

CONSULTING SERVICES AGREEMENT

This Agreement (Agreement), effective June 1, 2011, is by and between the METROPOLITAN ST. LOUIS SEWER DISTRICT (CLIENT) and BLACK & VEATCH CORPORATION (CONSULTANT). CONSULTANT shall perform the Scope of Services (Services) set forth in Exhibit A--Scope of Services and CLIENT shall pay CONSULTANT in accordance with the compensation provisions set forth in Exhibit A.

1. CONSULTANT warrants that it shall perform the Services in accordance with the standards of care and diligence normally practiced by recognized consulting firms in performing services of a similar nature. *No other warranty, express or implied, is included in this Agreement or in any drawing, specification, report, or opinion produced pursuant to this Agreement.*
2. CONSULTANT shall maintain in force, during the period that Services are performed, workers' compensation insurance in accordance with the laws of the states having jurisdiction over CONSULTANT's employees who are engaged in the Services and employer's liability insurance with a limit of \$150,000 each occurrence and in the aggregate; automobile liability insurance with combined single limit of \$1,000,000.
3. CONSULTANT shall maintain in force for the duration of this Agreement errors and omissions liability insurance appropriate to the CONSULTANT's profession. Coverage as required in this Article shall apply to liability for professional error, act or omission arising out of scope of the CONSULTANT's services as defined in this Agreement. Coverage shall be written subject to limits of \$1,000,000 per occurrence and in the aggregate. The insurance coverage under such certificates shall be retroactive to the later of the date of this Agreement or the commencement of the CONSULTANT's work on the Project, and CONSULTANT shall cause the same to remain in effect for period of two (2) years after final acceptance of the Project by the District, (hereinafter referred to as the Insurance Period).
4. CONSULTANT shall maintain commercial general liability (CGL) with a limit of \$2,000,000 each occurrence and in the aggregate for a duration of the Agreement. CGL insurance shall be written on ISO occurrence form CG 00 01 10 01 (or substitute form providing equivalent coverage) and shall cover liability arising from premise, operations, independent contractors products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The District shall be endorsed on the policy as additional insured.
5. CONSULTANT shall indemnify CLIENT against any and all claims, demands and causes of action for bodily injury to or death of persons or for damage to or destruction of third-party property resulting solely from any and all negligent physical acts of CONSULTANT while at CLIENT's facility. CLIENT and CONSULTANT hereby waive all claims for property damage against the other; however such damage may be caused, including without limitation the negligence or fault of the other party, and shall require their insurers to waive subrogation rights against the other party under any applicable policy of property insurance.
6. In performance of the Services, it is understood that CONSULTANT may be supplied with certain information and/or data by CLIENT and/or others, and that CONSULTANT will rely on such information. It is agreed that the accuracy of such information is not within CONSULTANT's control and CONSULTANT shall not be liable for its accuracy, nor for its verification, except to the extent that such verification is expressly a part of CONSULTANT's Scope of Services.
7. CONSULTANT shall retain its rights in its standard drawing details, designs, specifications, databases, computer software, models and any other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of the CONSULTANT with the specific exception of any rate reports, rate model data output, written testimonies, all non-proprietary materials or CONSULTANT intellectual property required by the Rate Commission and any other non-proprietary or CONSULTANT intellectual property deliverables as required by the CLIENT. At all times, each party shall retain all of its rights in its drawing details, designs, specifications, databases, models, computer software, copyrights, trade and service marks, patents, trade secrets, and any other proprietary property.
8. CLIENT may, with or without cause, terminate the Services at any time upon ten working days written notice to CONSULTANT. In such case, CONSULTANT shall be paid costs incurred and fees earned to the date of termination and through demobilization and neither party shall be entitled to any other compensation or damages from the other.
9. CLIENT may audit and inspect CONSULTANT's records and accounts covering reimbursable costs for a period of 3 years following the completion of CONSULTANT's Services. The purpose of any such audit shall be only for verification of such costs. CONSULTANT shall not be required to keep records of or provide access to those of its costs expressed as fixed rates, a lump sum, or as a percentage of other costs.
10. CONSULTANT's opinions, estimates, projections, and forecasts of current and future costs, revenues, other levels of any sort, and events shall be made on the basis of available information and CONSULTANT's expertise and qualifications as a professional. CONSULTANT does not warrant or guarantee that its opinions, estimates, projections or forecasts of current and future levels and events will not vary from CLIENT's estimates or forecasts or from actual outcomes.
11. The parties agree to look solely to each other with respect to performance of this Agreement. CONSULTANT may subcontract portions of the Services to its successor, related or affiliated entities with the written approval of CLIENT. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than CLIENT and CONSULTANT. Except for CLIENT'S obligation to make payments, neither party shall be in default hereunder to the extent such default is caused by a cause or circumstance beyond such party's reasonable control.
12. Neither party shall be liable to the other party for loss of profits or revenue; loss of use; loss of opportunity; loss of goodwill; cost of substitute facilities, goods or services; cost of capital; cost of replacement power; governmental and regulatory sanctions; and claims of customers for such damages; or for any special, consequential, incidental, indirect or exemplary damages whether a claim for any such loss arises out of breach of contract, warranty, tort (including negligence), strict liability, indemnity, or another theory. CONSULTANT's total aggregate liability under this Agreement for any reason whatsoever shall not exceed the compensation received by CONSULTANT under this Agreement, and CLIENT, to such extent as may be permitted by law, agrees to release, defend, indemnify, and hold CONSULTANT harmless from and against any and all further liability in excess thereof arising in any manner from the Services. In the event such provision is determined to exceed the maximum scope allowed by law, said provision shall be interpreted and enforced so as to preserve the indemnity, release or limitation to the maximum extent allowable. The warranties, obligations, liabilities and remedies of the parties, as provided herein, are exclusive and in lieu of any others available at law, equity or otherwise. Indemnifications against, releases from, and limitations of liability and waivers of subrogation shall apply notwithstanding the fault, negligence (whether active, passive, joint or concurrent), strict liability or other theory of legal liability of the party indemnified, released or whose liability is limited and shall be effective to, and only to, the maximum extent allowable by law.

