

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) dated May 8, 2018 is made by and between the **Town of McCordsville**, acting by and through its Board of Public Works and Safety (“OWNER”) and **Whitaker Engineering Corporation**, (“CONSULTANT”) an Indiana corporation organized under the laws of the State of Indiana.

RECITALS

WHEREAS, OWNER wishes to hire CONSULTANT to provide certain professional services with respect to **WWTP Expansion to 1 MGD**(“Project”); and

WHEREAS, CONSULTANT has extensive experience, knowledge and expertise relating to these services and has expressed a willingness to furnish the services in connection therewith, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises, the mutual covenants and undertakings herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section I – Services by CONSULTANT

The engineering services to be performed by CONSULTANT are presented in Appendix “A”, which is attached hereto, and made a part hereof, and are referred to herein as the “Services”.

Section II – Information and Services to be furnished by OWNER

The information and services to be furnished by OWNER are as set out in Appendix “B”, which is attached to this Agreement, and incorporated herein by reference.

Section III – Commencement of Services and Schedule

CONSULTANT shall commence performance under this Agreement and shall provide the Services hereunder in accordance with the Schedule contained in Appendix “C”, which is attached to this Agreement, and incorporated herein by reference.

Section IV – Compensation

For all Services rendered by CONSULTANT under this Agreement, OWNER agrees to pay CONSULTANT on the basis of fees and charges established in Appendix “D”, which is attached to this Agreement, and incorporated herein by reference.

Section V – Term and Termination

1. Term

This Agreement shall commence upon execution by the parties and shall continue until completion of the Services and deliverables as set forth in Appendix "C" or unless terminated as set forth below.

2. Termination

OWNER reserves the right to terminate or suspend this Agreement upon five days advance written notice to CONSULTANT. Upon termination of this Agreement, CONSULTANT shall deliver all Work Product (as defined herein) to OWNER. The dollar amount for any earned but unpaid Services performed by CONSULTANT shall be based upon an estimate of the portions of the total Services completed by CONSULTANT through the effective date of termination, which estimated shall be as made by OWNER in the exercise of its honest and reasonable judgment for all Services to be paid for on a lump sum basis and shall be based upon an audit by OWNER of those Services to be paid for on a cost basis or a cost plus fixed fee basis as described in Section IV hereof.

Section VI – General Provisions

1. Subcontracting

It is recognized that CONSULTANT may engage subconsultants to perform a portion of the work under this Agreement. The engagement of subconsultants by CONSULTANT shall not relieve CONSULTANT of any responsibility for the fulfillment of this Agreement. No subconsultant shall subcontract any portion of its work under this Agreement.

2. Ownership of Documents

All reproducible materials prepared by CONSULTANT or its subconsultants in connection with this Agreement, alone or in combination with others, on any and all media, in whole or in part, and all copies thereof, whether created before, during, or after the term of this Agreement (collectively, the "Work Product") will be the property of the OWNER.

CONSULTANT shall be allowed to retain copies of all documents included in the Work Product, unless prohibited for reasons of security and as mutually agreed by both parties.

CONSULTANT agrees that written agreements with any and all subconsultants used by CONSULTANT to fulfill CONSULTANT's obligations hereunder shall contain language substantially similar to that of this Subsection to assign OWNER all Work Product by such subconsultants, and to require cooperation with CONSULTANT on the same terms and conditions as set forth herein.

The provisions of this Subsection shall survive the expiration, suspension, abandonment, termination, or completion of this Agreement.

3. Access to Records

Full access to the work during the progress of the Services shall be available to the OWNER. CONSULTANT and its subconsultants shall maintain all books, documents, papers, accounting records and other evidence pertaining to the cost incurred under this Agreement and shall make such materials available at its respective offices at all reasonable times during the period of this Agreement and for three (3) years from the date of final payment for Services is made by OWNER to CONSULTANT.

4. Liability for Damages

CONSULTANT assumes all risk of loss, damage or destruction to the Work Product, to all of its materials, tools, appliances and property of every description, and for injury to or deaths of its employees or agents arising out of or in connection with the performance of this Agreement, excluding that which occurs due to the acts or failure to act of any third party, and excluding that which is caused by the OWNER.

