



North Carolina
Durham County

CERTIFICATION

I, Monica W. Toomer, the duly appointed and qualified Clerk of the Durham County Board of County Commissioners, do hereby certify that the foregoing is a true and correct copy of:

Board of County Commissioners approved to authorize the County Manager to enter into a contract amendment to increase the existing design consultant contract with Black & Veatch International Company (FR# 17-832) for the Efficiency and Resiliency Improvements Project (RFQ 17-012) in the amount of \$29,900, bringing the total contract amount from \$441,500 to \$471,400, and to execute any other related contracts, including amendments, not to exceed \$500,000.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of Durham County, this 9th day of September 2019.




MONICA W. TOOMER
Clerk to the Board of County Commissioners

**NORTH CAROLINA
DURHAM COUNTY**

**DESIGN CONSULTANT
CONTRACT AMENDMENT**

THIS CONTRACT AMENDMENT is made and entered into this **12th day of September, 2019**, by and between the **COUNTY OF DURHAM** (hereinafter referred to as "**County**") and **BLACK & VEATCH CORPORATION**, (hereinafter referred to as "**Design Consultant**").

WITNESSETH:

THAT WHEREAS, the County and Design Consultant entered into a Design Consultant contract dated January 12, 2017, for the provision of engineering design of the aeration system, as well as refurbishing and improvements to the sodium hypochlorite chemical feed system at the TWWTP (FR17-832, RFQ 17-012), (hereinafter the "Original Agreement"); and

WHEREAS, the County and Design Consultant amended the Original Agreement on June 23, 2017, on September 14, 2017, on April 17, 2018, on August 15, 2018, and on November 29, 2018, on February 22, 2019; and

WHEREAS, the County and Design Consultant desire to amend the Original Agreement *a 7th time*, while keeping in effect all terms and conditions of the Original Agreement not inconsistent with the terms and conditions set forth below.

NOW THEREFORE, for and in consideration for the mutual covenants and agreements made herein, the parties agree to amend the Original Agreement as follows:

1. The Term of the Original Agreement hereby remains through **June 30, 2020**.
2. The compensation paid to Design Consultant shall be amended to add **Twenty-nine thousand nine hundred and No/100 Dollars (\$29,900.00)** for a new amount not to exceed of **Four hundred seventy-one thousand four hundred and No/100 Dollars (\$471,400.00)**. *Itemized pricing for additional services listed in ATTACHMENT 1.*
3. **CONFIDENTIALITY, DATA SECURITY, TRAINING AND NON-DISCLOSURE.** DESIGN CONSULTANT acknowledges and agrees that, in the course of its engagement with COUNTY, DESIGN CONSULTANT or its licensors, subConsultants or suppliers in connection with the services to be rendered under this Contract may receive or have access to "confidential information" or "personal identifiable information".

DESIGN CONSULTANT or its licensors, Design Consultants or suppliers has obtained or may need to obtain confidential information from the COUNTY in connection with the provision of services to the COUNTY or the discussions of such a proposed relationship.

The COUNTY and DESIGN CONSULTANT desire to stipulate and agree that any disclosure of confidential information in connection with the provision of services or the discussion of such a proposed relationship has occurred or will occur under circumstances and conditions that will protect and preserve the confidentiality of the information.

In consideration of the pursuit of current discussions and payment for the services, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

3.1 DEFINITIONS. As used in this Contract, the following terms shall have the meanings set forth below:

Confidential Information. The term “Confidential Information” shall mean any information, in any medium, whether written, oral or electronic, not generally known in the relevant trade or industry, which falls within any of the following general categories:

