



An Agreement for the Provision of Limited Professional Engineering Services

Civil Engineer ("BE"): Banning Engineering, Inc.
853 Columbia Road, Suite 101
Plainfield, IN 46168

Client: Town of Danville
49 North Wayne St.
Danville, IN 46122
Attn: Tony Kirkpatrick
Phone: (317) 745-4180
E-mail: tkirkpatrick@danvilleindiana.org
Accts Payable Contact: _____
Accts Payable Email: _____

Date: 2/13/2025 Expected Time Frame TBD Project No. 25045

Project Name: Phase 1 – S.E. Regional Lift Station BE Project Manager: Kent Elliott

Project Location: E Co Rd 75 S & S Co Rd. 200 E Total Acreage: N/A

City/Town: Danville County Hendricks Section: 11 Township: 15N Range: 1W

Scope of Services ("Services"):

See Attached Scope

Accepted by (Client):

Approved by (BE):

(signature) (date)

 02-13-25

(signature) (date)

(printed name/title)

Kent Elliott, Water & Wastewater Services Director
(printed name/title)

It has been requested by our errors and omissions insurance carrier that we receive a signed contract for all work we perform. This also includes any preliminary work for a Project. The attached terms and conditions along with the scope and cost above constitute an integrated Agreement. Therefore, we need you to provide the requested information by completing this form. Our receipt of the signed agreement will represent the Client's notice to proceed, approval and assent to these terms. This proposal is valid for sixty (60) days from the date listed above.

**TOWN OF DANVILLE – WASTEWATER DEPARTMENT
WASTEWATER COLLECTION SYSTEM IMPROVEMENTS
PHASE 1 – SOUTHEAST REGIONAL LIFT STATION
Engineering Services through construction**

Summary of Scope:

The scope of work for “PHASE 1 – SOUTHEAST REGIONAL LIFT STATION” (PHASE 1) project includes engineering services necessary for the construction of a proposed new regional lift station, approximately 5,000 lineal feet of force main and approximately 1,800 lineal feet of gravity sanitary sewer. The lift station will expand sanitary sewer service to an area of Town south of U.S. 36 and east of County Road 150 East not currently served by municipal sanitary sewer and will provide capacity for future growth in this area.

This project is the first phase of the overall project to provide sanitary sewer service to the area identified as “Southeast Service Area”, and as shown on attached Southeast Service Area Exhibit. PHASE 1 project will provide sanitary sewer service to the northernmost area shown in yellow on the exhibit and will be an integral part in provide additional sanitary sewer service to the southern two phases shown in blue (Phase 2) and red (Phase 3).

The proposed new southeast regional lift station will be located generally in the area County Road 200 East and County Road 75 South intersection. Exact lift station location will be determined during the preliminary engineering phase of the project.

The proposed force main from the proposed lift station will head east out of the lift station, along County Road 75 South to County Road 150 East, and head north to Twin Bridges Road, and head northwest along Twin Bridges Road, and connect to an existing manhole near the entrance of the Twin Bridges Waste Facility. Exact force main route and length will be determined during the preliminary engineering phase of the project.

The proposed gravity sanitary sewer from the proposed lift station will head north along County Road 200 East and terminate near the “S”-curve in County Road 200 East, near the entrance of Green Cycle Landscape Materials. Exact gravity sanitary sewer route and length will be determined during the preliminary engineering phase of the project.

The scope of work and associated engineering fees are based upon the Client obtaining local funding. Should the Client pursue alternative funding sources other than local, the scope of work and associated fees of this Contract shall be revised to fit the needs and requirements of the selected funding mechanism.

Scope of Work:

A. Geotechnical

- a. Geotechnical Services are not included in this Contract. The Town shall contract directly with a Geotechnical Consulting Engineering firm for the required Geotechnical soil boring investigation, laboratory testing, and technical reports.

B. Survey - Topographic Survey

- a. Complete a detailed topographic survey of the 100 ft wide area of the route along County Road 75 South and Twin Bridges Road, and a 200 ft wide area of the route along County Road 200 East, as described in the Summary of Scope and depicted in the Site Exhibit.
- b. The survey will identify all existing improvements, grades, features, apparent utility lines, apparent adjacent property line and outlines of wooded areas or trees that stand alone.

Buried utilities will be shown based on locates made via Indiana 811 and above ground evidence.

- c. Private utility locating services have been included.
- d. The survey will provide a 1-foot contour interval map with spot grades at key locations including top of bank and toe of slopes, grade breaks and flow lines, edges of pavement and generally on a 50' grid across the site. The horizontal datum will be based on NAD83(2012) Indiana State Plane Coordinates, and the vertical datum will be NAVD88.
- e. The finished product will be provided in dwg and pdf formats.