This Agreement and the attached Exhibit constitute the entire Agreement. No other representations of any kind, oral or otherwise, shall have any effect. This Agreement shall be governed by the laws of the state of Missouri, without giving effect to the principles thereof relating to conflicts of law.

IN WITNESS WHEREOF, Client and Consultant have signed this Agreement.

METROPOLITAN ST. LOUIS SEWER DISTRICT

By Jeffrey L. Theerman
Jeffrey L. Theerman
Executive Director

Date 7/11/11

ATTEST:

Karl J. Tyminski
Karl J. Tyminski
Secretary-Treasurer

Approved as to Legal Form
Office of General Counsel

Susan M. Myers
Susan M. Myers
General Counsel

BLACK & VEATCH CORPORATION

By Thomas R. Peterson
Thomas R. Peterson
Vice President, EMS

Date 06/24/2011

Off Approved by Legal(Grimaldi) 06/24/2011.

KDB Approved by PM(Barber) 06/24/2011.



I certify that this expenditure is within the appropriation to which it is to be charged, and that there is an unencumbered balance in the appropriation sufficient to pay this obligation or so much of it as may be payable during the current fiscal year.

JMZ
Janice M. Zimmerman
Director of Finance

Date 7/11/11

EXHIBIT A

CONSULTING SERVICES AGREEMENT

Dated June 1, 2011

Between

METROPOLITAN ST. LOUIS SEWER DISTRICT ("Client")

And

BLACK & VEATCH CORPORATION ("Consultant")


- A. Scope of Services – Consultant will provide expert witness testimony and support services required during anticipated 2011/2012 Rate Commission proceedings.
- B. Term – The term of this Agreement shall be for seven (7) months commencing on June 1, 2011 and terminating on December 31, 2011.
- C. Compensation – Client will pay, and Consultant will accept compensation for services provided based on the following fee basis: Compensation for the Services provided by this Agreement shall be at the billing rates specified below plus direct expenses at out-of-pocket costs. Direct expenses include materials and support services costs and travel expenses. Materials and support services costs include such items as computer time, long distance telephone charges, postage, report reproduction costs and other miscellaneous direct costs. Direct expenses shall be itemized on invoices submitted to Client for payment. Supporting documentation for direct expenses shall be made available to Client for verification at Client's request. The maximum amount payable to the Consultant for services provided by this Agreement shall not exceed thirty three thousand dollars (\$33,000) without further Client authorization.
- | | |
|--------------------------------------|------------|
| Senior Vice President | \$325/hour |
| Vice President (Principal-in-Charge) | \$305/hour |
| Director | \$275/hour |
| Principal (Project Manager) | \$240/hour |
| Manager | \$205/hour |
| Consultant | \$170/hour |
| Senior Analyst | \$140/hour |
| Analyst | \$110/hour |
| Clerical/Administrative Support | \$ 80/hour |
- D. Method of Payment – Payments to be made to Consultant under this Agreement shall be electronically transferred either by ACH, specifically in CCD+ or CTX format, or wire transfer to the bank account and in accordance with the bank instructions identified in Consultant's most recent invoice in immediately available funds no later than the payment due date. Invoice number and project name shall be referenced in the bank wire reference fields or the ACH addenda information.
- E. Client Responsibilities – Client shall furnish, as required by the work and not at the expense of the Consultant, the following items.
1. Make available to the Consultant all records, reports, maps, and other data pertinent to the provision of the Services required under this Contract.
 2. Examine all analyses, reports and other documents submitted by Consultant for Client review and render decisions promptly to prevent delay to the Consultant.
 3. Designate one person as the Client representative (Project Manager) with respect to all Services to be rendered under this Contract. This individual shall have authority to transmit instructions, receive information and to interpret and define the Client's policies and decisions pertinent to the Consultant's services.

IN WITNESS WHEREOF, the parties have executed this Exhibit A on the date(s) indicated below.

METROPOLITAN ST. LOUIS SEWER DISTRICT

BLACK & VEATCH CORPORATION

By: 
Jeffrey L. Theerman
Executive Director

By: 
Thomas R. Peterson
Vice President, EMS

Date: 7/1/11

Date: 06/24/2011

OFF Approved by Legal(Grimaldi) 06/24/2011.
KDB Approved by PM(Barber) 06/24/2011.