5. General Liability Insurance

a. Amounts of Coverage. CONSULTANT shall procure and maintain at its expense insurance of the kind and in the amounts set forth below by companies authorized to do such business in the State of Indiana covering all Services and related activities performed by CONSULTANT.

| <u>Coverage</u> | <u>Limits</u> |
|--|----------------------------|
| a. Workmen's Compensation And Disability | Statutory Requirements |
| b. Employer's Liability Bodily Injury by Accident | \$500,000 each accident |
| Bodily Injury by Disease | \$500,000 policy limit |
| Bodily Injury by Disease | \$500,000 each employee |
| c. Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property Damage, contractual liability, Products-completed operations | \$1,000,000 |
| General Aggregate Limit (other than Products/Completed Operations | \$2,000,000 |
| Products/Completed Operations Aggregate | \$2,000,000 |
| Personal & Advertising Injury Limit | \$1,000,000 |

| | |
|--|---------------------------------|
| Each Occurrence | \$1,000,000 |
| Fire Damage (any one fire) | \$50,000 |
| Medical Expense (any one person) | \$5,000 |
| d. Comprehensive Auto Liability (single Limit, owned, hired and non-owned) | \$1,000,000 each accident |
| Bodily injury and property damage | \$1,000,000 |
| Umbrella Excess Liability | \$2,000,000 each Occurrence and |
| The Deductible on the Umbrella Liability | \$10,000 shall not be more than |

- b. Evidence of Insurance. Before commencing its Services, CONSULTANT shall furnish to OWNER a certificate, or certificates, showing that it has complied with this Section VI.5.b, which certificate or certificates, shall also designate OWNER as an additional named insured. Certificate shall include in the comments section of the document verbiage indicating that “The Town of McCordsville is Additionally Insured”. The policies shall not be changed or canceled unless thirty (30) days prior written notice has been given to OWNER.

6. Worker’s Compensation

CONSULTANT shall be responsible for providing all necessary unemployment and Worker’s Compensation Insurance for its employees. CONSULTANT shall provide the OWNER with a certificate of insurance indicating that it has complied with this requirement.

7. Changes in Work

- a. Prior Approval. CONSULTANT shall not commence any additional services or change of scope until authorized by OWNER.

- b. Additional Services. Additional services may include, but not be limited to:

- i. Services associated with significant changes in the scope, extent, or character of the portions of the Project required by, but not limited to, changes in scope, complexity or schedule and revisions required by changes in applicable laws and regulations or due to any other causes beyond CONSULTANT’s control.

- ii. Preparing to serve or serving as a consultant or witness for OWNER in any litigation or other dispute resolution process related to the Project that does not involve a claim against CONSULTANT or a claim that is based on an alleged act of negligence or breach of contract by CONSULTANT.
- iii. Subject to other provisions of this Agreement, additional or extended services during the Project made necessary by (1) emergencies or Acts of God endangering the Project site, (2) an occurrence of a hazardous environmental condition, (3) damages to OWNER's facilities caused by fire, flood or other cause, (4) acceleration or deceleration of the Schedule involving services beyond normal working hours, (5) significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages and (6) default or failure to perform by other consultants.

8. Non-Discrimination

CONSULTANT and its subconsultants, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of the Services under this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, handicap, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the Agreement.

9. Safety

- a. Responsibility. CONSULTANT shall be directly responsible for the safety requirements and programs applicable to its own employees, its subconsultants and other parties with whom it has contracted to perform Services with respect to the Project.
- b. Compliance. CONSULTANT's safety program shall comply with applicable federal, state and local statutes, rules, regulations and ordinances. CONSULTANT shall report to OWNER, in writing, any injury or accident at the Project site involving its employees, its subconsultants or other parties for which it is responsible, within forty-eight (48) hours or a shorter period of time if required by law.
- c. Notification. CONSULTANT shall not be responsible for the safety requirements or programs applicable to any other person or entity involved with the Project other than CONSULTANT and its subconsultants.

10. Independent Contractor

OWNER and CONSULTANT are acting in an individual capacity in the performance of this Agreement and will not act as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or

construed to be the employees or agents of the other party for any purpose whatsoever. Neither party will assume any liability for any injury (including death) to any persons, nor damage to any property, arising out of the acts or omissions of the agents, employees, or subconsultants of the other party. CONSULTANT shall be responsible for providing all necessary unemployment and worker's compensation insurance for its employees.