Topographic Surveying Services Fee = \$21,300

C. Property Title & Encumbrance Reports

- a. Prepare title reports including 10-year lien searches, current owner vesting deed, legal description, property address, tax parcel number and tax installments, and title search for utilities back to recorded electric, water and/or sewer easements with copies of recorded easements.

Property Title & Encumbrance Reports Fee = \$700 each

D. Easement Exhibits & Legal Descriptions

- a. Provide, legal description, easement exhibit reflecting title and encumbrance reports, easement staking and incorporate findings into our survey work along the route.

Easement Exhibits & Legal Descriptions Fee = \$1,800 each

E. Easement Legal Services

- a. Prepare legal easement document incorporating the easement exhibit and legal descriptions.
- b. File and Record executed easement

Easement Legal Services Fee = \$500 each

F. Easement Appraisals

- a. Provide property appraisals based on the following scope of work and assignment assumptions/conditions:
 - Restricted Appraisal Reports (Short Form Reports) for each subject parcel
 - Permanent and/or temporary easement valuations
 - Raw land values only
 - No consideration for buildings, structures, land improvements, etc.
 - No consideration for damages and/or benefits
 - No consideration for effects or disruptions to normal business activities
 - Visual inspections of the subject parcels
 - No property owner contact unless deemed necessary

Easement Appraisal Fee = \$650 residential; \$1,250 non-residential (per parcel)

G. Easement Negotiations

- a. Prepare, review, and present/ deliver all offer documents to the property owner
- b. Communicate as needed with both the property owner and the Town to conclude the acquisition
- c. Provide a Buyer's Report detailing all owner communication
- d. Finalize and assemble parcel packet to be submitted to the Town for payment
- e. Provide a Supplemental Title & Encumbrance Report dated within 30 days of the parcel submittal to the Town.
- f. If an agreement is not reached with the owner, prepare a Condemnation Report for the Town Attorney to file suit.

Easement Negotiation Fee = \$2,100 (per parcel)

H. Land Acquisition Assistance

- a. Provide technical assistance and coordination, as required, to the Town, Town's legal counsel, appraiser, and easement negotiator, to help facilitate the execution of easements required for the Project.
- b. Attend any meetings, site visits, and conference calls related to the acquisition of easements required for the Project.

Land Acquisition Assistance Fee = \$9,000 (estimated hourly)

I. Engineering Design

- a. Engineer shall design the required components of the subject regional lift station, force main, gravity sanitary sewer, manholes, air relief structures and appurtenances as described in the above Summary of Scope.
- b. Engineer shall attend up to four (4) meetings (Project Kick-off, 30% Design Review, 60% Design Review, 90% Design Review. Additional meeting time will be added to this Contract and charge as an hourly fee per Engineer's current rate schedule.
- c. Prepare Preliminary Design documents consisting of preliminary design criteria, preliminary drawings, and an outline of specifications, and an Opinion of Probable Construction Costs based on preliminary design documents.
- d. Provide necessary field surveys and topographic and utility mapping for design purposes. Wastewater utility mapping will be based upon information obtained from the Town.
- e. Assist Town with the coordination of the Town's Geotechnical Engineering Consultant.
- f. Advise town if additional reports, data, information, or services are necessary and assist Town in obtaining such reports, data, information, or services.
- g. Engineer shall develop design plans and technical specifications adhering to the Town of Danville standards.
- h. Engineer shall develop 30% design plans for the Town's review.
- i. Engineer shall incorporate Town's comments from the 30% design review.
- j. Engineer shall develop 60% design plans for the Town's review.
- k. Engineer shall incorporate Town's comments from the 60% design review.
- l. Engineer shall develop 90% design plans for the Town's review.
- m. Engineer shall incorporate Town's comment for the 90% design review.
- n. Engineer shall submit Final Submission plans to the Town. Final Drawings and Specifications completed to a level indicating the scope, extent, and character of the work to be performed and furnished by Contractor.
- o. Engineer shall adjust the Opinion of Probable Construction Costs based upon current market conditions at the time of completion of the Final Submission Plans.

J. Permitting

- a. Provide technical criteria, written descriptions, and design data for the Town's use in filing applications for permits or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project(s).
- b. Assist Town in consultations with such authorities and revise the Drawings and Specifications in response to directives from such authorities.
- c. Engineer will assist Town in applying for an IDEM Office of Water Quality construction permits.
- d. Engineer will assist Town in applying for IDEM CSGP stormwater permits.
- e. Any additional permitting assistance on any other permits shall be added to this Contract and charged as an hourly fee per Engineer's current rate schedule.

