30 APPROVED AS TO FORM AND LEGALITY



Carol Helton, City Attorney

Interoffice Memo

Date: July 8, 2015
To: Common Council Members
From: Michael Kiester, Manager, City Utilities Engineering / ESS
RE: **City Utilities-On Call Resident Project Representative/Inspection Services-2015/2016**

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

The ordinance for 2015/2016 services includes the same six firms that have been utilized since 2011; GAI Consultants, Construction Support Services, DLZ of Indiana, Butler, Fairman & Seufert, A&Z Engineering and VS Engineering, Inc. along with one new firm; CH2M Hill. All seven of these firms have a local Fort Wayne office.

The hourly rate for these services will increase slightly from the previous 2011 level. The hourly rate for Developer Project Inspection will be \$52.50 per hour and the hourly rate for the Capital Project Inspection will be tiered at \$60.00 and \$70.00 per hour. Two new rates were established, \$55.00 per hour for Allen County Regional Sewer District projects and \$90.00 per hour for projects at the Water Pollution Control and Water Filtration plants. These are straight time hourly rates with no travel time paid and no premium for hours worked beyond the normal 8-hour day.

In 2014, consultants provided 22,104 hours of service for a total of \$1,368,889.25.

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

The Board of Public Works approved the Professional Services Agreement with these firms through the 2015/2016 period on July 8, 2015.

What Are The Implications If Not Approved?

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

If Prior Approval Is Being Requested, Justify:

Prior approval NOT requested

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

Council Introduction Date: July 14, 2015

CC: BOW
Matthew Wirtz
Diane Brown
Chrono
File

PROFESSIONAL SERVICES AGREEMENT

City Utilities- Resident Project Representative / Inspection Services

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

By and through its

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

and,

PROJECT ENGINEER ("FIRM"):

A & Z Engineering, Inc.
9017 Coldwater Road, Suite 500
Fort Wayne, IN 46825

Who agree as follows:

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

APPROVALS

APPROVED FOR CITY:

BOARD OF PUBLIC WORKS

BY: _____
Robert P. Kennedy, Chair

BY: _____
Kumar Menon, Member

BY: _____
Mike Avila, Member

ATTEST:

BY: _____
Lyndsey Richards, Clerk

APPROVED FOR FIRM: A & Z ENGINEERING, INC.

BY: _____

PRINTED NAME _____

TITLE: _____

DATE: _____

PART I
FIRMS RESPONSIBILITIES

A. GENERAL RESPONSIBILITIES

FIRM Shall:

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

B. SERVICES BY FIRM:

Services to be provided for the project are as follows:

1. FIRM shall have a designated person as a point of contact for RPR services oversight.
2. FIRM shall provide professional RPR, inspection, observation and testing services during the construction of facilities on assigned projects.
3. FIRM shall provide one (1) Inspector, clerical, and secretarial personnel as required for a period of time necessary to complete the construction project and prepare a final construction report.
 - a. The qualifications and experiences of personnel provided by FIRM are subject to approval by CITY. No personnel shall be assigned to the project until such approval is obtained.
 - b. The Inspector shall take directions from and report to CITY'S assigned Contract Manager (CM) on all matters concerning contract compliance and administration.
 - c. The Inspector shall coordinate project activities with CITY'S assigned Contract Manager.
4. FIRM shall also do the following:
 - a. FIRMS will be expected to fully utilize the Program Management Information System (PMIS), a web based system that will allow for FIRMS to submit inspection reports, photographs, and other various forms of project documentation electronically to City Utilities Engineering.
 - b. Serve as CITY'S Liaison with the Developer / Contractor, working principally through the Developer / Contractor's field superintendent or such other person in authority as designated by the Developer / Contractor. Acting in liaison capacity, the Inspector shall be thoroughly familiar with the plans and specifications applicable to the project and observe the construction for compliance with respect to all provisions therein.

- c. Review the NPDES Stormwater permit / plans and conduct on-site observations as a basis for determining that the project is proceeding in substantial conformance with the approved permit / plan requirements. Any deviation observed shall be reported in writing promptly to CITY by the Inspector.
- d. Review the construction schedule prepared by the Developer / Contractor and assist CITY in making sure schedule is being held to meet project milestones (ex. Substantial & Final Completion) and updated monthly with pay application.
- e. Cooperate with CITY in dealing with the various local agencies having jurisdiction over the project.
- f. Provide observation of construction activities performed by the Contractor to ensure work complies with the contract documents and related project permits.
 - 1. Daily logs – to be loaded into PMIS for both Developer and Capital projects each day of active construction
 - 2. Photos for construction progress (taken daily of relevant work activities) as well as for any potential claim situations-to be loaded into PMIS at minimum of every week
 - 3. Record on project drawings all field changes and daily production information
 - 4. Keep quantity records and accurate materials stored on site records for submittal to Contract Manager for progress payment reviews
 - 5. Keep detailed records on time and materials for work authorized as reimbursable
 - 6. Obtain and review all applicable easements required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in easement documents.
 - 7. Obtain and review all applicable permits required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in permits including limits of construction and ensure contractor stays out of restricted areas. Copies of permits are uploaded into the PMIS digital library by Contract Manager.
- g. Inspect, at a minimum, the following:
 - 1. Bedding and backfill of stormwater and sanitary sewers and related structures
 - 2. Bedding, backfill and restraint of water mains, elbows, hydrants, valves, auxiliary valves, blow-offs, services and related appurtenances.
 - 3. Installation of manholes, lift stations and/or force mains
 - 4. Subgrade for horizontal and vertical alignment and compaction
 - 5. Rough and final grading of swales, ditches, and detention/retention facilities
 - 6. Testing of construction materials by private testing company may be called for on any of the above phases as required by the City Utilities Engineering Department or as requested by CITY.
 - 7. On-site verification of all required testing and as-built survey information.
 - 8. Verification of invert elevations at each manhole during construction of sanitary and storm sewer main trunk lines to ensure design elevations (and associated design capacity) is being maintained.
 - 9. Electrical/mechanical, concrete, and/or structural infrastructure on Facility projects.
- h. Furnish all equipment necessary to sample and test materials and/or provide on-site independent assurance testing of materials in accordance with standards and specifications of the Fort Wayne procedures and in accordance with current accepted practices, ordinances, and the most recent standards and specifications of the Division of Utilities, City Utilities Engineering Department as approved and adopted by the Board of Public Works.
- i. Verify that required testing has been accomplished and results of the testing are satisfactory

- j. Notify the Developer / Contractor and CITY in writing of any substandard work
- k. Consider and evaluate the Developer / Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to CITY'S assigned Contract Manager.
- l. Representative of the firm shall notify CITY of any additional work requested by the CONTRACTOR beyond the original approved design prior to the work occurring. Representatives are not empowered to make changes to projects; all changes must be approved by CITY staff.
- m. On the PMIS Inspectors Daily Report, record hours on the job site (both inspector & contractor(s)), weather conditions, field superintendent/foreman's name, crew size, list of visiting officials, decisions, interaction with the public or property owners/renters, safety observations, general observations, and specific observations with regard to test procedures and results of testing – to be loaded into PMIS daily.
- n. Provide a short weekly summary/status report of any major contractor's activities, issues, as well as work planned for the following week (during the active construction periods only)- to be loaded into PMIS every week
- o. Take notes during and provide meeting minutes of all construction related meetings.
- p. Assist City CM with management of contractor's request for interpretation (RFI's) on clarification and interpretations, field orders, change orders, allowance authorizations, and work change directives.
- q. Assist the City (CM) in reviewing the Contractor's monthly pay quantities and application
- r. Assist City CM in preparing and coordinating change management documents, issuing defective work notices, performing final inspection and reviewing final punch lists from Contractor.
- s. Assist City CM to coordinate any necessary vendor installation certifications as well as startup and training activities
- t. Assist City CM with final project closeout documentation and help ensure that compliance efforts are completed so that project can be accepted by CU and the Board of Public Works and final payment be made to Contractor.
- u. Provide timely invoices to CITY.
- v. Provide a scanned copy of Inspector marked up as-built drawings at substantial completion of the project. If unable to provide a scanned copy, furnish marked up as-built drawings to Contract Manager for City to scan. Scanned drawings to be uploaded into PMIS digital library by Contract Manager.
- w. Deliver the final project records to the Construction Manager within ten (10) calendar days after satisfactory completion of the project.
- x. Incident Reporting – Should an accident occur on the project, notify Contract Manager immediately, then document with photos and prepare a report of the incident including but not limited to: What happened, all parties on site when accident occurred, what parties responded to provide assistance to the accident involved parties (if police, name of officer or number on squad

car), what inspector personally witnessed, what may have occurred that inspector did not witness. Photos and report to be submitted to City Manager of Engineering by noon the day following the accident.

- y. Assist City Manager at Facility projects to inspect areas within confined space areas. Inspector shall be confined space certified and may be required to enter facilities as a part of a construction firms confined space entry team.
- z. Upon request by the City, if GPS coordinates are not secured by Contractor, Design Engineering firm, or Survey, Inspector shall gather GPS information utilizing GPS equipment with sub-meter accuracy. At a minimum, coordinates must be recorded for Hydrants, valves, curb stops, corporation stops, directional change fittings, connection fittings, manholes, clean-outs, sewer taps, and other appurtances as agreed upon at project assignment. Information to shall be provided to the City in Raw Data form that can be uploaded into GIS.
- aa. Notify CM and document in daily report when utilities other than the ones being installed as part of the project are encountered and are in interference with proposed infrastructure or damaged by the contractor.
- bb. Work with the public to resolve any complaints that are the result of construction activities. If complaint cannot be immediately resolved by disclosing to the contractor, notify the CM for assistance, guidance, and follow-up.

C. KEY PERSONEL

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

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

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

D. SCHEDULE

Services under this contract are to be completed from date of NTP until July 31, 2017.

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

PART II

CITY'S RESPONSIBILITIES

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

A. INFORMATION AND REQUIREMENTS

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

B. REPRESENTATIVE:

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

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

PART III

COMPENSATION, BILLING, PAYMENT AND SCHEDULE

A. COMPENSATION

FIRM'S COMPENSATION FOR SERVICES

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

PRIVATE/DEVELOPER PROJECTS

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

1. FIRM shall be compensated at a rate of **fifty two dollars and fifty cents (\$52.50) per hour** per Inspector per DEVELOPER/CONTRACTOR'S project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Private / Developer activities.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

ALLEN COUNTY REGIONAL SEWER DISTRICT PROJECTS

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

1. FIRM shall be compensated at a rate of **fifty-five dollars (\$55.00) per hour** per Inspector per ACRSD project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for ACRSD activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to a higher pay level upon approval by the City.

- If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

CAPITAL PROJECTS

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

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

WATER POLLUTION CONTROL AND WATER FILTRATION PLANT PROJECTS

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

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

B. BILLING AND PAYMENT

METHOD OF PAYMENT

FIRM shall submit a properly itemized invoice to CITY on a monthly basis. CITY shall pay FIRM within forty five (45) days after receipt of such properly itemized claim forms, unless claim is objected to in writing, in which case claim shall be paid within 15 days of resolution of any dispute. All required items must be uploaded into PMIS prior to Invoice approval.

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.
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 City. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined. FIRM will promptly provide City with a proposed amendment to this Agreement to recognize such change, which the CITY shall approve or reject in writing within 15 days of receipt.
3. **SAFETY.** Engineer shall establish and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, FIRM specifically disclaims any authority or responsibility for general job site safety and safety of persons other than FIRM employees.
4. **DELAYS.** If events beyond the control of CITY or FIRM, 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 amended to the extent necessary to compensate for such delay.
5. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party. CITY shall pay FIRM for all Services, including profit relating thereto, rendered prior to termination.
6. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by FIRM is supplied for the general guidance of the CITY only. Since FIRM has no control over competitive bidding or market conditions, FIRM cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CITY.
7. **RELATIONSHIP WITH CONTRACTORS.** FIRM shall serve as CITY'S professional representative for the Services, and may make recommendations to CITY concerning actions relating to CITY'S contractors, but FIRM shall have no authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CITY'S contractors, without specific written provision to do so in this agreement.
9. **INSURANCE.** FIRM 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 Board of Public Works
200 East Berry Street, Suite 240
Fort Wayne, IN 46802

- 10. INDEMNITIES.** To the fullest extent permitted by law, FIRM shall indemnify and save harmless CITY from and against loss, liability, and damages sustained by CITY, its agents, employees, and representatives by reason of injury or (including reasonable litigation costs) death to persons or damage to tangible property to the extent caused directly by the willful misconduct or failure to adhere to the standard of care described in Paragraph 1 above of FIRM, its agents or employees.

To the fullest extent permitted by law, CITY shall defend, indemnify, and save harmless FIRM, its agents, employees, and representatives from and against loss, liability, and damages (including reasonable litigation costs) arising from or relating to claims for injury or death to persons, damages to tangible property, or other losses alleged to be caused by persons directly within the control of CITY when the loss, injury, or damage attributable to CITY'S willful misconduct.

