

**CONTRACT FOR PROFESSIONAL SERVICES:**  
**MUNICIPAL CONSULTING**

WHEREAS, Gary Sanitary District (hereinafter, "GSD") wishes to employ a contractor for performance of certain professional services consisting of municipal consulting; and

WHEREAS, Faegre BD Consulting (hereinafter, "Contractor") 311 S. Wacker Dr., Ste. 4400, Chicago, IL 60606-6622, desires to perform said professional services for GSD as an independent contractor and pursuant to the terms and conditions contained herein;

This CONTRACT FOR PROFESSIONAL SERVICES (hereinafter, "Agreement") is entered into on this 21<sup>st</sup> day of February, 2018, and effective January 1, 2018, by and between Contractor and GSD.

NOW, THEREFORE, GSD and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1. PERFORMANCE

It shall be the responsibility of Contractor to provide all professional services, and specifically those defined within the Scope of Services herein, within its field of expertise and capability, to GSD as requested of Contractor by GSD. Contractor shall complete each such task as expeditiously as reasonably possible under all of the then existing circumstances unless otherwise instructed by GSD.

2. SCOPE OF SERVICE

Contractor shall do, perform, and carry out in a good and professional manner the following services, as requested by GSD:

- A. Contractor shall provide general and strategic municipal business consulting services;
- B. Contractor shall participate and assist in annual audits;
- C. Contractor shall help to evaluate current staffing levels, operations, and compliance with the current Consent Decree and make recommendations to improve or correct deficiencies;
- D. Contractor shall help to evaluate and manage any shared services with other municipal organizations including staffing levels, operations, and compliance;
- E. Contractor shall help to develop a broad-based operational policy for GSD;
- F. Contractor shall research and present a strategic plan to make GSD a standalone facility; and

G. Contractor shall research and help implement a broad waste and waste-to-energy strategic plan.

Contractor agrees to comply with all applicable Federal, State and Local laws, rules regulations, and ordinances in the performance of the Services. All provisions required thereby to be included herein, are hereby incorporated by reference.

GSD shall provide Contractor written notice of additional tasks, if any, it wishes Contractor to perform. Contractor shall provide, upon request, a reasonably accurate estimate of the cost for it to complete any task, which must be approved by GSD pursuant to its standard policies prior to commencement of the task by Contractor. Contractor shall perform all tasks requested in writing by GSD except, or unless, Contractor immediately advises GSD in writing of its reasons for refusing to do so. GSD's Special Administrator, Executive Director, and/or Board Attorney may make the request to Contractor to perform a task. Such changes to the originally-defined Scope of Service shall be made only upon written approval of both parties.

### 3. INDEMNIFICATION

Contractor shall maintain in effect a general liability and errors and omissions insurance policy in the amount of at least \$1,000,000 insuring against risk of loss and claims resulting from Contractor's conduct. Contractor shall indemnify and hold GSD and its employees, contractors, and agents harmless from and against any claims, demands, losses, damages, and expenses (i) related to bodily injury or death of any person or damage to property resulting from the negligent or willful acts or omissions of Contractor, (ii) resulting from any claim that Contractor is not an independent contractor, (iii) resulting from a breach by Contractor of the covenants or obligations under this Agreement, and/or (iv) related to or resulting from any negligent or intentional act performed by Contractor in the scope of performing its duties under this Contract. In no event shall GSD be liable for any consequential, incidental, or punitive damages, losses, or expenses in any such circumstance, even if it has been advised of their possible existence.

GSD shall similarly indemnify and hold the Contractor harmless from any claim or loss resulting from the conduct of GSD's officials, employees, agents, or other contractors.

### 4. TERM AND RENEWAL OF AGREEMENT

This Agreement is made effective as of January 1, 2018, and shall remain in effect through December 31, 2018. This Agreement may be renewed for future years as mutually agreed upon by both parties in writing.

## 5. COMPENSATION AND PAYMENT

Contractor shall be compensated for services as follows, and pursuant to timely submitted invoices to GSD:

- A. GSD shall pay Contractor at the rate of \$225.00 per hour for performance of all Services, as defined in Section 2, above. Compensation to Contractor for performance of said Services shall not exceed \$80,000.00 for the calendar year 2018 without authorization of the Board.

All payments tendered to Contractor shall be made upon submission of a written invoice to GSD. Contractor shall submit invoices to GSD on a monthly basis. Payments for services rendered shall be made in accordance with said billing. Invoices shall be deemed due upon receipt and payment shall be made within thirty days after receipt by the GSD.

## 6. PERSONNEL

Contractor represents that it has, or will secure at its own expense, all personnel required for performance of services pursuant to this Agreement. Such personnel shall not be employees of or have a contractual relationship with GSD. All of the services required under this contract will be performed by the Contractor or by Contractor's personnel under his direction, except or unless GSD gives written permission to Contractor to subcontract the services. GSD shall have the right to approve all said subcontractors but such consent shall not be unreasonably withheld. All of Contractor's personnel or subcontractors shall be fully qualified and, to the extent required by law, rule, regulation or ordinance, licensed and/or permitted.