Engineering Design and Permitting Services Fee = \$163,000

A. Bidding

- a. Engineer shall develop front end bidding documents for Town that are applicable for a locally funded project.
- b. Engineer shall assist Town in public advertising for bids and in accordance with state statutes for local funding.
- c. Engineer shall administer one (1) pre-bid meeting.
- d. Engineer shall field and answer Bidder questions and author and issue any addendums to clarify, correct, or change the Bidding Documents.
- e. Engineer shall attend the bid opening and assist Town with the bid opening.
- f. Engineer shall review all bids, prepare bid tabulation, assist Town in evaluating bids and make a recommendation to the Town.
- g. Provide information or assistance needed by Town in the course of any negotiations with prospective Contractors.
- h. Consult with the Town as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective Contractors.
- i. Prepare Notice of Award and attend Town Council meeting to present Notice of Award for Execution that satisfies local funding.

Bidding Services Fee = \$15,000

B. Construction Administration

- a. Engineer shall prepare Contract documents based upon the accepted bid by the Town, and local funding requirements.
- b. Engineering shall administer execution of Contract documents with Town and Contractor that satisfies local funding.
- c. Engineer will administer one (1) pre-construction meeting.
- d. Engineer shall review Shop Drawings.
- e. Engineer shall answer Contractor questions and be the Town's liason between Town and Contractor.
- f. Engineer shall review partial payment applications for completeness and accuracy and make recommendations for payment to the Town.
- g. Engineer shall field Contractor's Requests for Information and Requests for Change as outlined in the EJCDC Contract documents.
- h. Engineer shall administer construction administration through the project as outlined and described in the EJCDC Contract documents.

- i. Engineer's construction administration compensation in this Contract is based upon construction project duration defined as the date of the Notice to Proceed through Final Completion specified in the Contract Documents. Should the project construction duration extend beyond this, the additional effort and time will be added to this Contract and charged as an hourly fee per Engineer's current rate schedule.

Construction Administration Services Fee = \$57,000

C. Part Time Construction Observation

- a. This includes reviewing project schedules and consulting with the Engineer regarding acceptability.
- b. Review applications for payment and forward recommendations to the Engineer.
- c. Draft and recommend to the Engineer proposed change orders, work change directives, and field orders.
- d. Verify that material and equipment certificates, operation and maintenance manuals, and other data required by the specifications have been provided.
- e. Participate in substantial and final completion inspections.
- f. The Observer will be onsite periodically to monitor the work and track quantities of materials installed.
- g. Daily reports for the days on site will be logged with all of the activities of the day. Access to the online reports will be available throughout the duration of the contract for the Town, culminating with a digital report given to the Town for the entirety of the project.
- h. Construction Observation compensation in this Contract is based upon an estimated overall total construction project duration of 210 days, and being on site 2 days per week. Town will be charged for the actual time as an hourly fee per Engineer's current rate schedule.