- 11. LIMITATIONS OF LIABILITY.** CITY agrees that, to the fullest extent permitted by law, FIRM'S total liability to CITY for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, FIRM'S negligence, errors, omissions, strict liability, or breach of contract shall not exceed the total compensation received by FIRM under this Agreement. If CITY desires a limit of liability greater than that provided above, CITY and FIRM shall include in Part III of this Agreement the amount of such limit and the additional compensation, if any, to be paid to FIRM for assumption of such additional risk.

- 12. ACCESS.** CITY shall provide FIRM reasonably safe access to any premises as necessary for FIRM to provide the Services.

- 13. REUSE OF PROJECT DELIVERABLES.** Reuse of any documents or other deliverables including electronic media, pertaining to the Project by CITY for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by Engineer for the specific purpose intended, shall be at the CITY'S risk. CITY agrees to defend, indemnify, and hold harmless FIRM from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by CITY or others acting through CITY.

- 14. AMENDMENT.** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

- 15. ASSIGNMENT.** Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

- 16. STATUTES OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

- 17. PREVAILING PARTY LITIGATION COSTS.** In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to seek its litigation costs from the other party.
- 18. 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 any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.
- 19. NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including CITY'S contractors, if any.
- 20. SEVERABILITY.** The various terms, 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.
- 21. AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

IF FIRM IS ADVISED THAT THE PROJECT IT IS BEING ASSIGNED IS A CONSENT DECREE PROJECT, THEN THE FOLLOWING ITEMS MUST BE CONFORMED TO:

- 22. CONSENT DECREE NOTIFICATION.** FIRM shall perform, or cause others to perform, all work undertaken in connection with this Agreement in a good and workmen-like manner and in conformance with the terms of the City of Fort Wayne Consent Decree entered in the U.S. District Court on April 1, 2008 by the United States and State of Indiana. FIRM acknowledges that it has been provided a complete copy of the Consent Decree which can be viewed at:
<http://www.cityoffortwayne.org/index.php/content/view/1494/1566/>
- 23. DOCUMENT RETENTION.** Notwithstanding any other provision of this Agreement, FIRM agrees to preserve all non-identical copies of all documents, records and other information (whether in physical or electronic form) within FIRM's possession or control and which relate, in any manner, to the performance of the work undertaken in connection with this Agreement for a period of 1 year after the completion contemplated by the Agreement (the "Retention Period"). Prior to the end of the Retention Period, or at any earlier time if requested by the City, FIRM shall provide the City with complete copies of such documents, records and other information at no cost to the City. The copies shall be provided to the City on CD or DVD media, and individual files shall be in Adobe PDF format. The individual files shall be contained in a ZIP formatted file, and the filename of the ZIP shall include the name of the project and the FIRM. No part of any file shall be encrypted or protected from copying. Such copies shall be accompanied by a verified written statement from the FIRM attesting that it has provided the City with complete copies of all documents, records and other information which relates to the work contemplated by the Agreement.

PROFESSIONAL SERVICES AGREEMENT

City Utilities- Resident Project Representative / Inspection Services

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

By and through its

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

and,

PROJECT ENGINEER ("FIRM"):

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

Who agree as follows:

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

APPROVALS

APPROVED FOR CITY:

BOARD OF PUBLIC WORKS

BY: _____
Robert P. Kennedy, Chair

BY: _____
Kumar Menon, Member

BY: _____
Mike Avila, Member

ATTEST:

BY: _____
Lyndsey Richards, Clerk

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

BY: _____

PRINTED NAME _____

TITLE: _____

DATE: _____

PART I
FIRMS RESPONSIBILITIES

A. GENERAL RESPONSIBILITIES

FIRM Shall:

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

B. SERVICES BY FIRM:

Services to be provided for the project are as follows:

1. FIRM shall have a designated person as a point of contact for RPR services oversight.
2. FIRM shall provide professional RPR, inspection, observation and testing services during the construction of facilities on assigned projects.
3. FIRM shall provide one (1) Inspector, clerical, and secretarial personnel as required for a period of time necessary to complete the construction project and prepare a final construction report.
 - a. The qualifications and experiences of personnel provided by FIRM are subject to approval by CITY. No personnel shall be assigned to the project until such approval is obtained.
 - b. The Inspector shall take directions from and report to CITY'S assigned Contract Manager (CM) on all matters concerning contract compliance and administration.
 - c. The Inspector shall coordinate project activities with CITY'S assigned Contract Manager.
4. FIRM shall also do the following:
 - a. FIRMS will be expected to fully utilize the Program Management Information System (PMIS), a web based system that will allow for FIRMS to submit inspection reports, photographs, and other various forms of project documentation electronically to City Utilities Engineering.
 - b. Serve as CITY'S Liaison with the Developer / Contractor, working principally through the Developer / Contractor's field superintendent or such other person in authority as designated by the Developer / Contractor. Acting in liaison capacity, the Inspector shall be thoroughly familiar with the plans and specifications applicable to the project and observe the construction for compliance with respect to all provisions therein.

- c. Review the NPDES Stormwater permit / plans and conduct on-site observations as a basis for determining that the project is proceeding in substantial conformance with the approved permit / plan requirements. Any deviation observed shall be reported in writing promptly to CITY by the Inspector.
- d. Review the construction schedule prepared by the Developer / Contractor and assist CITY in making sure schedule is being held to meet project milestones (ex. Substantial & Final Completion) and updated monthly with pay application.
- e. Cooperate with CITY in dealing with the various local agencies having jurisdiction over the project.
- f. Provide observation of construction activities performed by the Contractor to ensure work complies with the contract documents and related project permits.
 - 1. Daily logs – to be loaded into PMIS for both Developer and Capital projects each day of active construction
 - 2. Photos for construction progress (taken daily of relevant work activities) as well as for any potential claim situations- to be loaded into PMIS at minimum of every week
 - 3. Record on project drawings all field changes and daily production information
 - 4. Keep quantity records and accurate materials stored on site records for submittal to Contract Manager for progress payment reviews
 - 5. Keep detailed records on time and materials for work authorized as reimbursable
 - 6. Obtain and review all applicable easements required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in easement documents.
 - 7. Obtain and review all applicable permits required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in permits including limits of construction and ensure contractor stays out of restricted areas. Copies of permits are uploaded into the PMIS digital library by Contract Manager.
- g. Inspect, at a minimum, the following:
 - 1. Bedding and backfill of stormwater and sanitary sewers and related structures
 - 2. Bedding, backfill and restraint of water mains, elbows, hydrants, valves, auxiliary valves, blow-offs, services and related appurtenances.
 - 3. Installation of manholes, lift stations and/or force mains
 - 4. Subgrade for horizontal and vertical alignment and compaction
 - 5. Rough and final grading of swales, ditches, and detention/retention facilities
 - 6. Testing of construction materials by private testing company may be called for on any of the above phases as required by the City Utilities Engineering Department or as requested by CITY.
 - 7. On-site verification of all required testing and as-built survey information.
 - 8. Verification of invert elevations at each manhole during construction of sanitary and storm sewer main trunk lines to ensure design elevations (and associated design capacity) is being maintained.
 - 9. Electrical/mechanical, concrete, and/or structural infrastructure on Facility projects.
- h. Furnish all equipment necessary to sample and test materials and/or provide on-site independent assurance testing of materials in accordance with standards and specifications of the Fort Wayne procedures and in accordance with current accepted practices, ordinances, and the most recent standards and specifications of the Division of Utilities, City Utilities Engineering Department as approved and adopted by the Board of Public Works.
- i. Verify that required testing has been accomplished and results of the testing are satisfactory

- j. Notify the Developer / Contractor and CITY in writing of any substandard work
- k. Consider and evaluate the Developer / Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to CITY'S assigned Contract Manager.
- l. Representative of the firm shall notify CITY of any additional work requested by the CONTRACTOR beyond the original approved design prior to the work occurring. Representatives are not empowered to make changes to projects; all changes must be approved by CITY staff.
- m. On the PMIS Inspectors Daily Report, record hours on the job site (both inspector & contractor(s)), weather conditions, field superintendent/foreman's name, crew size, list of visiting officials, decisions, interaction with the public or property owners/renters, safety observations, general observations, and specific observations with regard to test procedures and results of testing – to be loaded into PMIS daily.
- n. Provide a short weekly summary/status report of any major contractor's activities, issues, as well as work planned for the following week (during the active construction periods only)- to be loaded into PMIS every week
- o. Take notes during and provide meeting minutes of all construction related meetings.
- p. Assist City CM with management of contractor's request for interpretation (RFI's) on clarification and interpretations, field orders, change orders, allowance authorizations, and work change directives.
- q. Assist the City (CM) in reviewing the Contractor's monthly pay quantities and application
- r. Assist City CM in preparing and coordinating change management documents, issuing defective work notices, performing final inspection and reviewing final punch lists from Contractor.
- s. Assist City CM to coordinate any necessary vendor installation certifications as well as startup and training activities
- t. Assist City CM with final project closeout documentation and help ensure that compliance efforts are completed so that project can be accepted by CU and the Board of Public Works and final payment be made to Contractor.
- u. Provide timely invoices to CITY.
- v. Provide a scanned copy of Inspector marked up as-built drawings at substantial completion of the project. If unable to provide a scanned copy, furnish marked up as-built drawings to Contract Manager for City to scan. Scanned drawings to be uploaded into PMIS digital library by Contract Manager.
- w. Deliver the final project records to the Construction Manager within ten (10) calendar days after satisfactory completion of the project.
- x. Incident Reporting – Should an accident occur on the project, notify Contract Manager immediately, then document with photos and prepare a report of the incident including but not limited to: What happened, all parties on site when accident occurred, what parties responded to provide assistance to the accident involved parties (if police, name of officer or number on squad

car), what inspector personally witnessed, what may have occurred that inspector did not witness. Photos and report to be submitted to City Manager of Engineering by noon the day following the accident.

- y. Assist City Manager at Facility projects to inspect areas within confined space areas. Inspector shall be confined space certified and may be required to enter facilities as a part of a construction firms confined space entry team.
- z. Upon request by the City, if GPS coordinates are not secured by Contractor, Design Engineering firm, or Survey, Inspector shall gather GPS information utilizing GPS equipment with sub-meter accuracy. At a minimum, coordinates must be recorded for Hydrants, valves, curb stops, corporation stops, directional change fittings, connection fittings, manholes, clean-outs, sewer taps, and other appurtenances as agreed upon at project assignment. Information to shall be provided to the City in Raw Data form that can be uploaded into GIS.
- aa. Notify CM and document in daily report when utilities other than the ones being installed as part of the project are encountered and are in interference with proposed infrastructure or damaged by the contractor.
- bb. Work with the public to resolve any complaints that are the result of construction activities. If complaint cannot be immediately resolved by disclosing to the contractor, notify the CM for assistance, guidance, and follow-up.

C. KEY PERSONEL

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

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

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

D. SCHEDULE

Services under this contract are to be completed from date of NTP until July 31, 2017.

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

PART II

CITY'S RESPONSIBILITIES

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

A. INFORMATION AND REQUIREMENTS

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

B. REPRESENTATIVE:

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

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

PART III

COMPENSATION, BILLING, PAYMENT AND SCHEDULE

A. COMPENSATION

FIRM'S COMPENSATION FOR SERVICES

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

PRIVATE/DEVELOPER PROJECTS

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

1. FIRM shall be compensated at a rate of **fifty two dollars and fifty cents (\$52.50) per hour** per Inspector per DEVELOPER/CONTRACTOR'S project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Private / Developer activities.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

ALLEN COUNTY REGIONAL SEWER DISTRICT PROJECTS

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

1. FIRM shall be compensated at a rate of **fifty-five dollars (\$55.00) per hour** per Inspector per ACRSD project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for ACRSD activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to a higher pay level upon approval by the City.

- If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

CAPITAL PROJECTS

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

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

WATER POLLUTION CONTROL AND WATER FILTRATION PLANT PROJECTS

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

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

B. BILLING AND PAYMENT

METHOD OF PAYMENT

FIRM shall submit a properly itemized invoice to CITY on a monthly basis. CITY shall pay FIRM within forty five (45) days after receipt of such properly itemized claim forms, unless claim is objected to in writing, in which case claim shall be paid within 15 days of resolution of any dispute. All required items must be uploaded into PMIS prior to Invoice approval.

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.
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 City. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined. FIRM will promptly provide City with a proposed amendment to this Agreement to recognize such change, which the CITY shall approve or reject in writing within 15 days of receipt.
3. **SAFETY.** Engineer shall establish and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, FIRM specifically disclaims any authority or responsibility for general job site safety and safety of persons other than FIRM employees.
4. **DELAYS.** If events beyond the control of CITY or FIRM, 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 amended to the extent necessary to compensate for such delay.
5. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party. CITY shall pay FIRM for all Services, including profit relating thereto, rendered prior to termination.
6. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by FIRM is supplied for the general guidance of the CITY only. Since FIRM has no control over competitive bidding or market conditions, FIRM cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CITY.
7. **RELATIONSHIP WITH CONTRACTORS.** FIRM shall serve as CITY'S professional representative for the Services, and may make recommendations to CITY concerning actions relating to CITY'S contractors, but FIRM shall have no authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CITY'S contractors, without specific written provision to do so in this agreement.
9. **INSURANCE.** FIRM 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 Board of Public Works
200 East Berry Street, Suite 240
Fort Wayne, IN 46802

10. INDEMNITIES. To the fullest extent permitted by law, FIRM shall indemnify and save harmless CITY from and against loss, liability, and damages sustained by CITY, its agents, employees, and representatives by reason of injury or (including reasonable litigation costs) death to persons or damage to tangible property to the extent caused directly by the willful misconduct or failure to adhere to the standard of care described in Paragraph 1 above of FIRM, its agents or employees.