11. Indemnification

CONSULTANT agrees to indemnify OWNER, its officials, and employees, and to hold each of them harmless from claims and suits, including court costs, attorney's fees, and other expenses caused by any negligent act, effort or omission of, or by any recklessness or willful misconduct by CONSULTANT, its employees, or subconsultants. CONSULTANT's indemnification and defense obligations hereunder shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated.

12. Notification

All written notices required by this Agreement shall be sent to the parties at the following addresses by certified mail, return receipt:

To OWNER; **Town of McCordsville**
 6280 W 800 North
 McCordsville, IN 46055

To CONSULTANT: **Whitaker Engineering Corporation**
 6930 Atrium Boardwalk South, Ste. 200
 Indianapolis, IN 46250

13. Authority to Bind Consultant

CONSULTANT warrants that it has the necessary authority to enter into this Agreement. The signatory for CONSULTANT represents that he/she has been duly authorized to execute this Agreement on behalf of CONSULTANT and has obtained all necessary or applicable approval to make this Agreement fully binding upon CONSULTANT when his/her signature is affixed hereto.

14. Successors and Assignees

This Agreement is binding upon and shall inure to the benefit of OWNER and CONSULTANT and their respective successors and permitted assigns. CONSULTANT shall not assign this Agreement without the written consent of OWNER.

15. Entire Agreement; Amendments

This Agreement and its Appendices, each of which is incorporated herein by reference and made a part of this Agreement, constitutes the entire Agreement of the parties with regard to the subject matter hereof and supersedes all prior discussions or agreements

concerning any subject matter related hereto. This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

16. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without giving effect to principles respecting conflicts of laws. Subject to Section 19, any action pursuant to this Agreement shall be brought and tried in a court of competent jurisdiction in Johnson County, Indiana, and each party hereby irrevocably consents to the personal and subject matter jurisdiction of any such court and waives any objection to such jurisdiction and venue.

17. Non-Waiver

It is agreed and acknowledged that no action or failure to act by OWNER or CONSULTANT as to a breach, act or omission of the other shall constitute a waiver of any right or duty afforded either of them under this Agreement, as to any subsequent breach, act or omission of the other nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereof, except as may be specifically agreed in writing. No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused unless such a waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

18. Invalid Provisions

If any part of this Agreement is later found to be contrary to, prohibited by, or invalid under applicable law, rules or regulations, that provision shall not apply and shall be omitted to the extent so contrary, prohibited or invalid, but the remainder of this Agreement shall not be invalidated and shall be given full force and effect insofar as possible.

19. Dispute Resolution

Any dispute arising out of this Agreement that cannot be resolved through informal discussions between the parties, shall be subject to this Section.

a. The parties agree that the existence of a dispute notwithstanding, the parties shall continue without delay to carry out all of their respective responsibilities under this Agreement.

b. Should any dispute arise with respect to this Agreement that cannot be resolved through informal discussions between the parties, a party shall serve written notice to the other party outlining the details of the dispute and demanding mediation. No later than twenty (20) days from the date of the notice demanding mediation, the parties shall confer to discuss the selection of the mediator and agree upon other mediation procedures.

- c. Submission of a dispute under this Agreement to a mediation procedure shall be a condition precedent to filing litigation. No litigation shall be initiated by either party unless the mediation has been completed (unsuccessfully) or a party has failed to participate in a mediation procedure.

20. Employment Eligibility Verification

CONSULTANT affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien.

CONSULTANT shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. CONSULTANT is not required to participate should the E-Verify program cease to exist. Additionally, CONSULTANT is not required to participate if CONSULTANT is self-employed and does not employ any employees.

CONSULTANT shall not knowingly employ or contract with an unauthorized alien. CONSULTANT shall not retain an employee or contract with a person that CONSULTANT subsequently learns is an unauthorized alien.

CONSULTANT shall require its subconsultants, who perform work under this Agreement, to certify to CONSULTANT that the subconsultant does not knowingly employ or contract with an unauthorized alien and that the subconsultant has enrolled and is participating in the E-Verify program. CONSULTANT agrees to maintain this certification throughout the duration of the term of an agreement with a subconsultant.

OWNER may terminate for default if CONSULTANT fails to cure a breach of this provision no later than thirty (30) days after being notified by OWNER.

21. No Investment in Iran

As required by IC 5-22-16.5, CONSULTANT certifies that it is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Agreement and denial of future agreements, as well as an imposition of a civil penalty.

Non-Collusion.