Construction Observation Services Fee = \$55,200 estimated hourly

E US Highway 36
E US Highway 36

E US Highway 36
E US Highway 36

Conrail Railroad

Conrail Railroad

Approx. 1,800 LF
Proposed Gravity
Sewer

Approx. 5,000 LF
Proposed FM

Twin Bridges Rd

Proposed Lift Station

E County Road 75 S

S County Road 200 E

S County Road 200 E

150 E

1 IN = 500 FT

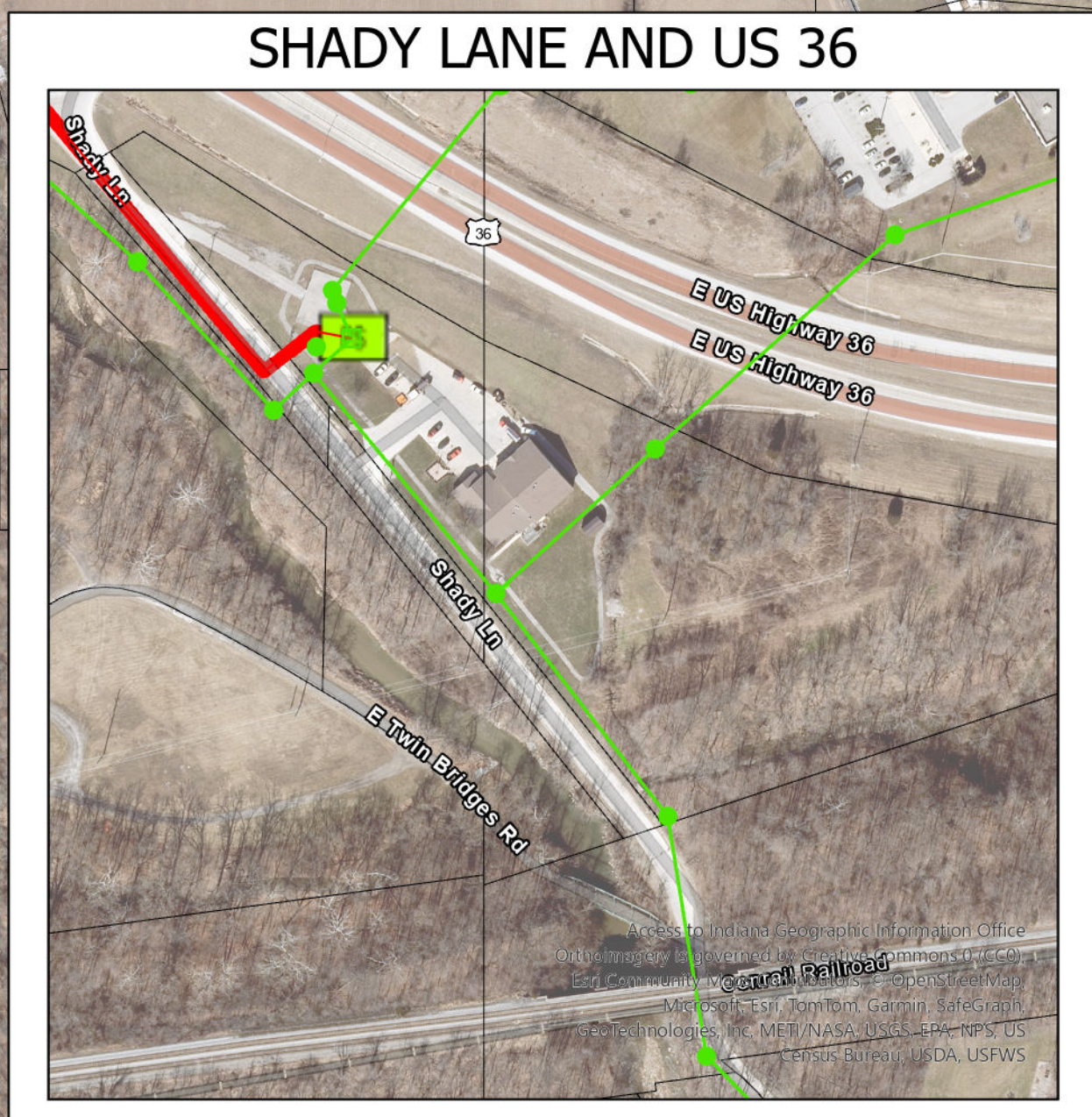
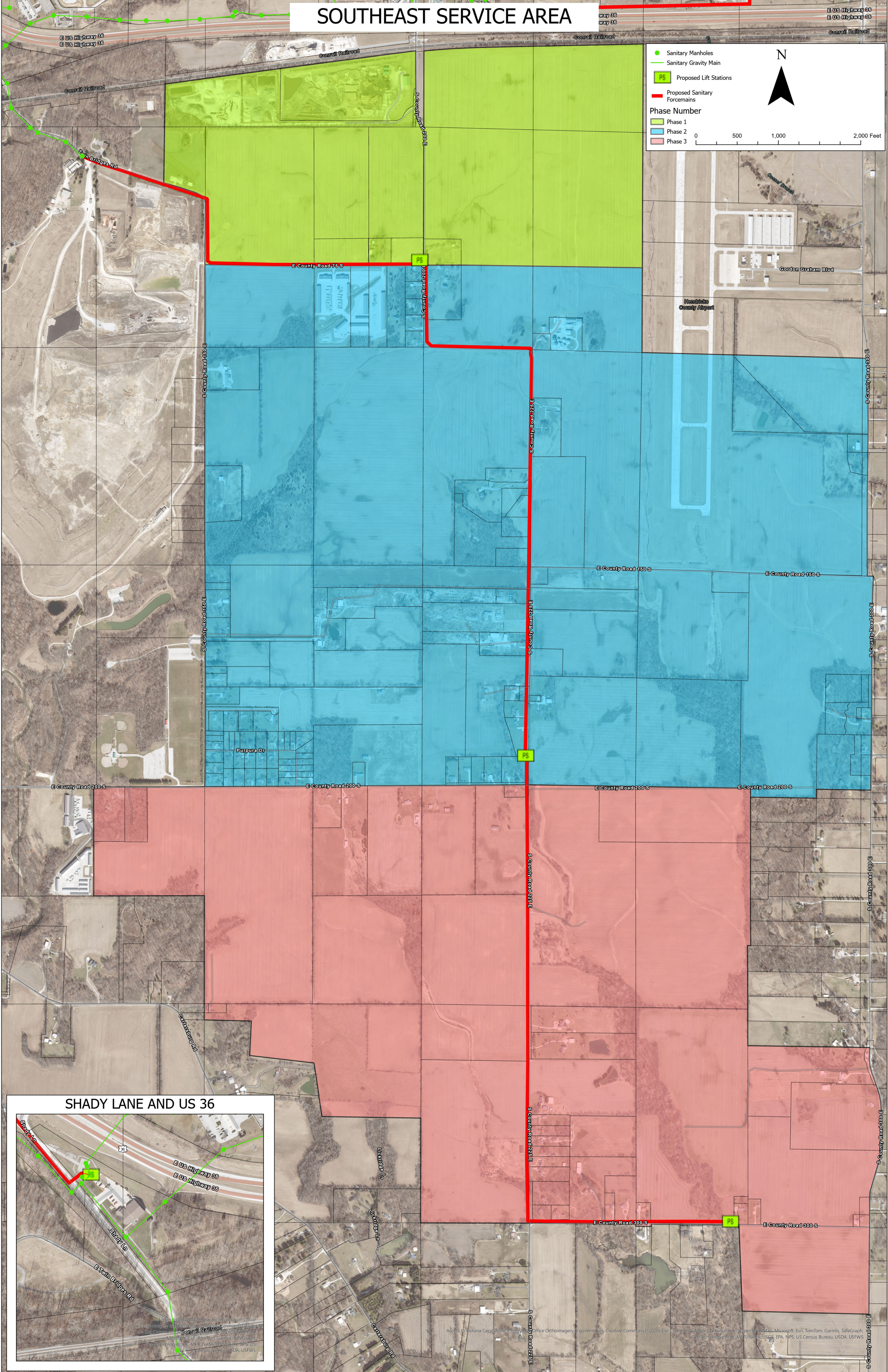
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SOUTHEAST SERVICE AREA