To the fullest extent permitted by law, CITY shall defend, indemnify, and save harmless FIRM, its agents, employees, and representatives from and against loss, liability, and damages (including reasonable litigation costs) arising from or relating to claims for injury or death to persons, damages to tangible property, or other losses alleged to be caused by persons directly within the control of CITY when the loss, injury, or damage attributable to CITY'S willful misconduct.

11. LIMITATIONS OF LIABILITY. CITY agrees that, to the fullest extent permitted by law, FIRM'S total liability to CITY for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, FIRM'S negligence, errors, omissions, strict liability, or breach of contract shall not exceed the total compensation received by FIRM under this Agreement. If CITY desires a limit of liability greater than that provided above, CITY and FIRM shall include in Part III of this Agreement the amount of such limit and the additional compensation, if any, to be paid to FIRM for assumption of such additional risk.

12. ACCESS. CITY shall provide FIRM reasonably safe access to any premises as necessary for FIRM to provide the Services.

13. REUSE OF PROJECT DELIVERABLES. Reuse of any documents or other deliverables including electronic media, pertaining to the Project by CITY for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by Engineer for the specific purpose intended, shall be at the CITY'S risk. CITY agrees to defend, indemnify, and hold harmless FIRM from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by CITY or others acting through CITY.

14. AMENDMENT. This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

15. ASSIGNMENT. Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

16. STATUTES OF LIMITATION. To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

- 17. PREVAILING PARTY LITIGATION COSTS.** In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to seek its litigation costs from the other party.
- 18. 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 any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.
- 19. NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including CITY'S contractors, if any.
- 20. SEVERABILITY.** The various terms, 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.
- 21. AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

IF FIRM IS ADVISED THAT THE PROJECT IT IS BEING ASSIGNED IS A CONSENT DECREE PROJECT, THEN THE FOLLOWING ITEMS MUST BE CONFORMED TO:

- 22. CONSENT DECREE NOTIFICATION.** FIRM shall perform, or cause others to perform, all work undertaken in connection with this Agreement in a good and workmen-like manner and in conformance with the terms of the City of Fort Wayne Consent Decree entered in the U.S. District Court on April 1, 2008 by the United States and State of Indiana. FIRM acknowledges that it has been provided a complete copy of the Consent Decree which can be viewed at:
<http://www.cityoffortwayne.org/index.php/content/view/1494/1566/>
- 23. DOCUMENT RETENTION.** Notwithstanding any other provision of this Agreement, FIRM agrees to preserve all non-identical copies of all documents, records and other information (whether in physical or electronic form) within FIRM's possession or control and which relate, in any manner, to the performance of the work undertaken in connection with this Agreement for a period of 1 year after the completion contemplated by the Agreement (the "Retention Period"). Prior to the end of the Retention Period, or at any earlier time if requested by the City, FIRM shall provide the City with complete copies of such documents, records and other information at no cost to the City. The copies shall be provided to the City on CD or DVD media, and individual files shall be in Adobe PDF format. The individual files shall be contained in a ZIP formatted file, and the filename of the ZIP shall include the name of the project and the FIRM. No part of any file shall be encrypted or protected from copying. Such copies shall be accompanied by a verified written statement from the FIRM attesting that it has provided the City with complete copies of all documents, records and other information which relates to the work contemplated by the Agreement.

PROFESSIONAL SERVICES AGREEMENT

City Utilities- Resident Project Representative / Inspection Services

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

By and through its

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

and,

PROJECT ENGINEER ("FIRM"):

CH2M Hill Engineers, Inc.
701 S Clinton Street
Suite 324
Fort Wayne, IN 46802

Who agree as follows:

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

APPROVALS

APPROVED FOR CITY:

BOARD OF PUBLIC WORKS

BY: _____
Robert P. Kennedy, Chair

BY: _____
Kumar Menon, Member

BY: _____
Mike Avila, Member

ATTEST:

BY: _____
Lyndsey Richards, Clerk

APPROVED FOR FIRM: CH2M HILL ENGINEERS, INC.

BY: _____

PRINTED NAME _____

TITLE: _____

DATE: _____

PART I
FIRMS RESPONSIBILITIES

A. GENERAL RESPONSIBILITIES

FIRM Shall:

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

B. SERVICES BY FIRM:

Services to be provided for the project are as follows:

1. FIRM shall have a designated person as a point of contact for RPR services oversight.
2. FIRM shall provide professional RPR, inspection, observation and testing services during the construction of facilities on assigned projects.
3. FIRM shall provide one (1) Inspector, clerical, and secretarial personnel as required for a period of time necessary to complete the construction project and prepare a final construction report.
 - a. The qualifications and experiences of personnel provided by FIRM are subject to approval by CITY. No personnel shall be assigned to the project until such approval is obtained.
 - b. The Inspector shall take directions from and report to CITY'S assigned Contract Manager (CM) on all matters concerning contract compliance and administration.
 - c. The Inspector shall coordinate project activities with CITY'S assigned Contract Manager.
4. FIRM shall also do the following:
 - a. FIRMS will be expected to fully utilize the Program Management Information System (PMIS), a web based system that will allow for FIRMS to submit inspection reports, photographs, and other various forms of project documentation electronically to City Utilities Engineering.
 - b. Serve as CITY'S Liaison with the Developer / Contractor, working principally through the Developer / Contractor's field superintendent or such other person in authority as designated by the Developer / Contractor. Acting in liaison capacity, the Inspector shall be thoroughly familiar with the plans and specifications applicable to the project and observe the construction for compliance with respect to all provisions therein.

- c. Review the NPDES Stormwater permit / plans and conduct on-site observations as a basis for determining that the project is proceeding in substantial conformance with the approved permit / plan requirements. Any deviation observed shall be reported in writing promptly to CITY by the Inspector.
- d. Review the construction schedule prepared by the Developer / Contractor and assist CITY in making sure schedule is being held to meet project milestones (ex. Substantial & Final Completion) and updated monthly with pay application.
- e. Cooperate with CITY in dealing with the various local agencies having jurisdiction over the project.
- f. Provide observation of construction activities performed by the Contractor to ensure work complies with the contract documents and related project permits.
 - 1. Daily logs – to be loaded into PMIS for both Developer and Capital projects each day of active construction
 - 2. Photos for construction progress (taken daily of relevant work activities) as well as for any potential claim situations- to be loaded into PMIS at minimum of every week
 - 3. Record on project drawings all field changes and daily production information
 - 4. Keep quantity records and accurate materials stored on site records for submittal to Contract Manager for progress payment reviews
 - 5. Keep detailed records on time and materials for work authorized as reimbursable
 - 6. Obtain and review all applicable easements required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in easement documents.
 - 7. Obtain and review all applicable permits required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in permits including limits of construction and ensure contractor stays out of restricted areas. Copies of permits are uploaded into the PMIS digital library by Contract Manager.
- g. Inspect, at a minimum, the following:
 - 1. Bedding and backfill of stormwater and sanitary sewers and related structures
 - 2. Bedding, backfill and restraint of water mains, elbows, hydrants, valves, auxiliary valves, blow-offs, services and related appurtenances.
 - 3. Installation of manholes, lift stations and/or force mains
 - 4. Subgrade for horizontal and vertical alignment and compaction
 - 5. Rough and final grading of swales, ditches, and detention/retention facilities
 - 6. Testing of construction materials by private testing company may be called for on any of the above phases as required by the City Utilities Engineering Department or as requested by CITY.
 - 7. On-site verification of all required testing and as-built survey information.
 - 8. Verification of invert elevations at each manhole during construction of sanitary and storm sewer main trunk lines to ensure design elevations (and associated design capacity) is being maintained.
 - 9. Electrical/mechanical, concrete, and/or structural infrastructure on Facility projects.
- h. Furnish all equipment necessary to sample and test materials and/or provide on-site independent assurance testing of materials in accordance with standards and specifications of the Fort Wayne procedures and in accordance with current accepted practices, ordinances, and the most recent standards and specifications of the Division of Utilities, City Utilities Engineering Department as approved and adopted by the Board of Public Works.
- i. Verify that required testing has been accomplished and results of the testing are satisfactory

- j. Notify the Developer / Contractor and CITY in writing of any substandard work
- k. Consider and evaluate the Developer / Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to CITY'S assigned Contract Manager.
- l. Representative of the firm shall notify CITY of any additional work requested by the CONTRACTOR beyond the original approved design prior to the work occurring. Representatives are not empowered to make changes to projects; all changes must be approved by CITY staff.
- m. On the PMIS Inspectors Daily Report, record hours on the job site (both inspector & contractor(s)), weather conditions, field superintendent/foreman's name, crew size, list of visiting officials, decisions, interaction with the public or property owners/renters, safety observations, general observations, and specific observations with regard to test procedures and results of testing – to be loaded into PMIS daily.
- n. Provide a short weekly summary/status report of any major contractor's activities, issues, as well as work planned for the following week (during the active construction periods only)- to be loaded into PMIS every week
- o. Take notes during and provide meeting minutes of all construction related meetings.
- p. Assist City CM with management of contractor's request for interpretation (RFI's) on clarification and interpretations, field orders, change orders, allowance authorizations, and work change directives.
- q. Assist the City (CM) in reviewing the Contractor's monthly pay quantities and application
- r. Assist City CM in preparing and coordinating change management documents, issuing defective work notices, performing final inspection and reviewing final punch lists from Contractor.
- s. Assist City CM to coordinate any necessary vendor installation certifications as well as startup and training activities
- t. Assist City CM with final project closeout documentation and help ensure that compliance efforts are completed so that project can be accepted by CU and the Board of Public Works and final payment be made to Contractor.
- u. Provide timely invoices to CITY.
- v. Provide a scanned copy of Inspector marked up as-built drawings at substantial completion of the project. If unable to provide a scanned copy, furnish marked up as-built drawings to Contract Manager for City to scan. Scanned drawings to be uploaded into PMIS digital library by Contract Manager.
- w. Deliver the final project records to the Construction Manager within ten (10) calendar days after satisfactory completion of the project.
- x. Incident Reporting – Should an accident occur on the project, notify Contract Manager immediately, then document with photos and prepare a report of the incident including but not limited to: What happened, all parties on site when accident occurred, what parties responded to provide assistance to the accident involved parties (if police, name of officer or number on squad

car), what inspector personally witnessed, what may have occurred that inspector did not witness. Photos and report to be submitted to City Manager of Engineering by noon the day following the accident.

- y. Assist City Manager at Facility projects to inspect areas within confined space areas. Inspector shall be confined space certified and may be required to enter facilities as a part of a construction firms confined space entry team.
- z. Upon request by the City, if GPS coordinates are not secured by Contractor, Design Engineering firm, or Survey, Inspector shall gather GPS information utilizing GPS equipment with sub-meter accuracy. At a minimum, coordinates must be recorded for Hydrants, valves, curb stops, corporation stops, directional change fittings, connection fittings, manholes, clean-outs, sewer taps, and other appurtances as agreed upon at project assignment. Information to shall be provided to the City in Raw Data form that can be uploaded into GIS.
- aa. Notify CM and document in daily report when utilities other than the ones being installed as part of the project are encountered and are in interference with proposed infrastructure or damaged by the contractor.
- bb. Work with the public to resolve any complaints that are the result of construction activities. If complaint cannot be immediately resolved by disclosing to the contractor, notify the CM for assistance, guidance, and follow-up.

C. KEY PERSONEL

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

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

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

D. SCHEDULE

Services under this contract are to be completed from date of NTP until July 31, 2017.

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

PART II

CITY'S RESPONSIBILITIES

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

A. INFORMATION AND REQUIREMENTS

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

B. REPRESENTATIVE:

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

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

PART III

COMPENSATION, BILLING, PAYMENT AND SCHEDULE

A. COMPENSATION

FIRM'S COMPENSATION FOR SERVICES

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

PRIVATE/DEVELOPER PROJECTS

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

1. FIRM shall be compensated at a rate of **fifty two dollars and fifty cents (\$52.50) per hour** per Inspector per DEVELOPER/CONTRACTOR'S project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Private / Developer activities.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

ALLEN COUNTY REGIONAL SEWER DISTRICT PROJECTS

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

1. FIRM shall be compensated at a rate of **fifty-five dollars (\$55.00) per hour** per Inspector per ACRSD project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for ACRSD activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to a higher pay level upon approval by the City.

- If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

CAPITAL PROJECTS

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

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

WATER POLLUTION CONTROL AND WATER FILTRATION PLANT PROJECTS

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

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

B. BILLING AND PAYMENT

METHOD OF PAYMENT

FIRM shall submit a properly itemized invoice to CITY on a monthly basis. CITY shall pay FIRM within forty five (45) days after receipt of such properly itemized claim forms, unless claim is objected to in writing, in which case claim shall be paid within 15 days of resolution of any dispute. All required items must be uploaded into PMIS prior to Invoice approval.