- a. Trade Secrets. For purposes of this Contract, trade secrets consist of information of the COUNTY or DESIGN CONSULTANT or any of its suppliers, Design Consultants or licensors: (a) that Derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- b. Highly Restricted Information. DESIGN CONSULTANT acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) DESIGN CONSULTANT will also comply with any more restrictive instructions or written policies that may be provided by the COUNTY from time to time to protect the confidentiality of Highly Restricted Information, as defined below:
 1. Information of the COUNTY or its suppliers, Design Consultants or licensors marked “Confidential” or “Proprietary.”
 2. Information relating to criminal investigations conducted by the COUNTY, and records of criminal intelligence information compiled by the COUNTY.
 3. Information contained in the COUNTY’s personnel files, as defined by NCGS §153A-98. This consists of all information gathered by the COUNTY about employees, except for that information which is a matter of public record under North Carolina law.
 4. Citizen or employee social security numbers collected by the COUNTY.
 5. Computer security information of the COUNTY, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
 6. Local tax records of the COUNTY that contained information about a taxpayer’s income or receipts.
 7. Any attorney/client privileged information disclosed by either party.
 8. Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.
 9. The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.
 10. Protected Information (PHI), as defined in the Insurance Portability and Accountability Act (HIPAA), and any other information that is designated as confidential under federal or state law.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential information shall include information disclosed or revealed within one year prior to the date of this Contract.

Personal Identifiable Information. The term “Personal Identifiable Information” shall mean information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked to a specific individual.

3.2 RESTRICTIONS. DESIGN CONSULTANT shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

- a. Not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the COUNTY in writing.
- b. Not directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an employee, agent, subConsultant or DESIGN CONSULTANT of the COUNTY or DESIGN CONSULTANT having a need to know such Confidential Information for purpose or performing work contemplated by this Contract between the COUNTY and DESIGN CONSULTANT, and who has executed a confidentiality agreement incorporating substantially the form of this Confidentiality and Non-Disclosure Agreement. DESIGN CONSULTANT shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted Information to any third party without the County’s prior written consent.
- c. Not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written contracts between the parties hereto or is for the purpose for which such Confidential Information is being disclosed.
- d. Not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
- e. Use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, agents and subConsultants from using or disclosing the Confidential Information in a manner not permitted by this Contract.
- f. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, DESIGN CONSULTANT shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- g. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the COUNTY or destroyed upon satisfaction of the purpose of the disclosure of such information.
- h. Restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
- i. Take all reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract.

3.3 EXCEPTIONS. The COUNTY agrees that DESIGN CONSULTANT shall have no obligation with respect to any Confidential Information that DESIGN CONSULTANT can establish was:

- a. Already known to DESIGN CONSULTANT prior to being disclosed by the COUNTY;
- b. Or becomes publicly known through no wrongful act of DESIGN CONSULTANT;

- c. Rightfully obtained by DESIGN CONSULTANT from a third party without similar restriction and without breach hereof;
- d. Used or disclosed by DESIGN CONSULTANT with the prior written authorization of the COUNTY;
- e. Disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, DESIGN CONSULTANT shall first give to the other party notice of such requirement or request;
- f. Disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued Subpoena, provided that DESIGN CONSULTANT shall take reasonable steps to obtain an agreement or protective order providing that this Agreement will be applicable to all disclosures under the court order or subpoena.

3.4 REMEDIES. DESIGN CONSULTANT acknowledges that the unauthorized disclosure of the Confidential Information will diminish the value of the COUNTY's proprietary interests therein. Accordingly, it is agreed that if DESIGN CONSULTANT breaches its obligations hereunder, the COUNTY shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

3.5 DATA SECURITY. The DESIGN CONSULTANT shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations and rules.

The DESIGN CONSULTANT shall report a suspected or confirmed security breach to the COUNTY Department within twenty-four (24) hours after the breach is first discovered, provided that the DESIGN CONSULTANT shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered.

If any applicable Federal, State, or local law, regulation, or rule requires the DESIGN CONSULTANT to give written notice of a security breach to affect persons, the DESIGN CONSULTANT shall bear the cost of the notice.

3.6 TRAINING AND NON-DISCLOSURE. Upon request by the COUNTY, DESIGN CONSULTANT agrees to ensure compliance and the security of "confidential information" and "personal identifiable information", by having its employees, agents and subDesign Consultants take online privacy and security awareness training provided by COUNTY, by way of an internet link or some other electronic method to be provided by COUNTY. DESIGN CONSULTANT, at the request of COUNTY, shall execute a non-disclosure agreement if, and when submitted by COUNTY.