Legend:
● Sanitary Manholes
— Sanitary Gravity Main
PS Proposed Lift Stations
— Proposed Sanitary Forcemains

Phase Number:
Phase 1 (Yellow)
Phase 2 (Blue)
Phase 3 (Red)

0 500 1,000 2,000 Feet



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SCHEDULE OF FEES

As of January 1, 2025

Engineer-1	\$265 / hour
Engineer-2	\$225 / hour
Engineer-3	\$190 / hour
Engineer-4	\$170 / hour
Engineer-5	\$140 / hour
Engineer Technician	\$90 / hour
Project Manager	\$210 / hour
CADD-1	\$150 / hour
CADD-2	\$130 / hour
CADD-3	\$100 / hour
GIS Manager	\$175 / hour
GIS Tech 1	\$135 / hour
GIS Tech 2	\$90 / hour
Survey-1	\$265 / hour
Survey-2	\$200 / hour
Survey-3	\$165 / hour
Survey-4	\$130 / hour
Utility Coordinator	\$150 / hour
Crew Chief	\$140 / hour
Jr. Crew Chief	\$110 / hour
Survey Field Tech	\$90 / hour
Scan Crew-2 Man	\$240 / hour
Scan Crew-1 Man	\$200 / hour
Observation-1	\$165 / hour
Observation-2	\$145 / hour
Observation-3	\$125 / hour
Observation-4	\$105 / hour
Admin Staff-1	\$125 / hour
Admin Staff-2	\$100 / hour

Note: Fees above are subject to change with 30-day written notice from ENGINEER to CLIENT.

TERMS AND CONDITIONS

1. **Acceptance.** This Agreement constitutes an offer by BE and may only be accepted on the exact terms herein. Documents containing additional or different terms shall not be binding on BE.
2. **Responsibilities of the Parties.** BE and Client shall cooperate with one another to fulfill their respective obligations under the Agreement and shall endeavor to maintain good working relationships among all Project team members.

Client. Client shall provide prompt written notice to BE of any error or defect in the Services or Deliverables for the Project, including any errors, omissions or inconsistencies.

 - a. **Designated Representative.** Client's designated representative shall be authorized to act on Client's behalf with respect to the Services and shall render decisions in a timely manner in response to documents submitted by BE to avoid delay in the orderly progress of the Services.
 - b. **Client's Duties.** Client shall assist BE with the performance of the Services and shall: (a) provide previous reports, construction drawings, and all available information related to the Project site; (b) when lawful, guarantee and provide access to, and make provision for entrance into, public and private lands as required to perform the Services; (3) examine and timely report its comments on reports, sketches, drawings and other documents presented for examination regarding the Project; and (4) furnish all legal, auditing, insurance and accounting services required of Client and necessary for the Services.
 - c. **Payment.** Client shall pay the Fee which includes all Amendments and Reimbursable Expenses, and fees for additional services incurred by BE, its employees, agents or representatives in the performance of the Services.

Engineer. BE shall be entitled to rely on the accuracy and completeness of any information furnished by the Client for the Services.