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.
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 City. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined. FIRM will promptly provide City with a proposed amendment to this Agreement to recognize such change, which the CITY shall approve or reject in writing within 15 days of receipt.
3. **SAFETY.** Engineer shall establish and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, FIRM specifically disclaims any authority or responsibility for general job site safety and safety of persons other than FIRM employees.
4. **DELAYS.** If events beyond the control of CITY or FIRM, 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 amended to the extent necessary to compensate for such delay.
5. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party. CITY shall pay FIRM for all Services, including profit relating thereto, rendered prior to termination.
6. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by FIRM is supplied for the general guidance of the CITY only. Since FIRM has no control over competitive bidding or market conditions, FIRM cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CITY.
7. **RELATIONSHIP WITH CONTRACTORS.** FIRM shall serve as CITY'S professional representative for the Services, and may make recommendations to CITY concerning actions relating to CITY'S contractors, but FIRM shall have no authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CITY'S contractors, without specific written provision to do so in this agreement.
9. **INSURANCE.** FIRM 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 Board of Public Works
200 East Berry Street, Suite 240
Fort Wayne, IN 46802

- 10. INDEMNITIES.** To the fullest extent permitted by law, FIRM shall indemnify and save harmless CITY from and against loss, liability, and damages sustained by CITY, its agents, employees, and representatives by reason of injury or (including reasonable litigation costs) death to persons or damage to tangible property to the extent caused directly by the willful misconduct or failure to adhere to the standard of care described in Paragraph 1 above of FIRM, its agents or employees.

To the fullest extent permitted by law, CITY shall defend, indemnify, and save harmless FIRM, its agents, employees, and representatives from and against loss, liability, and damages (including reasonable litigation costs) arising from or relating to claims for injury or death to persons, damages to tangible property, or other losses alleged to be caused by persons directly within the control of CITY when the loss, injury, or damage attributable to CITY'S willful misconduct.

- 11. LIMITATIONS OF LIABILITY.** CITY agrees that, to the fullest extent permitted by law, FIRM'S total liability to CITY for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, FIRM'S negligence, errors, omissions, strict liability, or breach of contract shall not exceed the total compensation received by FIRM under this Agreement. If CITY desires a limit of liability greater than that provided above, CITY and FIRM shall include in Part III of this Agreement the amount of such limit and the additional compensation, if any, to be paid to FIRM for assumption of such additional risk.

- 12. ACCESS.** CITY shall provide FIRM reasonably safe access to any premises as necessary for FIRM to provide the Services.

- 13. REUSE OF PROJECT DELIVERABLES.** Reuse of any documents or other deliverables including electronic media, pertaining to the Project by CITY for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by Engineer for the specific purpose intended, shall be at the CITY'S risk. CITY agrees to defend, indemnify, and hold harmless FIRM from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by CITY or others acting through CITY.

- 14. AMENDMENT.** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

- 15. ASSIGNMENT.** Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

- 16. STATUTES OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

- 17. PREVAILING PARTY LITIGATION COSTS.** In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to seek its litigation costs from the other party.
- 18. 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 any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.
- 19. NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including CITY'S contractors, if any.
- 20. SEVERABILITY.** The various terms, 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.
- 21. AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

IF FIRM IS ADVISED THAT THE PROJECT IT IS BEING ASSIGNED IS A CONSENT DECREE PROJECT, THEN THE FOLLOWING ITEMS MUST BE CONFORMED TO:

- 22. CONSENT DECREE NOTIFICATION.** FIRM shall perform, or cause others to perform, all work undertaken in connection with this Agreement in a good and workmen-like manner and in conformance with the terms of the City of Fort Wayne Consent Decree entered in the U.S. District Court on April 1, 2008 by the United States and State of Indiana. FIRM acknowledges that it has been provided a complete copy of the Consent Decree which can be viewed at:
<http://www.cityoffortwayne.org/index.php/content/view/1494/1566/>
- 23. DOCUMENT RETENTION.** Notwithstanding any other provision of this Agreement, FIRM agrees to preserve all non-identical copies of all documents, records and other information (whether in physical or electronic form) within FIRM's possession or control and which relate, in any manner, to the performance of the work undertaken in connection with this Agreement for a period of 1 year after the completion contemplated by the Agreement (the "Retention Period"). Prior to the end of the Retention Period, or at any earlier time if requested by the City, FIRM shall provide the City with complete copies of such documents, records and other information at no cost to the City. The copies shall be provided to the City on CD or DVD media, and individual files shall be in Adobe PDF format. The individual files shall be contained in a ZIP formatted file, and the filename of the ZIP shall include the name of the project and the FIRM. No part of any file shall be encrypted or protected from copying. Such copies shall be accompanied by a verified written statement from the FIRM attesting that it has provided the City with complete copies of all documents, records and other information which relates to the work contemplated by the Agreement.

PROFESSIONAL SERVICES AGREEMENT

City Utilities- Resident Project Representative / Inspection Services

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

By and through its

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

and,

PROJECT ENGINEER ("FIRM"):

Construction Support Services
PO Box 85048
Fort Wayne, IN 46885

Who agree as follows:

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

APPROVALS

APPROVED FOR CITY:

BOARD OF PUBLIC WORKS

BY: _____
Robert P. Kennedy, Chair

BY: _____
Kumar Menon, Member

BY: _____
Mike Avila, Member

ATTEST:

BY: _____
Lyndsey Richards, Clerk

APPROVED FOR FIRM: CONSTRUCTION SUPPORT SERVICES, INC.

BY: _____

PRINTED NAME _____

TITLE: _____

DATE: _____

PART I
FIRMS RESPONSIBILITIES

A. GENERAL RESPONSIBILITIES

FIRM Shall:

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

B. SERVICES BY FIRM:

Services to be provided for the project are as follows:

1. FIRM shall have a designated person as a point of contact for RPR services oversight.
2. FIRM shall provide professional RPR, inspection, observation and testing services during the construction of facilities on assigned projects.
3. FIRM shall provide one (1) Inspector, clerical, and secretarial personnel as required for a period of time necessary to complete the construction project and prepare a final construction report.
 - a. The qualifications and experiences of personnel provided by FIRM are subject to approval by CITY. No personnel shall be assigned to the project until such approval is obtained.
 - b. The Inspector shall take directions from and report to CITY'S assigned Contract Manager (CM) on all matters concerning contract compliance and administration.
 - c. The Inspector shall coordinate project activities with CITY'S assigned Contract Manager.
4. FIRM shall also do the following:
 - a. FIRMS will be expected to fully utilize the Program Management Information System (PMIS), a web based system that will allow for FIRMS to submit inspection reports, photographs, and other various forms of project documentation electronically to City Utilities Engineering.
 - b. Serve as CITY'S Liaison with the Developer / Contractor, working principally through the Developer / Contractor's field superintendent or such other person in authority as designated by the Developer / Contractor. Acting in liaison capacity, the Inspector shall be thoroughly familiar with the plans and specifications applicable to the project and observe the construction for compliance with respect to all provisions therein.

- c. Review the NPDES Stormwater permit / plans and conduct on-site observations as a basis for determining that the project is proceeding in substantial conformance with the approved permit / plan requirements. Any deviation observed shall be reported in writing promptly to CITY by the Inspector.
- d. Review the construction schedule prepared by the Developer / Contractor and assist CITY in making sure schedule is being held to meet project milestones (ex. Substantial & Final Completion) and updated monthly with pay application.
- e. Cooperate with CITY in dealing with the various local agencies having jurisdiction over the project.
- f. Provide observation of construction activities performed by the Contractor to ensure work complies with the contract documents and related project permits.
 - 1. Daily logs – to be loaded into PMIS for both Developer and Capital projects each day of active construction
 - 2. Photos for construction progress (taken daily of relevant work activities) as well as for any potential claim situations-to be loaded into PMIS at minimum of every week
 - 3. Record on project drawings all field changes and daily production information
 - 4. Keep quantity records and accurate materials stored on site records for submittal to Contract Manager for progress payment reviews
 - 5. Keep detailed records on time and materials for work authorized as reimbursable
 - 6. Obtain and review all applicable easements required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in easement documents.
 - 7. Obtain and review all applicable permits required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in permits including limits of construction and ensure contractor stays out of restricted areas. Copies of permits are uploaded into the PMIS digital library by Contract Manager.
- g. Inspect, at a minimum, the following:
 - 1. Bedding and backfill of stormwater and sanitary sewers and related structures
 - 2. Bedding, backfill and restraint of water mains, elbows, hydrants, valves, auxiliary valves, blow-offs, services and related appurtenances.
 - 3. Installation of manholes, lift stations and/or force mains
 - 4. Subgrade for horizontal and vertical alignment and compaction
 - 5. Rough and final grading of swales, ditches, and detention/retention facilities
 - 6. Testing of construction materials by private testing company may be called for on any of the above phases as required by the City Utilities Engineering Department or as requested by CITY.
 - 7. On-site verification of all required testing and as-built survey information.
 - 8. Verification of invert elevations at each manhole during construction of sanitary and storm sewer main trunk lines to ensure design elevations (and associated design capacity) is being maintained.
 - 9. Electrical/mechanical, concrete, and/or structural infrastructure on Facility projects.
- h. Furnish all equipment necessary to sample and test materials and/or provide on-site independent assurance testing of materials in accordance with standards and specifications of the Fort Wayne procedures and in accordance with current accepted practices, ordinances, and the most recent standards and specifications of the Division of Utilities, City Utilities Engineering Department as approved and adopted by the Board of Public Works.
- i. Verify that required testing has been accomplished and results of the testing are satisfactory

- j. Notify the Developer / Contractor and CITY in writing of any substandard work
- k. Consider and evaluate the Developer / Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to CITY'S assigned Contract Manager.
- l. Representative of the firm shall notify CITY of any additional work requested by the CONTRACTOR beyond the original approved design prior to the work occurring. Representatives are not empowered to make changes to projects; all changes must be approved by CITY staff.
- m. On the PMIS Inspectors Daily Report, record hours on the job site (both inspector & contractor(s)), weather conditions, field superintendent/foreman's name, crew size, list of visiting officials, decisions, interaction with the public or property owners/renters, safety observations, general observations, and specific observations with regard to test procedures and results of testing – to be loaded into PMIS daily.
- n. Provide a short weekly summary/status report of any major contractor's activities, issues, as well as work planned for the following week (during the active construction periods only)- to be loaded into PMIS every week
- o. Take notes during and provide meeting minutes of all construction related meetings.
- p. Assist City CM with management of contractor's request for interpretation (RFI's) on clarification and interpretations, field orders, change orders, allowance authorizations, and work change directives.
- q. Assist the City (CM) in reviewing the Contractor's monthly pay quantities and application
- r. Assist City CM in preparing and coordinating change management documents, issuing defective work notices, performing final inspection and reviewing final punch lists from Contractor.
- s. Assist City CM to coordinate any necessary vendor installation certifications as well as startup and training activities
- t. Assist City CM with final project closeout documentation and help ensure that compliance efforts are completed so that project can be accepted by CU and the Board of Public Works and final payment be made to Contractor.
- u. Provide timely invoices to CITY.
- v. Provide a scanned copy of Inspector marked up as-built drawings at substantial completion of the project. If unable to provide a scanned copy, furnish marked up as-built drawings to Contract Manager for City to scan. Scanned drawings to be uploaded into PMIS digital library by Contract Manager.
- w. Deliver the final project records to the Construction Manager within ten (10) calendar days after satisfactory completion of the project.
- x. Incident Reporting – Should an accident occur on the project, notify Contract Manager immediately, then document with photos and prepare a report of the incident including but not limited to: What happened, all parties on site when accident occurred, what parties responded to provide assistance to the accident involved parties (if police, name of officer or number on squad

car), what inspector personally witnessed, what may have occurred that inspector did not witness. Photos and report to be submitted to City Manager of Engineering by noon the day following the accident.

- y. Assist City Manager at Facility projects to inspect areas within confined space areas. Inspector shall be confined space certified and may be required to enter facilities as a part of a construction firms confined space entry team.
- z. Upon request by the City, if GPS coordinates are not secured by Contractor, Design Engineering firm, or Survey, Inspector shall gather GPS information utilizing GPS equipment with sub-meter accuracy. At a minimum, coordinates must be recorded for Hydrants, valves, curb stops, corporation stops, directional change fittings, connection fittings, manholes, clean-outs, sewer taps, and other appurtances as agreed upon at project assignment. Information to shall be provided to the City in Raw Data form that can be uploaded into GIS.
- aa. Notify CM and document in daily report when utilities other than the ones being installed as part of the project are encountered and are in interference with proposed infrastructure or damaged by the contractor.
- bb. Work with the public to resolve any complaints that are the result of construction activities. If complaint cannot be immediately resolved by disclosing to the contractor, notify the CM for assistance, guidance, and follow-up.

C. KEY PERSONEL

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

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

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

D. SCHEDULE

Services under this contract are to be completed from date of NTP until July 31, 2017.