Contractor further warrants as follows with regard to the employment of personnel for performance of services as defined herein:

- A. That in the hiring of employees for the performance of work under the contract or any subcontract thereunder, no contractor, or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the state of Indiana who is qualified and available to perform the work to which the employment relates;
- B. That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, religion, color, sex, national origin or ancestry;
- C. That there may be deducted from the amount payable to the contractor by GSD under the contract, a penalty of five dollars (\$5.00) for each person for each

calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract; and

- D. That the contract may be cancelled or terminated by GSD, and all money due or to become due thereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract.

## 7. COOPERATION BETWEEN GSD AND CONTRACTOR

In order for Contractor's services to be productive and effective and for GSD to obtain the maximum benefit therefrom, there must be a mutually cooperative effort on the part of GSD and Contractor. GSD shall therefore provide Contractor full access to all available plans, reports, records, statements, personnel files, and other similar data relative to the task it is assigned.

Upon request, GSD shall also provide Contractor with personnel and/or any reasonably necessary accommodations at GSD's facilities which are deemed by Contractor to be essential to the provision of services.

GSD's decisions, approvals, reviews, and responses shall be communicated to the Contractor in a timely manner so as not to delay the performance of the services. Comments, if from a committee or multiple interested entities, must be a consolidation of all comments in order to provide clear direction to the Contractor and to avoid delays.

## 8. PROHIBITED CONDUCT

GSD shall not knowingly request Contractor to perform any act or service that is in violation of any state or federal law, rule or regulation, nor shall Contractor engage in any such conduct unless a waiver is first obtained from the appropriate state or federal agency. Contractor shall apprise GSD of any and all such conduct in regards to GSD's business as soon as it becomes aware of it.

GSD shall have the right to prohibit Contractor from engaging in activity it deems in conflict of interest with GSD employment pursuant to this Agreement.

## 9. TERMINATION

GSD may terminate this Agreement for any reason by giving thirty (30) days written notice of intention to do so to Contractor. Upon receiving such notice from GSD, Contractor shall cease performance except to the extent necessary to protect GSD's interest in any matter. Upon receipt of such notice, Contractor shall cooperate with whomsoever GSD nominates to take over Contractor's responsibilities. Contractor shall be paid for all variable services performed in carrying out its responsibilities after receiving notice of termination and GSD reserves the right to obtain from Contractor any of its files or other items to which it is entitled.

Contractor may terminate this Agreement for any reason upon giving GSD thirty (30) days written notice of intention to do so. Upon receiving written notice from Contractor, GSD will make reasonable efforts to secure the services of another municipal consultant, and Contractor will continue to provide services until such time as GSD is able to secure the same. Contractor will be paid in accordance with this Agreement for any and all services performed for GSD.

#### 10. MODIFICATION AND SEVERABILITY

This agreement represents the entire understanding between the parties, and modifications of this agreement shall not be effective unless reduced to writing and signed by both parties. In the event that any portion or portions of this agreement are found to be void or voidable, such portions shall be stricken and the remaining portions of the agreement shall be enforceable.

#### 11. SUBCONTRACTING

Contractor may not subcontract any part of the work covered herein without prior written consent of GSD.

#### 12. FINES OR SANCTIONS

Contractor shall be personally responsible for paying any fines or sanction penalties which any judge, or administrative board, or administrative agency orders Contractor to personally pay by reason of actions of Contractor in violation of applicable statutes, procedural rules, rules of professional conduct, or rules of administrative entities.

#### 13. NOTICE

Any notice, bills, invoices, or reports required by this agreement shall be sufficient if sent by the parties hereto in the United States mail, postage prepaid, to the addresses noted below:

*If to GSD:*

Gary Sanitary District  
3600 W. 3<sup>rd</sup> Ave.  
Gary, IN 46406

*If to Contractor:*

Faegre BD Consulting  
Attn.: Bo Kemp  
311 S. Wacker Dr., Ste. 4400  
Chicago, IL 60606-6622

#### 14. WAIVER OF CONTRACT PROVISIONS

Subject to applicable law, any right or remedy which GSD may have under this contract may be waived in writing by the GSD by a formal waiver, if in the judgment of the GSD,

this contract, as so modified, will still conform to the terms and requirements of pertinent laws.

However, in no event shall the making by GSD of any payment to Contractor constitute or be construed as a waiver by the GSD of any breach of covenant, or any default which may then exist, on the part of Contractor, and the making of any such payment by GSD while any such breach or default exists shall in no way impair or prejudice any right or remedy available to GSD in respect to such breach or default.

## 15. WORK PRODUCT

Under this Agreement, all documents and other materials, including, but not limited to, files, records, pleadings, documents and exhibits received or generated by Contractor within the scope and during the course of his performance under this Agreement shall be the property of GSD, unless otherwise agreed to by a separate written agreement executed by both parties.