 - a. **Designated Representative.** BE's designated representative shall be authorized to act on BE's behalf with respect to the Project and Services.
 - b. **BE's Duties.** BE shall perform all Services that are required under the Agreement; and, Client will be responsible for the completion of all other services involved in the development, construction and completion of the Project.
3. **Means and Methods.** BE shall supervise and direct the Services and have control over all means, methods, techniques, sequences and procedures related to the Services. The Services shall not include governmental permits or fees of any kind; testing, removal and disposal of contaminated or hazardous materials, or of any materials containing hazardous material as defined by the EPA; relocating Client's property; restoration related to Client's prior Project activities, including repair of damage to roadways, driveways, or sidewalks resulting from equipment or vehicles.
4. **Warranty and Disclaimer.** All warranties (written, express implied or oral), including any implied warranty of merchantability, workmanship and fitness for a particular purpose, are excluded from this Agreement.
5. **Standard of Care.** The standard of care for all Services performed by BE and its sub-consultants shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. BE shall perform its Services as expeditiously as is consistent with such professional skill and care and the orderly and timely progress of the Project.
6. **Insurance.** Client has personal, property and casualty insurance. BE shall maintain workers' compensation; general liability; automobile liability, professional liability insurance for the duration of this Agreement in the limits represented in its Certificate of Insurance which is available upon written request.
7. **Delays / Interruption.** Client recognizes that events out of BE's reasonable control may prevent the timely provision of the Services. If the Services are delayed or interrupted by any act or neglect of Client or a separate service provider employed by Client or by changes in the Services, labor disputes, fire, unusual delay in deliveries, adverse weather conditions, unavoidable casualties, or other causes beyond BE's reasonable control, the Completion Date shall be extended for a period of time equal to the delay. It is expressly agreed that Client shall not be entitled to any damage for delay in the Services.
8. **Claims for Consequential Damages.** Client and BE waive claims against each other for consequential damages arising out of or relating to this Agreement. This waiver includes damages incurred for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity along with liable for any loss of business, revenues, profits, or any other special, incidental, consequential or punitive damages of any nature, or for any kind or any related claims made by a third-party.
9. **Changes.** Client may request changes within the general scope of the Services, in which event the Fee and Completion Date shall be adjusted by written Amendment. Unless otherwise agreed, the cost of change or additional Services shall be determined on the basis of the costs of the change, plus a reasonable allowance for overhead and profit. If conditions are encountered at the Project which differ from the conditions anticipated by BE or from those ordinarily found to exist and generally anticipated in the Services, the Fee and Completion Date shall be equitably adjusted by written Amendment. Circumstances beyond BE's control include, but are not limited to, the following: (1) a change in the instructions or approvals given by the Client that necessitate revisions in the BE's Deliverables;

(2) enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Deliverables; (3) decisions of the Client not rendered in a timely manner; (4) a significant change in the Project including, but not limited to, location, size, complexity, the Client's schedule or budget, or procurement method; (5) failure of performance on the part of the Client.

No changes to the Services will be effective without the prior written consent of BE, which consent may be withheld in the sole discretion of BE. Any additional services or other changes to the Services will be documented in an Amendment, which will become part of this Agreement. Should the parties be unable to mutually agree to the necessary modification, BE may proceed with performance of the Agreement and Client shall continue to make all other payments due and owing BE under this Agreement.

10. **Boundary Determinations.** Boundary determinations occasionally disclose unseen or unknown conflicts between the record documents and the location of physical improvements. Upon discovery of any latent or patent ambiguity, uncertainty, or dispute disclosed by the records or by placement of the boundaries, Services will be suspended and Client will be notified. BE will present alternatives for possible resolution and any additional services required. If Client decides to forego resolution, all Services completed to date will be invoiced and the Project file will be archived. If Client chooses resolution, BE will act as Client's consultant. Upon resolution, the Agreement will be completed in accordance with its terms subject to interim rate increases.

11. **Indemnification.** To the fullest extent permitted by law, Client or BE shall indemnify and hold harmless the other party and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from provision of the Services, provided that such claim, damage, loss or expense is attributable to sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of a party, anyone directly or indirectly employed by it or anyone whose acts it may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by the party indemnified hereunder.

12. **Limits on Liability.** In recognition of the relative risks, rewards and benefits of the Services provided for the Project to both the Client and BE, the risks have been allocated so that the Client agrees that, to the fullest extent permitted by law, BE's total liability to the Client for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this Agreement, whether based in contract, tort, strict liability or otherwise, from any cause or causes, shall not exceed the total amount of \$50,000.00 or the amount of the Fee (whichever is greater). This limit is not affected by any insurance limits described in (6) above.

13. **No Responsibility for the Work of Others.** BE shall not have control over or charge of or be responsible for the acts, omissions or failure of the Client's contractors, subcontractors, or their agents or employees, or any other persons or entities to perform their work, labor or services in accordance with the Project's requirements.