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

PART II

CITY'S RESPONSIBILITIES

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

A. INFORMATION AND REQUIREMENTS

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

B. REPRESENTATIVE:

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

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

PART III

COMPENSATION, BILLING, PAYMENT AND SCHEDULE

A. COMPENSATION

FIRM'S COMPENSATION FOR SERVICES

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

PRIVATE/DEVELOPER PROJECTS

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

1. FIRM shall be compensated at a rate of **fifty two dollars and fifty cents (\$52.50) per hour** per Inspector per DEVELOPER/CONTRACTOR'S project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Private / Developer activities.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

ALLEN COUNTY REGIONAL SEWER DISTRICT PROJECTS

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

1. FIRM shall be compensated at a rate of **fifty-five dollars (\$55.00) per hour** per Inspector per ACRSD project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for ACRSD activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to a higher pay level upon approval by the City.

- If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

CAPITAL PROJECTS

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

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

WATER POLLUTION CONTROL AND WATER FILTRATION PLANT PROJECTS

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

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

B. BILLING AND PAYMENT

METHOD OF PAYMENT

FIRM shall submit a properly itemized invoice to CITY on a monthly basis. CITY shall pay FIRM within forty five (45) days after receipt of such properly itemized claim forms, unless claim is objected to in writing, in which case claim shall be paid within 15 days of resolution of any dispute. All required items must be uploaded into PMIS prior to Invoice approval.

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.
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 City. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined. FIRM will promptly provide City with a proposed amendment to this Agreement to recognize such change, which the CITY shall approve or reject in writing within 15 days of receipt.
3. **SAFETY.** Engineer shall establish and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, FIRM specifically disclaims any authority or responsibility for general job site safety and safety of persons other than FIRM employees.
4. **DELAYS.** If events beyond the control of CITY or FIRM, 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 amended to the extent necessary to compensate for such delay.
5. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party. CITY shall pay FIRM for all Services, including profit relating thereto, rendered prior to termination.
6. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by FIRM is supplied for the general guidance of the CITY only. Since FIRM has no control over competitive bidding or market conditions, FIRM cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CITY.
7. **RELATIONSHIP WITH CONTRACTORS.** FIRM shall serve as CITY'S professional representative for the Services, and may make recommendations to CITY concerning actions relating to CITY'S contractors, but FIRM shall have no authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CITY'S contractors, without specific written provision to do so in this agreement.
9. **INSURANCE.** FIRM 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 Board of Public Works
200 East Berry Street, Suite 240
Fort Wayne, IN 46802

- 10. INDEMNITIES.** To the fullest extent permitted by law, FIRM shall indemnify and save harmless CITY from and against loss, liability, and damages sustained by CITY, its agents, employees, and representatives by reason of injury or (including reasonable litigation costs) death to persons or damage to tangible property to the extent caused directly by the willful misconduct or failure to adhere to the standard of care described in Paragraph 1 above of FIRM, its agents or employees.

To the fullest extent permitted by law, CITY shall defend, indemnify, and save harmless FIRM, its agents, employees, and representatives from and against loss, liability, and damages (including reasonable litigation costs) arising from or relating to claims for injury or death to persons, damages to tangible property, or other losses alleged to be caused by persons directly within the control of CITY when the loss, injury, or damage attributable to CITY'S willful misconduct.

- 11. LIMITATIONS OF LIABILITY.** CITY agrees that, to the fullest extent permitted by law, FIRM'S total liability to CITY for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, FIRM'S negligence, errors, omissions, strict liability, or breach of contract shall not exceed the total compensation received by FIRM under this Agreement. If CITY desires a limit of liability greater than that provided above, CITY and FIRM shall include in Part III of this Agreement the amount of such limit and the additional compensation, if any, to be paid to FIRM for assumption of such additional risk.

- 12. ACCESS.** CITY shall provide FIRM reasonably safe access to any premises as necessary for FIRM to provide the Services.

- 13. REUSE OF PROJECT DELIVERABLES.** Reuse of any documents or other deliverables including electronic media, pertaining to the Project by CITY for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by Engineer for the specific purpose intended, shall be at the CITY'S risk. CITY agrees to defend, indemnify, and hold harmless FIRM from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by CITY or others acting through CITY.

- 14. AMENDMENT.** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

- 15. ASSIGNMENT.** Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

- 16. STATUTES OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

- 17. PREVAILING PARTY LITIGATION COSTS.** In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to seek its litigation costs from the other party.
- 18. 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 any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.
- 19. NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including CITY'S contractors, if any.
- 20. SEVERABILITY.** The various terms, 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.
- 21. AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

IF FIRM IS ADVISED THAT THE PROJECT IT IS BEING ASSIGNED IS A CONSENT DECREE PROJECT, THEN THE FOLLOWING ITEMS MUST BE CONFORMED TO:

- 22. CONSENT DECREE NOTIFICATION.** FIRM shall perform, or cause others to perform, all work undertaken in connection with this Agreement in a good and workmen-like manner and in conformance with the terms of the City of Fort Wayne Consent Decree entered in the U.S. District Court on April 1, 2008 by the United States and State of Indiana. FIRM acknowledges that it has been provided a complete copy of the Consent Decree which can be viewed at:
<http://www.cityoffortwayne.org/index.php/content/view/1494/1566/>
- 23. DOCUMENT RETENTION.** Notwithstanding any other provision of this Agreement, FIRM agrees to preserve all non-identical copies of all documents, records and other information (whether in physical or electronic form) within FIRM's possession or control and which relate, in any manner, to the performance of the work undertaken in connection with this Agreement for a period of 1 year after the completion contemplated by the Agreement (the "Retention Period"). Prior to the end of the Retention Period, or at any earlier time if requested by the City, FIRM shall provide the City with complete copies of such documents, records and other information at no cost to the City. The copies shall be provided to the City on CD or DVD media, and individual files shall be in Adobe PDF format. The individual files shall be contained in a ZIP formatted file, and the filename of the ZIP shall include the name of the project and the FIRM. No part of any file shall be encrypted or protected from copying. Such copies shall be accompanied by a verified written statement from the FIRM attesting that it has provided the City with complete copies of all documents, records and other information which relates to the work contemplated by the Agreement.

PROFESSIONAL SERVICES AGREEMENT

City Utilities- Resident Project Representative / Inspection Services

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

By and through its

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

and,

PROJECT ENGINEER ("FIRM"):

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

Who agree as follows:

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

APPROVALS

APPROVED FOR CITY:

BOARD OF PUBLIC WORKS

BY: _____
Robert P. Kennedy, Chair

BY: _____
Kumar Menon, Member

BY: _____
Mike Avila, Member

ATTEST:

BY: _____
Lyndsey Richards, Clerk

APPROVED FOR FIRM: DLZ INDIANA, INC.

BY: _____

PRINTED NAME _____

TITLE: _____

DATE: _____

PART I
FIRMS RESPONSIBILITIES

A. GENERAL RESPONSIBILITIES

FIRM Shall:

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

B. SERVICES BY FIRM:

Services to be provided for the project are as follows:

1. FIRM shall have a designated person as a point of contact for RPR services oversight.
2. FIRM shall provide professional RPR, inspection, observation and testing services during the construction of facilities on assigned projects.
3. FIRM shall provide one (1) Inspector, clerical, and secretarial personnel as required for a period of time necessary to complete the construction project and prepare a final construction report.
 - a. The qualifications and experiences of personnel provided by FIRM are subject to approval by CITY. No personnel shall be assigned to the project until such approval is obtained.
 - b. The Inspector shall take directions from and report to CITY'S assigned Contract Manager (CM) on all matters concerning contract compliance and administration.
 - c. The Inspector shall coordinate project activities with CITY'S assigned Contract Manager.
4. FIRM shall also do the following:
 - a. FIRMS will be expected to fully utilize the Program Management Information System (PMIS), a web based system that will allow for FIRMS to submit inspection reports, photographs, and other various forms of project documentation electronically to City Utilities Engineering.
 - b. Serve as CITY'S Liaison with the Developer / Contractor, working principally through the Developer / Contractor's field superintendent or such other person in authority as designated by the Developer / Contractor. Acting in liaison capacity, the Inspector shall be thoroughly familiar with the plans and specifications applicable to the project and observe the construction for compliance with respect to all provisions therein.

- c. Review the NPDES Stormwater permit / plans and conduct on-site observations as a basis for determining that the project is proceeding in substantial conformance with the approved permit / plan requirements. Any deviation observed shall be reported in writing promptly to CITY by the Inspector.
- d. Review the construction schedule prepared by the Developer / Contractor and assist CITY in making sure schedule is being held to meet project milestones (ex. Substantial & Final Completion) and updated monthly with pay application.
- e. Cooperate with CITY in dealing with the various local agencies having jurisdiction over the project.
- f. Provide observation of construction activities performed by the Contractor to ensure work complies with the contract documents and related project permits.
 - 1. Daily logs – to be loaded into PMIS for both Developer and Capital projects each day of active construction
 - 2. Photos for construction progress (taken daily of relevant work activities) as well as for any potential claim situations- to be loaded into PMIS at minimum of every week
 - 3. Record on project drawings all field changes and daily production information
 - 4. Keep quantity records and accurate materials stored on site records for submittal to Contract Manager for progress payment reviews
 - 5. Keep detailed records on time and materials for work authorized as reimbursable
 - 6. Obtain and review all applicable easements required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in easement documents.
 - 7. Obtain and review all applicable permits required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in permits including limits of construction and ensure contractor stays out of restricted areas. Copies of permits are uploaded into the PMIS digital library by Contract Manager.
- g. Inspect, at a minimum, the following:
 - 1. Bedding and backfill of stormwater and sanitary sewers and related structures
 - 2. Bedding, backfill and restraint of water mains, elbows, hydrants, valves, auxiliary valves, blow-offs, services and related appurtenances.
 - 3. Installation of manholes, lift stations and/or force mains
 - 4. Subgrade for horizontal and vertical alignment and compaction
 - 5. Rough and final grading of swales, ditches, and detention/retention facilities
 - 6. Testing of construction materials by private testing company may be called for on any of the above phases as required by the City Utilities Engineering Department or as requested by CITY.
 - 7. On-site verification of all required testing and as-built survey information.
 - 8. Verification of invert elevations at each manhole during construction of sanitary and storm sewer main trunk lines to ensure design elevations (and associated design capacity) is being maintained.
 - 9. Electrical/mechanical, concrete, and/or structural infrastructure on Facility projects.
- h. Furnish all equipment necessary to sample and test materials and/or provide on-site independent assurance testing of materials in accordance with standards and specifications of the Fort Wayne procedures and in accordance with current accepted practices, ordinances, and the most recent standards and specifications of the Division of Utilities, City Utilities Engineering Department as approved and adopted by the Board of Public Works.
- i. Verify that required testing has been accomplished and results of the testing are satisfactory

- j. Notify the Developer / Contractor and CITY in writing of any substandard work
- k. Consider and evaluate the Developer / Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to CITY'S assigned Contract Manager.
- l. Representative of the firm shall notify CITY of any additional work requested by the CONTRACTOR beyond the original approved design prior to the work occurring. Representatives are not empowered to make changes to projects; all changes must be approved by CITY staff.
- m. On the PMIS Inspectors Daily Report, record hours on the job site (both inspector & contractor(s)), weather conditions, field superintendent/foreman's name, crew size, list of visiting officials, decisions, interaction with the public or property owners/renters, safety observations, general observations, and specific observations with regard to test procedures and results of testing – to be loaded into PMIS daily.
- n. Provide a short weekly summary/status report of any major contractor's activities, issues, as well as work planned for the following week (during the active construction periods only)- to be loaded into PMIS every week
- o. Take notes during and provide meeting minutes of all construction related meetings.
- p. Assist City CM with management of contractor's request for interpretation (RFI's) on clarification and interpretations, field orders, change orders, allowance authorizations, and work change directives.
- q. Assist the City (CM) in reviewing the Contractor's monthly pay quantities and application
- r. Assist City CM in preparing and coordinating change management documents, issuing defective work notices, performing final inspection and reviewing final punch lists from Contractor.
- s. Assist City CM to coordinate any necessary vendor installation certifications as well as startup and training activities
- t. Assist City CM with final project closeout documentation and help ensure that compliance efforts are completed so that project can be accepted by CU and the Board of Public Works and final payment be made to Contractor.
- u. Provide timely invoices to CITY.
- v. Provide a scanned copy of Inspector marked up as-built drawings at substantial completion of the project. If unable to provide a scanned copy, furnish marked up as-built drawings to Contract Manager for City to scan. Scanned drawings to be uploaded into PMIS digital library by Contract Manager.
- w. Deliver the final project records to the Construction Manager within ten (10) calendar days after satisfactory completion of the project.
- x. Incident Reporting – Should an accident occur on the project, notify Contract Manager immediately, then document with photos and prepare a report of the incident including but not limited to: What happened, all parties on site when accident occurred, what parties responded to provide assistance to the accident involved parties (if police, name of officer or number on squad

car), what inspector personally witnessed, what may have occurred that inspector did not witness. Photos and report to be submitted to City Manager of Engineering by noon the day following the accident.

- y. Assist City Manager at Facility projects to inspect areas within confined space areas. Inspector shall be confined space certified and may be required to enter facilities as a part of a construction firms confined space entry team.
- z. Upon request by the City, if GPS coordinates are not secured by Contractor, Design Engineering firm, or Survey, Inspector shall gather GPS information utilizing GPS equipment with sub-meter accuracy. At a minimum, coordinates must be recorded for Hydrants, valves, curb stops, corporation stops, directional change fittings, connection fittings, manholes, clean-outs, sewer taps, and other appurtances as agreed upon at project assignment. Information to shall be provided to the City in Raw Data form that can be uploaded into GIS.
- aa. Notify CM and document in daily report when utilities other than the ones being installed as part of the project are encountered and are in interference with proposed infrastructure or damaged by the contractor.
- bb. Work with the public to resolve any complaints that are the result of construction activities. If complaint cannot be immediately resolved by disclosing to the contractor, notify the CM for assistance, guidance, and follow-up.