4. **MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) PROGRAM.** It is the policy of the County to provide minorities and women-owned businesses equal opportunity to participate in all aspects of the County's contracting programs, including but not limited to, the procurement of construction, goods and services consistent with law. The County has established an ordinance and implements an MWBE Program based on the ordinance, that promotes, increases and works towards eradicating the underutilization of minorities and women-owned businesses in the County's contracting programs. As part of the implementation of the MWBE Program, Design Consultants shall complete **Attachment 2 – MWBE Utilization Form**, to provide the percentage/dollar value being subcontracted to any minority or women-owned business being utilized on this contract. Attachment 2 is hereby incorporated herein and made a part of this contract.
5. By execution hereof, the person signing for Design Consultant below certifies that he/she has read this Contract Amendment and that he/she is duly authorized to execute this contract on behalf of the Design Consultant.

6. Except for the changes made herein, the Original Agreement shall remain in full force and effect to the extent not inconsistent with this Amendment. In the event that there is a conflict between the Original Agreement and this Amendment, this Amendment shall control.

IN WITNESS WHEREOF, the parties have expressed their agreement to these terms by causing this Contract Amendment to be executed by their duly authorized office or agent. This Contract Amendment shall be effective as of the date herein.

COUNTY OF DURHAM

DocuSigned by:
By: Wendell M. Davis
Wendell Davis, County Manager

Date of Signature: 9/18/2019

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

DocuSigned by:
Susan Tezai
Susan Tezai, Durham County Chief Financial Officer

BLACK & VEATCH CORPORATION

DocuSigned by:
By: Jeff Coggins
Jeff Coggins, P.E., Project Manager
Associate Vice President, Water Division

Date of Signature: 9/18/2019

“ATTACHMENTS 1 & 2” to follow



BLACK & VEATCH
Building a world of difference.

BLACK & VEATCH INTERNATIONAL CO.
11000 REGENCY PARKWAY, SUITE 410 | CARY, NC 27518
+1 919-463-3047 | BRINKLEYJW@BV.COM

August 21, 2019

Ms. Stephanie Brixey
Deputy Director/POTW Director
Durham County Engineering and Environmental Services
5926 Highway 55 East
Durham, North Carolina 27713

**Re: Task Order Authorization
Triangle Wastewater Treatment Plant
Aeration System Upgrade and Replacement & Sodium Hypochlorite
Chemical Feed System Improvements Project
Durham County Funds Reservation No. 1700000832**

Dear Ms. Brixey:

Pursuant to the County's request, Black & Veatch (B&V) has provided itemized pricing in conjunction with a schedule for executing the integral improvements listed below, under the current contract. B&V agrees with Operations that these improvements will enhance the long-term resiliency and overall efficiency of the treatment plant.

Extend & Modify Sodium Hypochlorite Feed Piping at Filter Gallery – This work will consist of a developing a drawing with a demolition plan for piping that needs to replace and/or modified, based on our walk through, a plan view depicting new piping to eliminate the need for hose connections to facilitate dosing of the filters, and any details. Material requirements will be noted on the drawings. **Fee = \$7,100.00**

Raise Equipment Pad for Existing Bulk Sodium Hypochlorite Storage Tank - This work will consist of structural engineering calculations and the development of a structural engineering drawing with plan and section views and supporting details for raising the top of pad elevation to match the elevation of the existing bulk storage tanks. **Fee = \$11,400.00**

Replace Existing Air Release Valve on Reclaimed Water Force Main – This work will consist of a vendor coordination and noting the valve sizing and details on the current drawing set. **Fee = \$1,900.00**

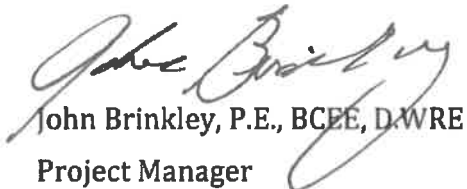
Extension of Aeration Main Header Piping to Serve a Future Third Blower – This work will consist of updating the current piping model to analyze pipe stresses and

loads to determine location pipe supports and expansion couplings. Additional work will entail develop as-built drawings for this work under the current construction contract with English Construction Company. **Fee = \$9,500.00**

Fee for completing the work described above is \$29,900.00 (total) and shall be completed within 3 weeks from a being given written Notice-to-Proceed by Durham County. If you have any questions, please do not hesitate to contact me at (919) 463-3047 or brinkleyjw@bv.com.

Very truly yours,

BLACK & VEATCH INTERNATIONAL COMPANY


John Brinkley, P.E., BCEE, D.WRE
Project Manager