The undersigned attests, subject to the penalties for perjury, that he/she is the CONSULTANT, or that he/she is the properly authorized representative, agent, member or officer of the CONSULTANT, that he/she has not, nor has any other member, employee, representative, agent or officer of the CONSULTANT, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears within this Agreement.

In Witness Whereof, the CONSULTANT and the OWNER have, through duly authorized representatives, entered into this Agreement. The parties having read and understand the forgoing terms of this Agreement do by their respective signatures dated below hereby agree to the terms thereof.

WHITAKER ENGINEERING CORPORATION TOWN OF MCCORDSVILLE
(CONSULTANT) TOWN COUNCIL
MCCORDSVILLE, INDIANA
(OWNER)

Cecil L. Whitaker

Cecil L. Whitaker, President

Larry Longman, Town Council President

Attest:

Katherine Campbell

Katherine Campbell, Office Manager

Attest:

(Signature)

(Print or type name and title)

Appendix A – Services by Consultant

Services/Deliverables

- Perform one site investigation to collect data, pick up documents, and take photographs.
- Develop a design scope to add 500,000 GPD of treatment capacity per the existing master plan including the following components:
 - Additional biological treatment capacity,
 - Additional sludge digester capacity,
 - Additional geobag sludge disposal capacity, and
 - Convert to aeration provided by a high efficiency turbo blower.
- Investigate the following options with the AeroMod treatment system manufacturer to add the following components to the treatment system:
 - Sludge holding tank for additional solids destruction,
 - Bio-P pretreatment,
 - Improved fine screening area, and
 - Any optimization of treatment layout which would add treatment efficiencies such as adding concrete channels in lieu of process piping.
- Investigate current SRF requirements for potential funding source for the proposed WWTP expansion.
- Develop a site layout for the following WWTP components:
 - An expanded geobag sludge processing area enclosed by a pole barn,
 - A pole barn generally located over and around the existing UV disinfection and re-aeration tank which could also hold chemical treatment system,
 - Additional parking close to the existing building,
 - Modify the existing building including the garage area to create a more efficient operations building layout.
- Obtain opinions of electrical and architectural professionals of proposed improvements.
- Prepare a technical memorandum consisting of 1-2 pages including the following attachments:
 - Preliminary sketches:
 - Overall site layout,
 - Building floor layouts for the following:
 - Office,
 - Sludge processing,
 - UV/Re-aeration/Chemical,
 - Treatment tanks,
 - A rough opinion of probable construction costs for the proposed improvements, and
 - Information on current SRF requirements for low-cost loans.

- Attend a meeting with Town representatives and a Town Council meeting to discuss the report.

Not Included in Work

- Design, modeling, surveying, permitting

Appendix B - Information and Services to be furnished by OWNER

- Monthly Reports of Operation for two years,
- Design summaries and drawings for the WWTP expansions, and
- Information regarding the overall WWTP master plan including adjacent properties.

Appendix C - Commencement of Services & Schedule

The Consultant shall perform the Services and submit a draft technical memorandum within 60 days of a notice to proceed. Whitaker proposes to meet Town representatives within 14 days to review the report and gather feedback for finalizing the memorandum prior to the next council meeting.

Appendix D - Compensation

Reimbursable & Hourly Rate Schedule

Owner shall compensate Professional for services rendered in accordance with the following:

Time and Materials

Reimbursable Expenses

| | |
|--|---------------|
| The following expenses will be charged on an as-used basis | |
| Blueline or Bond Print | \$ 2.00/sheet |
| Digital Information (CD/DVD) | \$20.00/each |
| Certified mailings or Shipping | cost plus 10% |
| Delivery fees | |
| Marion County | \$22.00 |
| Outside Marion County | \$28.00 |
| Other out-of-pocket expenses | cost plus 10% |

After a period of 12 months from the date of an Agreement, all fees remaining under it are subject to an increase based upon an annual agreement revision between the parties.

Staff Level

Hourly Rate

| | |
|-----------------------|-------|
| Principal | \$195 |
| Sr. Project Manager | \$180 |
| Project Manager | \$140 |
| Sr. Project Engineer | \$130 |
| Project Engineer | \$120 |
| Sr. Engineer Designer | \$105 |
| Engineer Designer | \$94 |
| Engineer Technician | \$88 |
| Administration | \$65 |

The Consultant shall perform the services for \$17,200, with additional being billed on a time and materials basis in accordance with the rate schedule above. Payment is due and payable within 60 days of invoicing.