C. KEY PERSONEL

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

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

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

D. SCHEDULE

Services under this contract are to be completed from date of NTP until July 31, 2017.

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

PART II

CITY'S RESPONSIBILITIES

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

A. INFORMATION AND REQUIREMENTS

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

B. REPRESENTATIVE:

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

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

PART III

COMPENSATION, BILLING, PAYMENT AND SCHEDULE

A. COMPENSATION

FIRM'S COMPENSATION FOR SERVICES

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

PRIVATE/DEVELOPER PROJECTS

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

1. FIRM shall be compensated at a rate of **fifty two dollars and fifty cents (\$52.50) per hour** per Inspector per DEVELOPER/CONTRACTOR'S project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Private / Developer activities.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

ALLEN COUNTY REGIONAL SEWER DISTRICT PROJECTS

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

1. FIRM shall be compensated at a rate of **fifty-five dollars (\$55.00) per hour** per Inspector per ACRSD project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for ACRSD activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to a higher pay level upon approval by the City.

- If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

CAPITAL PROJECTS

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

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

WATER POLLUTION CONTROL AND WATER FILTRATION PLANT PROJECTS

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

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

B. BILLING AND PAYMENT

METHOD OF PAYMENT

FIRM shall submit a properly itemized invoice to CITY on a monthly basis. CITY shall pay FIRM within forty five (45) days after receipt of such properly itemized claim forms, unless claim is objected to in writing, in which case claim shall be paid within 15 days of resolution of any dispute. All required items must be uploaded into PMIS prior to Invoice approval.

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.
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 City. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined. FIRM will promptly provide City with a proposed amendment to this Agreement to recognize such change, which the CITY shall approve or reject in writing within 15 days of receipt.
3. **SAFETY.** Engineer shall establish and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, FIRM specifically disclaims any authority or responsibility for general job site safety and safety of persons other than FIRM employees.
4. **DELAYS.** If events beyond the control of CITY or FIRM, 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 amended to the extent necessary to compensate for such delay.
5. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party. CITY shall pay FIRM for all Services, including profit relating thereto, rendered prior to termination.
6. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by FIRM is supplied for the general guidance of the CITY only. Since FIRM has no control over competitive bidding or market conditions, FIRM cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CITY.
7. **RELATIONSHIP WITH CONTRACTORS.** FIRM shall serve as CITY'S professional representative for the Services, and may make recommendations to CITY concerning actions relating to CITY'S contractors, but FIRM shall have no authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CITY'S contractors, without specific written provision to do so in this agreement.
9. **INSURANCE.** FIRM 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 Board of Public Works
200 East Berry Street, Suite 240
Fort Wayne, IN 46802

- 10. INDEMNITIES.** To the fullest extent permitted by law, FIRM shall indemnify and save harmless CITY from and against loss, liability, and damages sustained by CITY, its agents, employees, and representatives by reason of injury or (including reasonable litigation costs) death to persons or damage to tangible property to the extent caused directly by the willful misconduct or failure to adhere to the standard of care described in Paragraph 1 above of FIRM, its agents or employees.

To the fullest extent permitted by law, CITY shall defend, indemnify, and save harmless FIRM, its agents, employees, and representatives from and against loss, liability, and damages (including reasonable litigation costs) arising from or relating to claims for injury or death to persons, damages to tangible property, or other losses alleged to be caused by persons directly within the control of CITY when the loss, injury, or damage attributable to CITY'S willful misconduct.

- 11. LIMITATIONS OF LIABILITY.** CITY agrees that, to the fullest extent permitted by law, FIRM'S total liability to CITY for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, FIRM'S negligence, errors, omissions, strict liability, or breach of contract shall not exceed the total compensation received by FIRM under this Agreement. If CITY desires a limit of liability greater than that provided above, CITY and FIRM shall include in Part III of this Agreement the amount of such limit and the additional compensation, if any, to be paid to FIRM for assumption of such additional risk.

- 12. ACCESS.** CITY shall provide FIRM reasonably safe access to any premises as necessary for FIRM to provide the Services.

- 13. REUSE OF PROJECT DELIVERABLES.** Reuse of any documents or other deliverables including electronic media, pertaining to the Project by CITY for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by Engineer for the specific purpose intended, shall be at the CITY'S risk. CITY agrees to defend, indemnify, and hold harmless FIRM from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by CITY or others acting through CITY.

- 14. AMENDMENT.** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

- 15. ASSIGNMENT.** Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

- 16. STATUTES OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

- 17. PREVAILING PARTY LITIGATION COSTS.** In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to seek its litigation costs from the other party.
- 18. 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 any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.
- 19. NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including CITY'S contractors, if any.
- 20. SEVERABILITY.** The various terms, 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.
- 21. AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

IF FIRM IS ADVISED THAT THE PROJECT IT IS BEING ASSIGNED IS A CONSENT DECREE PROJECT, THEN THE FOLLOWING ITEMS MUST BE CONFORMED TO:

- 22. CONSENT DECREE NOTIFICATION.** FIRM shall perform, or cause others to perform, all work undertaken in connection with this Agreement in a good and workmen-like manner and in conformance with the terms of the City of Fort Wayne Consent Decree entered in the U.S. District Court on April 1, 2008 by the United States and State of Indiana. FIRM acknowledges that it has been provided a complete copy of the Consent Decree which can be viewed at:
<http://www.cityoffortwayne.org/index.php/content/view/1494/1566/>
- 23. DOCUMENT RETENTION.** Notwithstanding any other provision of this Agreement, FIRM agrees to preserve all non-identical copies of all documents, records and other information (whether in physical or electronic form) within FIRM's possession or control and which relate, in any manner, to the performance of the work undertaken in connection with this Agreement for a period of 1 year after the completion contemplated by the Agreement (the "Retention Period"). Prior to the end of the Retention Period, or at any earlier time if requested by the City, FIRM shall provide the City with complete copies of such documents, records and other information at no cost to the City. The copies shall be provided to the City on CD or DVD media, and individual files shall be in Adobe PDF format. The individual files shall be contained in a ZIP formatted file, and the filename of the ZIP shall include the name of the project and the FIRM. No part of any file shall be encrypted or protected from copying. Such copies shall be accompanied by a verified written statement from the FIRM attesting that it has provided the City with complete copies of all documents, records and other information which relates to the work contemplated by the Agreement.

PROFESSIONAL SERVICES AGREEMENT

City Utilities- Resident Project Representative / Inspection Services

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

by and through its

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

and,

PROJECT ENGINEER ("FIRM"):

GAI Consultants, Inc.
1502 Magnavox Way
Fort Wayne, IN 46804
Name of Firm
Firm Address
Fort Wayne, IN 46825

Who agree as follows:

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

APPROVALS

APPROVED FOR CITY:

BOARD OF PUBLIC WORKS

BY: _____
Robert P. Kennedy, Chair

BY: _____
Kumar Menon, Member

BY: _____
Mike Avila, Member

ATTEST:

BY: _____
Victoria Edwards, Clerk

APPROVED FOR FIRM: GAI CONSULTANTS, INC. Firm Name

BY: _____

PRINTED NAME _____

TITLE: _____

DATE: _____

PART I
FIRMS RESPONSIBILITIES

A. GENERAL RESPONSIBILITIES

FIRM Shall:

1. Certify and warrant that it has the capacity to perform the services required by CITY with high professional quality, ability and expertise and further certify and warrant that it has the capacity and authority to enter into this Agreement.
2. Perform Resident Project Representative (RPR) and inspection services during the construction of sanitary sewers, water mains, and stormwater sewer facilities in assigned projects to determine whether said infrastructure is constructed in substantial conformance with plans and specifications approved by Fort Wayne City Utilities Development Services or Engineering Department and Chapters 51, 52 and 53 of the City Code of Fort Wayne, Indiana, as set forth in Service by Firm section included herein.
3. Review project National Pollutant Discharge Elimination System (NPDES) Stormwater permit / plans and conduct on-site observations as a basis for determining that the project is proceeding in substantial conformance with approved permit / plan requirements.
4. Keep appropriate records, as instructed by CITY and submit all records to CITY'S (City Utilities Engineering Department) as set forth in Services by Firm section.

B. SERVICES BY FIRM:

Services to be provided for the project are as follows:

1. FIRM shall provide professional RPR, inspection, observation and testing services during the construction of facilities on assigned projects.
2. FIRM shall provide one (1) Inspector, clerical, and secretarial personnel as required for a period of time necessary to complete the construction project and prepare a final construction report.
 - a. The qualifications and experiences of personnel provided by FIRM are subject to approval by CITY. No personnel shall be assigned to the project until such approval is obtained.
 - b. The Inspector shall take directions from and report to CITY'S assigned Contract Manager on all matters concerning contract compliance and administration.
 - c. The Inspector shall coordinate project activities with CITY'S assigned Contract Manager.
3. FIRM shall also do the following:
 - a. FIRMS will be expected to fully utilize the Program Management Information System (PMIS), a web based system that will allow for FIRMS to submit inspection reports, photographs, and other various forms of project documentation electronically to City Utilities Engineering.
 - b. Serve as CITY'S Liaison with the Developer / Contractor, working principally through the Developer / Contractor's field superintendent or such other person in authority as designated by the Developer / Contractor. Acting in liaison capacity, the Inspector shall be thoroughly familiar with

the plans and specifications applicable to the project and observe the construction for compliance with respect to all provisions therein.

- c. Review the NPDES Stormwater permit / plans and conduct on-site observations as a basis for determining that the project is proceeding in substantial conformance with the approved permit / plan requirements. Any deviation observed shall be reported in writing promptly to CITY by the Inspector.
- d. Review the construction schedule prepared by the Developer / Contractor and assist CITY in making sure schedule is being held and updated monthly with pay application.
- e. Cooperate with CITY in dealing with the various local agencies having jurisdiction over the project.
- f. Provide observation of construction activities performed by the Contractor to ensure work complies with the contract documents and related project permits.
 1. Daily logs – to be loaded into PMIS for both Developer and Capital projects each day of active construction
 2. Photos for construction progress (minimum of 3 per day of active construction) as well as for any potential claim situations-to be loaded into PMIS at minimum of every week
 3. Record on project drawings all field changes and daily production information
 4. Keep quantity records and accurate materials stored on site records for submittal to Contract Manager for progress payment reviews
 5. Keep detailed records on time and materials for work authorized as reimbursable
 6. Verify that all applicable permits required for the successful completion of the project have been obtained and are being complied with. Copies of permits should be loaded into PMIS
- g. Inspect, at a minimum, the following:
 1. Bedding and backfill of stormwater and sanitary sewers and related structures
 2. Bedding, backfill and restraint of water mains, elbows, hydrants, valves, auxiliary valves, blow-offs, services and related appurtenances.
 3. Installation of manholes, lift stations and/or force mains
 4. Subgrade for horizontal and vertical alignment and compaction
 5. Rough and final grading of swales, ditches, and detention/retention facilities
 6. Testing of construction materials by private testing company may be called for on any of the above phases as required by the City Utilities Engineering Department or as requested by CITY.
 7. On-site verification of all required testing and as-built survey information including review of all record drawing plans by design engineer.
 8. Verification of invert elevations at each manhole during construction of sanitary and storm sewer main trunk lines to ensure design elevations (and associated design capacity) is being maintained.
- h. Furnish all equipment necessary to sample and test materials and/or provide on-site independent assurance testing of materials in accordance with standards and specifications of the Fort Wayne procedures and in accordance with current accepted practices, ordinances, and the most recent standards and specifications of the Division of Utilities, City Utilities Engineering Department as approved and adopted by the Board of Public Works.
- i. Verify that required testing has been accomplished and results of the testing are satisfactory
- J. Notify the Developer / Contractor and CITY in writing of any substandard work
- k. Consider and evaluate the Developer / Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to CITY'S assigned Contract

Manager.

- l. Representative of the firm shall notify CITY of any additional work requested by the CONTRACTOR beyond the original approved design prior to the work occurring. Representatives are not empowered to make changes to projects; all changes must be approved by CITY staff.
- m. On the PMIS Inspectors Daily Report, record hours on the job site (both inspector & contractor(s)), weather conditions, field superintendent/foreman's name, crew size, list of visiting officials, decisions, interaction with the public or property owners/renters, safety observations, general observations, and specific observations with regard to test procedures and results of testing – to be loaded into PMIS daily.
- n. Provide a short weekly summary/status report of any major contractor's activities, issues, as well as work planned for the following week (during the active construction periods only)- to be loaded into PMIS every week
- o. Provide meeting minutes of all construction related meetings .
 - p. Assist City CM with management of contractor's request for information (RFI's) on clarification and interpretations, field orders, change orders and work change directives.
 - q. Assist the City Construction Manager (CM) in reviewing the Contractor's monthly pay quantities and application
 - r. Assist City CM in preparing and coordinating change management documents, issuing defective work notices, performing final inspection and developing final punch lists
 - s. Assist City CM to coordinate any necessary vendor installation certifications as well as startup and training activities
 - t. Assist City CM with final project closeout documentation and help ensure that compliance efforts are completed so that project can be accepted by CU and the Board of Public Works and final payment be made to Contractor.
- u. Provide timely invoices to CITY.
- v. Deliver the final project records to the Construction Manager within ten (10) calendar days after satisfactory completion of the project.