14. **Safety, Protection of Persons and Property.** BE shall take necessary precautions to comply with applicable federal, state and municipal safety laws. Except for its own employees, agents, contractors and subcontractors, BE shall not be responsible for the safety of any person or property within or on the Project site. The Client's contractors, subcontractors, or their agents or employees, shall be solely responsible for the safety of their employees and others affected by its/their work at the Project. The Client shall cause its contractors, subcontractors, agents or employees to take necessary precautions for the safety of its own employees and the Client's property.

15. **Hazardous Waste.** The Client shall promptly notify BE of the existence of any hazardous substance on or adjacent to the Project site of which the Client has actual knowledge. The phrase "hazardous waste" shall be defined by the Superfund Act (Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended) and shall include similar definitions of a substance subject to a similar control by state or local law. The Client, or its other agents or subcontractors, shall have responsibility for compliance with all federal, state and local laws, regulations, guidance or other requirements relating to the handling, treatment, storage or disposal of hazardous wastes, substances or constituents. Client agrees that BE, as well as its owners, officers, directors or employees are not an owner, handler, generator, operator, treater, storer, transporter, disposer or Potentially Responsible Party, under the Resource Conservation and Recovery Act of 1976, as amended, the Comprehensive Environmental Response, Compensation and Liability Act as amended, or any other similar federal, state or local law or regulation, including the Indiana Environmental Legal Action statute. Client agrees to defend, indemnify and hold harmless BE, its owners, officers, directors and employees from and against all claims and liabilities resulting from any form of allegation that BE, its owners, officers, directors or employees are an owner, handler, generator, operator, treater, storer, transporter, disposer, or potentially responsible party under any federal, state, or local law or regulation. Notwithstanding the foregoing, Client does not agree to defend, indemnify, or hold BE harmless to the extent that damages are caused by the negligent actions or inactions of BE.

16. **Payment.** Invoices will be submitted monthly for Services and reimbursable expenses. Payment is due upon receipt. Invoices shall be based upon Services provided through the date of Invoice. Undisputed invoices unpaid thirty (30) days from the Invoice date shall accrue interest at 1 ½% per month (18% per annum) and shall entitle BE to

immediately suspend the Services or terminate this Agreement upon seven (7) days written notice to Client, in the sole discretion of BE, without any further liability to BE under this Agreement. By exercising its rights of suspension or termination, BE does not waive any rights it may have under any applicable law. Before resuming the Services, BE shall recover from the Client all undisputed amounts due BE for all Services performed pursuant to this Agreement and Reimbursable Expenses incurred. In the event of Service stoppage, the Completion Date, shall be extended and the Fee increased by the amount of BE's reasonable costs of shutdown, delay and start up pursuant to an Amendment and the Client may not withhold its approval of same. If BE incurs any cost or expense, including attorneys' fees and/or costs of collection, to recover undisputed sums due and owing, Client shall be responsible for payment of all such sums. The Client shall make no deductions from the BE's compensation on account of sums withheld from payments to others providing services, materials or labor at the Project.

17. **Reimbursable Expenses.** Reimbursable Expenses are in addition to the compensation for the Services and include, but are not limited to, expenses for the following: (1) filing fees, title searches, submittal fees, certified letters, reproduction of drawings and specifications or other documents, as well as the handling costs associated therewith; (2) any fees paid for securing approval of authorities having jurisdiction over the Project; (3) Client authorized travel and electronic communications and (4) the expense of professional liability insurance dedicated exclusively to this Project or the expenses of additional insurance coverage or limits requested by the Client in excess of that normally carried by BE and its consultants. BE shall not be obligated to advance payment associated with the foregoing expenses and upon written notice to Client, the Client may be required to make direct payment of these expenses.

18. **Default.** In the event of default, the non-defaulting entity shall give to the defaulting entity forty-eight (48) hours to cure such default. In addition to any other legal remedies available to BE, under this Agreement, law or equity, BE shall have the absolute right to immediately discontinue the Services when Client is in default of any of its obligations or fails to make timely payment.

19. **Disputes.** The parties agree to provide one another with written notice of a dispute within a reasonable time, not to exceed thirty (30) days, after obtaining knowledge of the same and shall include: (1) a statement specifying that a dispute has occurred that falls within the scope of this paragraph, (2) a statement of the party's position and a summary of evidence and arguments that support such position, and (3) the name and title of the disputing party's authorized representative. Within twenty (20) days after receipt of the disputing party's notice, the responding party shall submit a written response to the disputing party. The response shall contain: (1) a statement of the responding party's position and a summary of evidence and arguments

that support such position; and (2) the name and title of the responding party's authorized representative. In the absence of an agreement to the contrary, the parties' authorized representatives shall meet in Hendricks County, Indiana, at a mutually acceptable time and place within ten (10) days after the disputing party receives a response and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. If the dispute has not been resolved within forty (40) days after the disputing party receives the response, or if the responding party refuses or fails to comply with the provisions of this paragraph, then the disputing party may commence mediation or legal action.

