

CONSULTING SERVICES AGREEMENT

This Agreement, effective December 5, 2017 is between the CITY OF BROKEN ARROW ("Client") and BLACK & VEATCH MANAGEMENT CONSULTING, LLC ("Consultant"). Consultant shall perform Services in accordance with written Requests for Services (Requests) issued by Client and agreed to by Consultant during the term of this Agreement, which shall be attached as separate Exhibits A. Consultant shall accept or decline a Request as promptly as practicable under the circumstances.

1. Consultant will perform the Services in accordance with the standards of care and diligence normally practiced by recognized consulting companies in performing services of a similar nature. If, during the six-month period following the earlier of termination or completion of the Services under the applicable Request for Service, it is shown there is an error in the Services caused solely by Consultant's failure to meet such standards, and Client has promptly notified Consultant in writing of any such error within that period, Consultant shall perform, at Consultant's cost, such corrective consulting services within the original Request for Service as may be necessary to remedy such error. The obligations and representations contained in this Article 3 are Consultant's sole warranty and guarantee obligations and Client's exclusive remedy in respect of quality of the Services. ***EXCEPT AS PROVIDED IN THIS ARTICLE, CONSULTANT MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.*** This Article governs, modifies, and supersedes any other terms in this Agreement which may be construed to address warranties or guarantees or the quality of the Services.
2. Reports and other documents which Consultant prepares and delivers to Client pursuant to this Agreement shall become the property of Client when Consultant has been compensated for Services rendered. Nothing contained in this Section shall be construed as limiting or depriving Consultant of its rights to use its basic knowledge and skills to design or carry out other projects or work for itself or others, whether or not such other projects or work are similar to the work to be performed pursuant to this Agreement. Consultant shall have the right to retain and use copies of drawings, documents, and other data furnished or to be furnished by Consultant and any non-confidential information contained therein. 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. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of Consultant. Client shall not acquire any rights to any of Consultant's, its subcontractors' or vendors' proprietary computer software that may be used in connection with the Services except as expressly provided in the Request or as may be separately agreed. Files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. Consultant makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between any specifications, reports, or other documents and electronic files, the original will govern.
3. Documents, including, but not limited to, drawings, specifications, reports, electronic files, and computer software prepared by Consultant pursuant to this Agreement, are instruments of service in respect to the project. They are not intended or represented to be suitable for reuse by Client or others on extensions of the project or on any other project. Any reuse without prior written approval, and verification or adaptation by Consultant for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Consultant. Client shall defend, indemnify, and hold harmless Consultant against all claims, losses, damages, injuries, and expenses, including attorneys' fees, arising out of or resulting from such reuse. Any approval, and verification or adaptation of documents will entitle Consultant to additional compensation at rates customarily charged by Consultant for such services. No documents or any information contained therein, or otherwise supplied by Consultant in connection with the Services, shall be released or used by Client in connection with any proxy, proxy statement, proxy soliciting material, prospectus, official statement, offering memorandum, Securities Registration Statement, or any sales or due diligence or similar document without the express written approval of Consultant, except as may be required by law. Consultant may include its standard commercial third-party disclaimers in its Report. Any information shared with the Client prior to the release of the Report is superseded by the Report. As such, Client may not rely on, or distribute to third-parties, any emails, drafts, or oral statements made prior to the issuance of the Report. Client's distribution of the Report to a third party shall be at its own risk, and Client agrees to indemnify and hold Consultant harmless against any and all claims Consultant receives from any such third party based upon its access to, or reliance upon, Consultant's Report.
4. 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 \$100,000 each occurrence and in the aggregate. Consultant also shall maintain commercial general liability insurance with a limit of \$1,000,000 per occurrence and in the aggregate; automobile liability insurance with combined single limit of \$1,000,000; and professional liability insurance with per claim in the aggregate limits of \$1,000,000.
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 property (other than property of Client or construction work in progress, for which Client shall have responsibility) resulting solely from any and all negligent physical acts of Consultant while at Client's facility. The parties waive all claims for property damage, 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 acknowledged that Consultant may be supplied with certain information and/or data by Client and/or others, and that Consultant will rely on such information. Therefore, the accuracy of such information is not within Consultant's control and Consultant shall not be liable for its accuracy, nor for its verification unless otherwise provided in the Request. Since Consultant has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others (including Client) to meet project schedules, Consultant's opinion of probable costs and of project schedules shall be made on the basis of experience and qualifications as a professional consultant. Consultant does not guarantee that proposals, bids, revenues, costs, and other cash requirements, or actual operating and project costs will not vary from Consultant's estimates or that actual schedules will not vary from Consultant's projected schedules.
7. Client may, with or without cause, terminate the Services at any time upon 10 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. At all times, each party shall retain all of its rights in its drawing details, designs, specifications, databases, computer software, copyrights, trade and service marks, patents, trade secrets, and any other proprietary property.
8. Client may audit and inspect Consultant's records and accounts covering fees and reimbursable costs for a period of six months 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.
9. 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. Except for an obligation to make payments, neither party shall be in default to the extent any nonperformance is caused by a circumstance beyond such party's reasonable control. The warranties, obligations, liabilities and remedies of the parties, as provided herein, are exclusive and in lieu of any others available at law or in equity. Consultant's total aggregate liability under this Agreement shall not exceed the compensation received by Consultant under the applicable Request for Services. To the fullest extent allowed by law, releases from, and limitations of liability shall apply notwithstanding the breach of contract, tort including negligence, strict liability or other theory of legal liability of the party released or whose liability is limited. Consultant may subcontract portions of the Services to its related entities.
10. During the term of this Agreement, and for a period of six months following any termination or expiration hereof, Client agrees that it will not, hire, or solicit any employee of Consultant who performed services hereunder, to become employees or independent contractors of Client or such other person or entity, excluding employees who are responding to a general solicitation for employment advertised by Client. If Client does hire a Consultant employee as prohibited herein, Client shall be liable to Consultant for 60% of such employee's first-year salary (including any signing bonuses or reimbursable relocation costs). Client shall be obligated to disclose such amounts to Consultant and Consultant shall immediately invoice Client for such amount to be paid by Client within 10 business days of receipt of Consultant's invoice. Failure to pay such amount when due shall be considered a breach of this Agreement by Client and entitle Consultant to any and all remedies available under this contract, at law or in equity.
11. Client understands that Consultant will not provide legal or tax advice or opinions, and Client will seek such advice and opinions from its attorneys and tax advisors.