C. LIST OF KEY PERSONEL

FIRM'S key personnel to provide services under this agreement are as listed in Attachment #1.

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

discussions) for the key staff person(s) to be substituted by other pre-approved staff person(s) a maximum of one incident or day per week.

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

D. SCHEDULE

Services under this contract are to be completed from date of NTP until December 31, 2014.

1. FIRM shall commence its services on assigned PROJECT upon notification by CITY.
2. FIRM shall attend a pre-construction meeting with the DEVELOPER/CONTRACTOR before commencement of construction.

PART II

CITY'S RESPONSIBILITIES

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

A. INFORMATION AND REQUIREMENTS

1. Provide all criteria and full information as to CITY'S requirements for the Project, including without limitation, design objectives and constraints capacity and performance requirements, flexibility, the project scope, the comprehensive engineering report, the general and special provisions of the construction agreement/contract and any budgetary limitations; and furnish copies or notify FIRM of all design and construction standards which CITY will require to be included in the required reports and all other items as described in PART 1.
2. CITY shall provide a CITY Representative with decision-making authority on all inquiries.
3. CITY shall supply FIRM with One (1) set of approved Sub-Division or Commercial Plans at least 2 calendar days prior to work.
4. CITY shall supply FIRM with One (1) set of approved Bid Documents (Plans & Specifications) at least 14 calendar days prior to a pre-construction meeting.

B. REPRESENTATIVE:

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

Contract Managers: Michael Kiester, Ron Sheppard, Dan Smith, Ray Wigfield, Andrea Adams, Patrick Dooley, Bill Maxwell, Zach Schortgen

PART III

COMPENSATION, BILLING, PAYMENT AND SCHEDULE

A. COMPENSATION

FIRM'S COMPENSATION FOR SERVICES

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

PRIVATE/DEVELOPER PROJECTS

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

1. FIRM shall be compensated at a rate of **fifty dollars (\$50.00) per hour** per Inspector per DEVELOPER/CONTRACTOR'S crew for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM listed in Attachment# 1 that have a minimum of two years of experience.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

CAPITAL PROJECTS

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

1. FIRM shall be compensated at a rate of **fifty-five dollars (\$55.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM listed in Attachment# 1 that have a minimum of five years of experience.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

2. FIRM shall be compensated at a rate of **sixty-five dollars (\$65.00) per hour** per Inspector per CAPITAL project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM listed in Attachment #1 that have a minimum of ten years of experience for larger projects or projects with more complex work- such as projects with electrical/mechanical facilities. Staff with experience in electrical/mechanical disciplines will be required on facility projects.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

TAP INSPECTIONS

1. FIRM shall be compensated at a rate of **fifty dollars (\$50.00) per tap** for tap inspections performed at the CITY'S request after the 2:00 PM call in time deadline. CITY'S request will come through the NEW WATER & SEWER DEPARTMENT.

B. BILLING AND PAYMENT

METHOD OF PAYMENT

FIRM shall submit a properly itemized invoice to CITY on a monthly basis. CITY shall pay FIRM within forty five (45) days after receipt of such properly itemized claim forms, unless claim is objected to in writing, in which case claim shall be paid within 15 days of resolution of any dispute.

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.
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 City. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined. FIRM will promptly provide City with a proposed amendment to this Agreement to recognize such change, which the CITY shall approve or reject in writing within 15 days of receipt.
3. **SAFETY.** Engineer shall establish and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, FIRM specifically disclaims any authority or responsibility for general job site safety and safety of persons other than FIRM employees.
4. **DELAYS.** If events beyond the control of CITY or FIRM, 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 amended to the extent necessary to compensate for such delay.
5. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party. CITY shall pay FIRM for all Services, including profit relating thereto, rendered prior to termination.
6. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by FIRM is supplied for the general guidance of the CITY only. Since FIRM has no control over competitive bidding or market conditions, FIRM cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CITY.
7. **RELATIONSHIP WITH CONTRACTORS.** FIRM shall serve as CITY'S professional representative for the Services, and may make recommendations to CITY concerning actions relating to CITY'S contractors, but FIRM shall have no authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CITY'S contractors, without specific written provision to do so in this agreement.
9. **INSURANCE.** FIRM 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 Board of Public Works
200 East Berry Street, Suite 240
Fort Wayne, IN 46802

10. INDEMNITIES. To the fullest extent permitted by law, FIRM shall indemnify and save harmless CITY from and against loss, liability, and damages sustained by CITY, its agents, employees, and representatives by reason of injury or (including reasonable litigation costs) death to persons or damage to tangible property to the extent caused directly by the willful misconduct or failure to adhere to the standard of care described in Paragraph 1 above of FIRM, its agents or employees.

To the fullest extent permitted by law, CITY shall defend, indemnify, and save harmless FIRM, its agents, employees, and representatives from and against loss, liability, and damages (including reasonable litigation costs) arising from or relating to claims for injury or death to persons, damages to tangible property, or other losses alleged to be caused by persons directly within the control of CITY when the loss, injury, or damage attributable to CITY'S willful misconduct.

11. LIMITATIONS OF LIABILITY. CITY agrees that, to the fullest extent permitted by law, FIRM'S total liability to CITY for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, FIRM'S negligence, errors, omissions, strict liability, or breach of contract shall not exceed the total compensation received by FIRM under this Agreement. If CITY desires a limit of liability greater than that provided above, CITY and FIRM shall include in Part III of this Agreement the amount of such limit and the additional compensation, if any, to be paid to FIRM for assumption of such additional risk.

12. ACCESS. CITY shall provide FIRM reasonably safe access to any premises as necessary for FIRM to provide the Services.

13. REUSE OF PROJECT DELIVERABLES. Reuse of any documents or other deliverables including electronic media, pertaining to the Project by CITY for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by Engineer for the specific purpose intended, shall be at the CITY'S risk. CITY agrees to defend, indemnify, and hold harmless FIRM from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by CITY or others acting through CITY.

14. AMENDMENT. This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

15. ASSIGNMENT. Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

16. STATUTES OF LIMITATION. To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

- 17. PREVAILING PARTY LITIGATION COSTS.** In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to seek its litigation costs from the other party.
- 18. 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 any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.
- 19. NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including CITY'S contractors, if any.
- 20. SEVERABILITY.** The various terms, 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.
- 21. AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

IF FIRM IS ADVISED THAT THE PROJECT IT IS BEING ASSIGNED IS A CONSENT DECREE PROJECT, THEN THE FOLLOWING ITEMS MUST BE CONFORMED TO:

- 22. CONSENT DECREE NOTIFICATION.** FIRM shall perform, or cause others to perform, all work undertaken in connection with this Agreement in a good and workmen-like manner and in conformance with the terms of the City of Fort Wayne Consent Decree entered in the U.S. District Court on April 1, 2008 by the United States and State of Indiana. FIRM acknowledges that it has been provided a complete copy of the Consent Decree which can be viewed at:
<http://www.cityoffortwayne.org/index.php/content/view/1494/1566/>
- 23. DOCUMENT RETENTION.** Notwithstanding any other provision of this Agreement, FIRM agrees to preserve all non-identical copies of all documents, records and other information (whether in physical or electronic form) within FIRM's possession or control and which relate, in any manner, to the performance of the work undertaken in connection with this Agreement for a period of 1 year after the completion contemplated by the Agreement (the "Retention Period"). Prior to the end of the Retention Period, or at any earlier time if requested by the City, FIRM shall provide the City with complete copies of such documents, records and other information at no cost to the City. The copies shall be provided to the City on CD or DVD media, and individual files shall be in Adobe PDF format. The individual files shall be contained in a ZIP formatted file, and the filename of the ZIP shall include the name of the project and the FIRM. No part of any file shall be encrypted or protected from copying. Such copies shall be accompanied by a verified written statement from the FIRM attesting that it has provided the City with complete copies of all documents, records and other information which relates to the work contemplated by the Agreement.

PROFESSIONAL SERVICES AGREEMENT

Attachment #1

LIST OF KEY PERSONEL

LIST OF PERSONEL ELIGIBLE FOR IDGHER \$50.00 PAY RATE FOR DEVELOPER PROJECTS PER PART III, SECTION A, PRIVATE/DEVELOPER PROJECTS, PARAGRAPH 1:

Personnel:

LIST OF PERSONEL ELIGIBLE FOR HIGHER \$55.00 PAY RATE FOR CAPITAL PROJECTS PER PART III, SECTION A, CAPITAL PROJECTS, PARAGRAPH 1:

Personnel:

LIST OF PERSONEL ELIGIBLE FOR HIGHER \$65.00 PAY RATE FOR CAPITAL PROJECTS PER PART III, SECTION A, CAPITAL PROJECTS, PARAGRAPH 2:

Personnel:

PROFESSIONAL SERVICES AGREEMENT

City Utilities- Resident Project Representative / Inspection Services

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

By and through its

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

and,

PROJECT ENGINEER ("FIRM"):

VS Engineering, Inc.
10305 Dawsons Creek Boulevard, Suite A
Fort Wayne, IN 46825

Who agree as follows:

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

APPROVALS

APPROVED FOR CITY:

BOARD OF PUBLIC WORKS

BY: _____
Robert P. Kennedy, Chair

BY: _____
Kumar Menon, Member

BY: _____
Mike Avila, Member

ATTEST:

BY: _____
Lyndsey Richards, Clerk

APPROVED FOR FIRM: VS ENGINEERING, INC.

BY: _____

PRINTED NAME _____

TITLE: _____

DATE: _____

PART I
FIRMS RESPONSIBILITIES

A. GENERAL RESPONSIBILITIES

FIRM Shall:

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

B. SERVICES BY FIRM:

Services to be provided for the project are as follows:

1. FIRM shall have a designated person as a point of contact for RPR services oversight.
2. FIRM shall provide professional RPR, inspection, observation and testing services during the construction of facilities on assigned projects.
3. FIRM shall provide one (1) Inspector, clerical, and secretarial personnel as required for a period of time necessary to complete the construction project and prepare a final construction report.
 - a. The qualifications and experiences of personnel provided by FIRM are subject to approval by CITY. No personnel shall be assigned to the project until such approval is obtained.
 - b. The Inspector shall take directions from and report to CITY'S assigned Contract Manager (CM) on all matters concerning contract compliance and administration.
 - c. The Inspector shall coordinate project activities with CITY'S assigned Contract Manager.
4. FIRM shall also do the following:
 - a. FIRMS will be expected to fully utilize the Program Management Information System (PMIS), a web based system that will allow for FIRMS to submit inspection reports, photographs, and other various forms of project documentation electronically to City Utilities Engineering.
 - b. Serve as CITY'S Liaison with the Developer / Contractor, working principally through the Developer / Contractor's field superintendent or such other person in authority as designated by the Developer / Contractor. Acting in liaison capacity, the Inspector shall be thoroughly familiar with the plans and specifications applicable to the project and observe the construction for compliance with respect to all provisions therein.