20. **Mediation.** If negotiations prove fruitless, the parties shall endeavor to settle the dispute by mediation (which shall be conducted, administered and governed by the Indiana Rules for Alternative Dispute Resolution or by other process agreed to by the parties) before recourse to other dispute resolution methods are used. Mediation shall be concluded within sixty (60) days after the conclusion of the initial thirty (30) day dispute negotiation period. Either party may terminate the mediation at any time after the first session. The cost of any mediation proceeding shall be shared equally by the Parties. If mediation efforts are not successful, the parties may exercise all of their rights under law.

21. **Litigation/Venue.** Exclusive venue for all claims or disputes arising out of this Agreement or Services provided hereunder shall be in Hendricks County, Indiana and any litigation between the parties that arises under this Agreement shall be prosecuted in Hendricks County, Indiana.

22. **Termination for Cause.** This Agreement may also be terminated by a party upon not less than seven (7) days' written notice should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the party initiating termination. If the Client fails to make undisputed payments to the BE in accordance with this Agreement, such failure shall be considered substantial nonperformance of services under this Agreement and BE may terminate this Agreement for cause. In the alternative, BE may suspend the Agreement.

23. **Termination Due to Delay or Suspension.** If the Services are stopped, suspended or delayed for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of any *force majeure*, act or neglect of the Client's contractors, subcontractors, agents or employees, changes ordered in the Services, labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the control of the BE or its agents or employees, then the BE shall be entitled to a reasonable extension in the Completion Date pursuant to an Amendment and the Client may not withhold its approval of same. In the alternative, BE may upon not less than seven (7) days' written notice to the Client, terminate this Agreement and recover from the Client all

amounts due BE for all Services performed pursuant to this Agreement and Reimbursable Expenses incurred, including overhead and profit, together with any other liabilities, obligations, damages or commitments, attorneys' fees and/or costs of collection of the amounts due under this Agreement.

24. **Termination for Convenience.** BE or Client may terminate this Agreement for its sole convenience. In the case of termination for convenience or without cause, BE shall be entitled to receive payment from Client for all amounts due for all Services performed pursuant to this Agreement and Reimbursable Expenses incurred.

25. **Assignment.** Client may assign the Agreement to a separate entity, but only with the prior written consent of BE. This Agreement will be binding upon the parties, their successors, executors, administrators, and assigns.

26. **Notice.** Notice shall be in writing and delivered via e-mail, fax, overnight delivery, hand delivery, or certified mail. Notice shall be considered provided as of the date of delivery. Where notice cannot be immediately provided in writing, telephonic notice may be made followed by written notice.

27. **No Third-Party Beneficiaries.** It is agreed that the Services are for Client's sole use and benefit at the Project; as such, BE and Client agree that this Agreement is not intended to benefit any third-party.

28. **Ownership of BE's Deliverables.** All Deliverables, including, but not limited to, original drawings, field notes, reports, written data, and electronic data are and shall remain the exclusive property of BE until BE is paid in full under this Agreement and may not be used by the Client for any other endeavor without the written consent of BE. Upon completion of the Services and final payment of the Fee, the Client shall have a non-exclusive license to reproduce the Deliverables. Client shall also be permitted to make changes, corrections or additions to the Deliverables for the

purposes of completing, using and maintaining the Project or for future additions or alterations to the Project; provided however, that the Client's use of the Deliverables shall be at the Client's sole risk and without liability to BE. In the event BE is not fully compensated under this Agreement, Client shall remit the Deliverables and related documents to BE upon BE's demand. In the absence of BE's demand for remittance or upon completion of the BE's Services under this Agreement, the Client shall have a non-exclusive license to reproduce BE's drawings and related document provided however, that the Client's use of the Deliverables shall be at the Client's sole risk and without liability to BE, except that BE shall remain liable for its own negligent errors and omissions.

29. **Applicable Law**

The terms and conditions of this Agreement will be governed by the laws of the State of Indiana.

30. **Severability.** In case any one or more of the provisions contained in this Agreement or any application thereof shall be judicially determined to be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

31. **Miscellaneous.** This Agreement represents the entire and integrated agreement between BE and Client, supersedes all prior negotiations, representations and agreements, written or oral, and shall not be modified, supplemented or interpreted by evidence of course of dealing, course of performance or usage of trade. If any provision of the Agreement is found by a court to be illegal, invalid, void or otherwise unenforceable, the remaining terms and conditions shall remain in full force.

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