This Agreement and the attached Exhibits 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 Oklahoma, notwithstanding the operation of any conflict or choice of law statutes or decisional law to the contrary.

CITY OF BROKEN ARROW, OKLAHOMA

BLACK & VEATCH MANAGEMENT CONSULTING, LLC

By: _____

By: _____

By: _____
(Printed)

By: _____
(Printed)

Title: _____

Title: _____

APPROVED AS TO FORM:

Leshli Myers
December 31, 2008
ASSISTANT CITY ATTORNEY

Legal
Approved _____
Reviewed _____
Date _____

PM
Approved _____
Date _____

EXHIBIT A
REQUEST FOR SERVICES

CONSULTING SERVICES AGREEMENT

Between

City of Broken Arrow, Oklahoma ("Client")

And

Black & Veatch Management Consulting, LLC ("Consultant")

Pursuant to the terms and conditions of the Consulting Services Agreement executed and made effective as of the 5th day of December, 2017, between the City of Broken Arrow, Oklahoma ("Client") and Black & Veatch Management Consulting ("Consultant"), Client hereby requests Consultant perform and Consultant agrees to perform the following Services:

Effective Date: This Exhibit A will be effective on December 5, 2017.

A. Requested Services:

Black & Veatch will update the City's water, wastewater and stormwater 5-year financial plans. The scope of service includes update the existing rate models with historical data for the most recent fiscal year, and developing a financial plan for the 5-year study period (FY 2018-2022). One work session will be held with utility staff and management to review the draft results and one work session will be held with the member of the Broken Arrow Municipal Authority (BAMA) to present to preliminary results. The final study results will be presented to BAMA at a regularly scheduled meeting and a letter report will be provided.

B. Commencement Date:

December 5, 2017.

C. Billing Basis:

Time and material, not to exceed.

Invoices are due within 30 days of receipt.

D. Estimated Cost of the Services:

A fee of \$49,000 is authorized for the payment of service to be provided under the terms of this Agreement. Client will be billed only for requested services actually provided, in accordance with the above stated basis of charges. Consultant will provide no services under this agreement that will result in cumulative billable fees in excess of the above fee authorization without additional authorization by Client.

E. Estimated Completion Date:

March 5, 2017.

F. Monthly Billing:

Commencing on or about the first day of the calendar month following execution of this Agreement, and monthly thereafter, Consultant shall furnish Client with an invoice covering the Reimbursable Costs and Fee for services provided during the previous month and any interest due under this Agreement. Invoices may be submitted electronically by email to adaniel@brokenarrowok.gov. In such event, the electronic copy of the invoice will be considered the official invoice and will not be followed by a hard copy invoice. Notwithstanding any other provision of the above-referenced Agreement, or this Exhibit A, Consultant is under no obligation to submit any deliverable if any invoice is more than 45 days outstanding.

G. 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.

H. Disputes: In the event Client disputes any invoice item, Client shall give Consultant written notice of such disputed item within 10 days after receipt of such invoice and shall pay to Consultant the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of eighteen percent per annum, or the maximum amount allowed by law if less, from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally

resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due. In the event Consultant refers this Agreement to a third party for collection or enforcement of its terms, Consultant shall be entitled to reimbursement for all costs and expenses incurred, including a reasonable attorneys' fee. In the event that Client has an unpaid invoice over 50 days past due, Consultant may, in addition to all other remedies available at law and equity, terminate this Request for Services.

This Request for Services and the above-referenced Agreement constitute the complete understanding of the parties with respect to the Services specified herein. Terms and conditions contained in purchase orders, work orders, or other documents issued by Client with respect to the Services shall be of no force and effect.

IN WITNESS WHEREOF, the parties have executed this Request for Services on the date(s) indicated below.

CITY OF BROKEN ARROW, OKLAHOMA

BLACK & VEATCH MANAGEMENT CONSULTING, LLC

By: _____

By: _____

By: _____
(Printed)

By: _____
(Printed)

Title: _____

Title: _____

Date: _____

Date: _____

Legal
Approved _____
Reviewed _____
Date _____

PM
Approved _____
Date _____

APPROVED AS TO FORM:

Leshi Myers
ASSISTANT CITY ATTORNEY