- c. Review the NPDES Stormwater permit / plans and conduct on-site observations as a basis for determining that the project is proceeding in substantial conformance with the approved permit / plan requirements. Any deviation observed shall be reported in writing promptly to CITY by the Inspector.
- d. Review the construction schedule prepared by the Developer / Contractor and assist CITY in making sure schedule is being held to meet project milestones (ex. Substantial & Final Completion) and updated monthly with pay application.
- e. Cooperate with CITY in dealing with the various local agencies having jurisdiction over the project.
- f. Provide observation of construction activities performed by the Contractor to ensure work complies with the contract documents and related project permits.
 - 1. Daily logs – to be loaded into PMIS for both Developer and Capital projects each day of active construction
 - 2. Photos for construction progress (taken daily of relevant work activities) as well as for any potential claim situations-to be loaded into PMIS at minimum of every week
 - 3. Record on project drawings all field changes and daily production information
 - 4. Keep quantity records and accurate materials stored on site records for submittal to Contract Manager for progress payment reviews
 - 5. Keep detailed records on time and materials for work authorized as reimbursable
 - 6. Obtain and review all applicable easements required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in easement documents.
 - 7. Obtain and review all applicable permits required for successful completion of project and verify contractors are complying with and fulfilling the requirements outlined in permits including limits of construction and ensure contractor stays out of restricted areas. Copies of permits are uploaded into the PMIS digital library by Contract Manager.
- g. Inspect, at a minimum, the following:
 - 1. Bedding and backfill of stormwater and sanitary sewers and related structures
 - 2. Bedding, backfill and restraint of water mains, elbows, hydrants, valves, auxiliary valves, blow-offs, services and related appurtenances.
 - 3. Installation of manholes, lift stations and/or force mains
 - 4. Subgrade for horizontal and vertical alignment and compaction
 - 5. Rough and final grading of swales, ditches, and detention/retention facilities
 - 6. Testing of construction materials by private testing company may be called for on any of the above phases as required by the City Utilities Engineering Department or as requested by CITY.
 - 7. On-site verification of all required testing and as-built survey information.
 - 8. Verification of invert elevations at each manhole during construction of sanitary and storm sewer main trunk lines to ensure design elevations (and associated design capacity) is being maintained.
 - 9. Electrical/mechanical, concrete, and/or structural infrastructure on Facility projects.
- h. Furnish all equipment necessary to sample and test materials and/or provide on-site independent assurance testing of materials in accordance with standards and specifications of the Fort Wayne procedures and in accordance with current accepted practices, ordinances, and the most recent standards and specifications of the Division of Utilities, City Utilities Engineering Department as approved and adopted by the Board of Public Works.
- i. Verify that required testing has been accomplished and results of the testing are satisfactory

- j. Notify the Developer / Contractor and CITY in writing of any substandard work
- k. Consider and evaluate the Developer / Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to CITY'S assigned Contract Manager.
- l. Representative of the firm shall notify CITY of any additional work requested by the CONTRACTOR beyond the original approved design prior to the work occurring. Representatives are not empowered to make changes to projects; all changes must be approved by CITY staff.
- m. On the PMIS Inspectors Daily Report, record hours on the job site (both inspector & contractor(s)), weather conditions, field superintendent/foreman's name, crew size, list of visiting officials, decisions, interaction with the public or property owners/renters, safety observations, general observations, and specific observations with regard to test procedures and results of testing – to be loaded into PMIS daily.
- n. Provide a short weekly summary/status report of any major contractor's activities, issues, as well as work planned for the following week (during the active construction periods only)- to be loaded into PMIS every week
- o. Take notes during and provide meeting minutes of all construction related meetings.
- p. Assist City CM with management of contractor's request for interpretation (RFI's) on clarification and interpretations, field orders, change orders, allowance authorizations, and work change directives.
- q. Assist the City (CM) in reviewing the Contractor's monthly pay quantities and application
- r. Assist City CM in preparing and coordinating change management documents, issuing defective work notices, performing final inspection and reviewing final punch lists from Contractor.
- s. Assist City CM to coordinate any necessary vendor installation certifications as well as startup and training activities
- t. Assist City CM with final project closeout documentation and help ensure that compliance efforts are completed so that project can be accepted by CU and the Board of Public Works and final payment be made to Contractor.
- u. Provide timely invoices to CITY.
- v. Provide a scanned copy of Inspector marked up as-built drawings at substantial completion of the project. If unable to provide a scanned copy, furnish marked up as-built drawings to Contract Manager for City to scan. Scanned drawings to be uploaded into PMIS digital library by Contract Manager.
- w. Deliver the final project records to the Construction Manager within ten (10) calendar days after satisfactory completion of the project.
- x. Incident Reporting – Should an accident occur on the project, notify Contract Manager immediately, then document with photos and prepare a report of the incident including but not limited to: What happened, all parties on site when accident occurred, what parties responded to provide assistance to the accident involved parties (if police, name of officer or number on squad

car), what inspector personally witnessed, what may have occurred that inspector did not witness. Photos and report to be submitted to City Manager of Engineering by noon the day following the accident.

- y. Assist City Manager at Facility projects to inspect areas within confined space areas. Inspector shall be confined space certified and may be required to enter facilities as a part of a construction firms confined space entry team.
- z. Upon request by the City, if GPS coordinates are not secured by Contractor, Design Engineering firm, or Survey, Inspector shall gather GPS information utilizing GPS equipment with sub-meter accuracy. At a minimum, coordinates must be recorded for Hydrants, valves, curb stops, corporation stops, directional change fittings, connection fittings, manholes, clean-outs, sewer taps, and other appurtances as agreed upon at project assignment. Information to shall be provided to the City in Raw Data form that can be uploaded into GIS.
- aa. Notify CM and document in daily report when utilities other than the ones being installed as part of the project are encountered and are in interference with proposed infrastructure or damaged by the contractor.
- bb. Work with the public to resolve any complaints that are the result of construction activities. If complaint cannot be immediately resolved by disclosing to the contractor, notify the CM for assistance, guidance, and follow-up.

C. KEY PERSONEL

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

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

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

D. SCHEDULE

Services under this contract are to be completed from date of NTP until July 31, 2017.

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

PART II

CITY'S RESPONSIBILITIES

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

A. INFORMATION AND REQUIREMENTS

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

B. REPRESENTATIVE:

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

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

PART III

COMPENSATION, BILLING, PAYMENT AND SCHEDULE

A. COMPENSATION

FIRM'S COMPENSATION FOR SERVICES

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

PRIVATE/DEVELOPER PROJECTS

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

1. FIRM shall be compensated at a rate of **fifty two dollars and fifty cents (\$52.50) per hour** per Inspector per DEVELOPER/CONTRACTOR'S project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for Private / Developer activities.
 - If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

ALLEN COUNTY REGIONAL SEWER DISTRICT PROJECTS

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

1. FIRM shall be compensated at a rate of **fifty-five dollars (\$55.00) per hour** per Inspector per ACRSD project for the inspection services performed under this Agreement, inclusive of any clerical and/or administrative/management cost by FIRM. This rate will be paid for the employees of the FIRM whose resumes have been approved by the City for ACRSD activities. FIRM's employees will typically have less than five years of experience. Inspectors that have less than five years of experience but have exhibited competent knowledge for the project assignment may be waived to a higher pay level upon approval by the City.

- If requested by CITY, CITY shall compensate FIRM at above specified hourly rate for time spent attending the preconstruction conference, making visual on-site inspections after construction is complete, and evaluating the design or the construction as may be required.

CAPITAL PROJECTS

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

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

WATER POLLUTION CONTROL AND WATER FILTRATION PLANT PROJECTS

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

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

B. BILLING AND PAYMENT

METHOD OF PAYMENT

FIRM shall submit a properly itemized invoice to CITY on a monthly basis. CITY shall pay FIRM within forty five (45) days after receipt of such properly itemized claim forms, unless claim is objected to in writing, in which case claim shall be paid within 15 days of resolution of any dispute. All required items must be uploaded into PMIS prior to Invoice approval.

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.
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 City. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined. FIRM will promptly provide City with a proposed amendment to this Agreement to recognize such change, which the CITY shall approve or reject in writing within 15 days of receipt.
3. **SAFETY.** Engineer shall establish and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, FIRM specifically disclaims any authority or responsibility for general job site safety and safety of persons other than FIRM employees.
4. **DELAYS.** If events beyond the control of CITY or FIRM, 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 amended to the extent necessary to compensate for such delay.
5. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party. CITY shall pay FIRM for all Services, including profit relating thereto, rendered prior to termination.
6. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by FIRM is supplied for the general guidance of the CITY only. Since FIRM has no control over competitive bidding or market conditions, FIRM cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CITY.
7. **RELATIONSHIP WITH CONTRACTORS.** FIRM shall serve as CITY'S professional representative for the Services, and may make recommendations to CITY concerning actions relating to CITY'S contractors, but FIRM shall have no authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CITY'S contractors, without specific written provision to do so in this agreement.
9. **INSURANCE.** FIRM 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 Board of Public Works
200 East Berry Street, Suite 240
Fort Wayne, IN 46802

- 10. INDEMNITIES.** To the fullest extent permitted by law, FIRM shall indemnify and save harmless CITY from and against loss, liability, and damages sustained by CITY, its agents, employees, and representatives by reason of injury or (including reasonable litigation costs) death to persons or damage to tangible property to the extent caused directly by the willful misconduct or failure to adhere to the standard of care described in Paragraph 1 above of FIRM, its agents or employees.

To the fullest extent permitted by law, CITY shall defend, indemnify, and save harmless FIRM, its agents, employees, and representatives from and against loss, liability, and damages (including reasonable litigation costs) arising from or relating to claims for injury or death to persons, damages to tangible property, or other losses alleged to be caused by persons directly within the control of CITY when the loss, injury, or damage attributable to CITY'S willful misconduct.

- 11. LIMITATIONS OF LIABILITY.** CITY agrees that, to the fullest extent permitted by law, FIRM'S total liability to CITY for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, FIRM'S negligence, errors, omissions, strict liability, or breach of contract shall not exceed the total compensation received by FIRM under this Agreement. If CITY desires a limit of liability greater than that provided above, CITY and FIRM shall include in Part III of this Agreement the amount of such limit and the additional compensation, if any, to be paid to FIRM for assumption of such additional risk.

- 12. ACCESS.** CITY shall provide FIRM reasonably safe access to any premises as necessary for FIRM to provide the Services.

- 13. REUSE OF PROJECT DELIVERABLES.** Reuse of any documents or other deliverables including electronic media, pertaining to the Project by CITY for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by Engineer for the specific purpose intended, shall be at the CITY'S risk. CITY agrees to defend, indemnify, and hold harmless FIRM from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by CITY or others acting through CITY.

- 14. AMENDMENT.** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

- 15. ASSIGNMENT.** Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

- 16. STATUTES OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

- 17. PREVAILING PARTY LITIGATION COSTS.** In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to seek its litigation costs from the other party.
- 18. 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 any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.
- 19. NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including CITY'S contractors, if any.
- 20. SEVERABILITY.** The various terms, 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.
- 21. AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

IF FIRM IS ADVISED THAT THE PROJECT IT IS BEING ASSIGNED IS A CONSENT DECREE PROJECT, THEN THE FOLLOWING ITEMS MUST BE CONFORMED TO:

- 22. CONSENT DECREE NOTIFICATION.** FIRM shall perform, or cause others to perform, all work undertaken in connection with this Agreement in a good and workmen-like manner and in conformance with the terms of the City of Fort Wayne Consent Decree entered in the U.S. District Court on April 1, 2008 by the United States and State of Indiana. FIRM acknowledges that it has been provided a complete copy of the Consent Decree which can be viewed at:
<http://www.cityoffortwayne.org/index.php/content/view/1494/1566/>
- 23. DOCUMENT RETENTION.** Notwithstanding any other provision of this Agreement, FIRM agrees to preserve all non-identical copies of all documents, records and other information (whether in physical or electronic form) within FIRM's possession or control and which relate, in any manner, to the performance of the work undertaken in connection with this Agreement for a period of 1 year after the completion contemplated by the Agreement (the "Retention Period"). Prior to the end of the Retention Period, or at any earlier time if requested by the City, FIRM shall provide the City with complete copies of such documents, records and other information at no cost to the City. The copies shall be provided to the City on CD or DVD media, and individual files shall be in Adobe PDF format. The individual files shall be contained in a ZIP formatted file, and the filename of the ZIP shall include the name of the project and the FIRM. No part of any file shall be encrypted or protected from copying. Such copies shall be accompanied by a verified written statement from the FIRM attesting that it has provided the City with complete copies of all documents, records and other information which relates to the work contemplated by the Agreement.

Public Hearing Date, if applicable _____

Read the first time in full and on motion by Councilman Thomas Smith
Read the second time by title and referred to the City Utilities
Committee. Read the third time in full and on motion by Councilman
Thomas Smith, placed on passage by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____
BENDER	<u>✓</u>	_____	_____	_____
CRAWFORD	<u>✓</u>	_____	_____	_____
DIDIER	<u>✓</u>	_____	_____	_____
HARPER	<u>✓</u>	_____	_____	_____
HINES	<u>✓</u>	_____	_____	_____
JEHL	<u>✓</u>	_____	_____	_____
PADDOCK	<u>✓</u>	_____	_____	_____
SHOAF	<u>✓</u>	_____	_____	_____
SMITH	<u>✓</u>	_____	_____	_____

DATED: 7-28-15 Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE (RESOLUTION) NO. S-67-15 on the 28th day of July, 2015

ATTEST: Sandra E. Kennedy SANDRA E. KENNEDY, CITY CLERK
John W. Crawford PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 29th day of July, 2015, at the hour of 11:30 O'clock AM, E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 29th day of JULY 2015, at the hour of 3:00 O'clock PM, E.S.T.

Thomas C. Henry
THOMAS C. HENRY, MAYOR

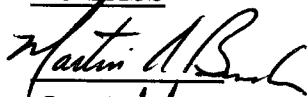
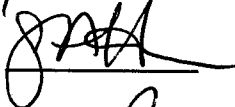


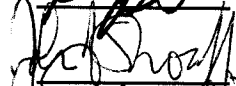
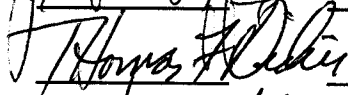
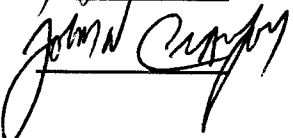
BILL NO. S-15-07-02

REPORT OF COMMITTEE ON CITY UTILITIES

JULY 21, 2015

***Thomas Smith, Chair
Martin Bender, Co-Chair
All Council Members***

AN ORDINANCE certifying and approving the need for the services of a consultant to provide professional On-Call Resident Project Representative/Inspection Services - 2015/2016 to the Division of City Utilities through its Board of Public Works. **Amount to be paid to Consultants on an annual basis will be in excess of \$100,000.00. COMMITTEE ON CITY UTILITIES HAVE HAD SAID** Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**SANDRA E. KENNEDY
CITY CLERK**