## 16. AUDIT, INSPECTION, AND RETENTION OF RECORDS

- A. Contractor shall furnish GSD with such information as GSD may request relative to the progress, execution and/or cost of an assigned task. Contractor shall maintain records showing actual time, in quarter-hour increments, and cost incurred. Contractor shall permit an authorized representative of GSD to inspect, copy, and audit all data and records of Contractor for work done in connection with this Agreement. Any and all agreements with subcontractors or Contractors employed by Contractor shall provide for authorized representatives of the GSD to inspect and audit all data and records for work done in connection with this Agreement.
- B. Contractor shall maintain its books, records, documents and other evidence, and use generally accepted accounting procedures sufficient to accurately reflect all costs, of whatever nature, claimed to have been incurred and anticipated to be incurred for or in connection with the performance of this Agreement for five (5) years after the final payment made in connection with this Agreement.
- C. No provision of this Contract granting GSD a right of access to records and documents is intended to impair, limit or affect any right of access to such records and documents which the GSD would have had in the absence of such provisions.
- D. Any and all written or oral information received by Contractor or any of its agents, employees, Contractors or subcontractors in regards to performance of its responsibilities under this Agreement shall, to the extent permitted by law, be considered confidential and shall not be divulged to any third party, except to the extent required to permit performance, without the prior written consent of GSD and Contractor shall notify all its agents, employees, Contractors and subcontractors of this provision. In addition, the original and any copy of any

record, report, audit or study for which GSD has paid Contractor shall be considered to be the sole property of GSD, regardless of where it is maintained and also shall not be disclosed, except as required by law or Court Order, without prior consent of GSD.

17. CONTRACTOR'S REPRESENTATIONS RELATED TO UNAUTHORIZED ALIENS

- A. Contractor represents that it is enrolled in and verifies the work eligibility status of all newly hired employees of the Contractor through the E-Verify program as defined herein; however, contractor is not required to verify the work eligibility status of all newly hired employees of the Contractor through the E-Verify program if the E-Verify program no longer exists and Contractor signs an Affidavit affirming that the Contractor does not knowingly employ an unauthorized alien.

"E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L.104-208), Division C, Title IV, §403(a), as amended, operated by the United State Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

- B. Contractor and its subcontractor(s) may not knowingly employ or contract with an unauthorized alien; or retain an employee or contract with a person that the Contractor or its subcontractor subsequently learns is an unauthorized alien. If a Contractor violates this requirement, the City shall require in writing that the Contractor remedy the violation not later than thirty (30) days after the date the Owner notifies the Contractor of the violation. There is a rebuttable presumption that a Contractor did not knowingly employ an unauthorized alien if the Contractor verified the work eligibility of the employee through the E-Verify Program.

If the Contractor fails to remedy the violation within the thirty (30) day period, the City shall terminate the Agreement with Contractor for breach. However, if the City determines that terminating the Agreement would be detrimental to the public interest or public property, the City may allow the Agreement to remain in effect until the City procures a replacement contractor. If the City terminates the Agreement, the Contractor shall be liable to the City for any and all actual damages incurred, including but not limited to attorneys' fees.

- C. Contractor's subcontractor(s) shall certify to Contractor in a manner consistent with federal law that the Contractor's subcontractor(s), at the time of certification does not knowingly employ or contract with an unauthorized alien; and has enrolled and is participating in the E-Verify Program.

- D. Contractor shall maintain in its files a certification of each of its subcontractor(s) throughout the duration of the term of this Agreement and the term of Contractor's subcontract with its subcontractor(s).
- E. Termination of the Agreement for violation of this requirement may not be considered by the Contractor or its subcontractor(s) as a breach of contract by the City.

18. ADDITIONAL TERMS

- A. This Agreement, consisting of 9 pages, embodies the total agreement of the parties, and there are no other promises, terms, conditions or obligations, other than those imposed by law, regarding the subject matter of this Agreement other than those contained herein.
- B. All signatories state and affirm that there are no other considerations or monies contingent upon or resulting from the execution of this Agreement, nor have any been sought by or for any signatory to this Agreement.
- C. This Agreement shall be interpreted and enforced under the laws of the State of Indiana.
- D. An accurate photocopy of this Agreement as executed shall be as enforceable and binding and admissible as evidences in any administrative, arbitration or judicial proceeding as the original.
- E. The words "Contract" and "Agreement" are used interchangeably in this Agreement, where used, refer to this Agreement.

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IN WITNESS WHEREOF, the parties have caused this Contract to be executed in their behalf by their proper officers or officials this 21<sup>st</sup> day of February, 2018.

**CONTRACTOR:**  
**FAEGRE BD CONSULTING**

By: \_\_\_\_\_  
Bo Kemp

**GARY SANITARY DISTRICT  
BOARD OF COMMISSIONERS**

By: \_\_\_\_\_  
Charles W. Jackson, Jr., President

By: \_\_\_\_\_  
Tramel Raggs, Vice-President

By: \_\_\_\_\_  
Ola Morris, Secretary

By: \_\_\_\_\_  
Maurice Mabon, Commissioner

By: \_\_\_\_\_  
Karen Freeman-Wilson, Mayor  
and Special Administrator

By: \_\_\_\_\_  
Daniel F. Vicari, P.E., B.C.E.E.,  
Executive Director

By: \_\_\_\_\_  
Jewell Harris, Jr.  
GSD Attorney