

**GUARANTEED SAVINGS
CONTRACT**

THIS GUARANTEED SAVINGS CONTRACT (herein sometimes "Agreement" and sometimes "Contract"), made this day _____, by and between **Town of Danville**, Indiana, a municipal Corporation (hereinafter called the "Owner") and Bowen Engineering Corporation, an Indiana corporation, acting as contractor and qualified provider (hereinafter called "Contractor").

WITNESSETH:

WHEREAS, Contractor has submitted to Owner a proposal (the "Proposal") for the installation of Improvements to the North Interceptor or conservation measures at facilities owned by Owner and located in Hendricks County, Indiana (herein the "Facilities"), the specific details of such Proposal are outlined in the Exhibits attached to this Agreement; and

WHEREAS, Owner has accepted the terms of the Proposal, and the Owner and Contractor desire to enter into this Agreement in order to memorialize their respective agreements and undertakings with respect to the Project (as defined hereinafter).

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto agree as follows:

1. Integration; Conflict; Agreement Conditional.

The parties hereby incorporate by reference the same as if fully set forth herein, the following documents and instruments, all of which together are herein referred to as the "Contract Documents":

- 2007 Version of EJCDC C-700 Standard General Conditions of the Construction Contract (the "General Conditions");
- Specifications, Drawings and Project Manual (the foregoing, collectively, the "Specifications and Drawings");
- Exhibit A Scope of Work;
- Exhibit B Proposal & Open Book Structure;
- Exhibit B-1 Contractor's Open Book Pricing Model & Proposal
- Exhibit C Performance Guarantee;
- Exhibit D Support Services; and
- Exhibit E Project Completion Schedule

The Contract Documents also shall include any permissible change orders issued pursuant to this Agreement and signed by an authorized representative of each of the Owner and Contractor.

In the event there is a conflict between the provisions of this Agreement and any other Contract Document, the provisions of this Agreement shall be controlling with respect to the subject matter hereof.

2. Scope of Project.

For purposes hereof, the term "Project" shall mean and include the installation of the conservation measures and related upgrades ("CM's" or "Conservation Measures") at the Owner's Facilities as **described in Exhibit A.**

The Contractor represents (i) that the Project constitutes the installation of "conservation measures" as defined in I.C. 36-1-12.5-1 *et seq.* (herein the "Act"), and (ii) that this Agreement is a "guaranteed savings contract" as defined in the Act. The Contractor further represents that it is a "qualified provider" of "conservation measures", as defined in the Act. The Contractor also represents that it has issued the report containing all data and information required by I.C. 36-1-12.5-6.

The Contractor further represents that the Project will result in savings in the total amount of **\$27,550** and operational savings in the total amount of **\$1,948,700** during the twenty (20) year period following completion of the Project. The Contractor represents that such total savings in the amount of **\$1,976,240** (herein the "Total Guaranteed Savings") exceeds the Owner's total cost of the Project. The Contractor hereby guarantees that it will reimburse the Owner for the difference between the Total Guaranteed Savings and the actual savings realized by virtue of the installation of the Conservation Measures. The Total Guaranteed Savings are identified on Tables 1 through 4 attached to this Agreement and Savings Calculation documents, also attached to this Agreement (all of the foregoing, collectively, the "Savings Documents"). The Savings Documents are hereby incorporated into and made a part of this Agreement by this reference. The parties stipulate and agree that the Total Guaranteed Savings shall be considered fully satisfied upon the substantial completion of the Project. The Total Guaranteed Savings will be realized over a period of twenty (20) years following final installation of the Project, which term of years the Contractor represents is less than the average life of the Conservation Measures. The term of this Agreement shall extend for twenty (20) years effective with the Owner's acceptance of all Conservation Measures.

3. General Obligations and Rights of Contractor.

Unless otherwise expressly provided herein or directed in writing by Owner, Contractor shall do all acts and provide all things necessary to perform and complete the Project properly, efficiently, in a good and workmanlike manner, and in compliance with all laws and regulations. Contractor shall apply for, secure, and obtain all necessary permits, fees, and licenses, which may be required in connection with the Project.

Contractor shall preserve and maintain, to the greatest extent possible and consistent with good engineering and design, the natural terrain and existing trees on the real estate, and shall remove only those trees necessary for the location of the Project and approved by Owner for removal.

Contractor shall commence the work immediately in accordance with the Contract Documents and shall diligently prosecute and complete the Project without interruption in accordance with the Project Completion Schedule attached hereto as **Exhibit E**, subject only to work stoppages or delays due to acts of God and other causes beyond control of Contractor and not the fault of Contractor. Time is of the essence of this Contract.

To the extent that Contractor has received all payments due from Owner, Contractor shall not permit any liens for labor, materials or equipment performed or furnished in connection with the Project to be filed against the Facilities or any real estate of Owner by any person, firm or corporation and Contractor shall indemnify, defend and hold Owner and the real estate harmless from and against any and all such other liens, claims, suits, liability or expense (including, without limitation, attorney's fees) resulting therefrom. Contractor further agrees that upon the completion of the performance of this Contract and receipt of payment from the Owner, the Facilities and all real estate of Owner shall be free and clear of any mechanic's and materialmen's liens, not only of the Contractor but also of any and all permitted subcontractors, suppliers, materialmen, laborers or permitted sub-subcontractors, who may furnish any labor, material, services, fixtures, apparatus, machinery, equipment, improvements, repairs or alterations in connection with, or to, the Facilities, in connection with the Project referred to in this Contract.

3.1. Contractor's Representations.

A. Correction of Work. Consistent with Article 13.07 of the General Conditions, if within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Project, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly and without cost to Owner, correct such defective work. Contractor's warranty, correction of work and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification, or improper maintenance or operation by persons other than Contractor, or its subcontractors, suppliers, or any other individual or entity for whom Contractor is responsible;
2. Design errors or omissions in Contract Documents prepared by parties other than the Contractor or those for whom the Contractor is responsible; or
3. Normal wear and tear under normal usage.

B. Pursuant to Indiana Code 5-22-16.5, Contractor hereby certifies that it does not engage in investment activities in Iran as more particularly described in Indiana Code 5-22-16.5.

C. E-Verify. Pursuant to I.C. § 22-5-1.7 et seq., as the same may be amended from time to time, and as is incorporated herein by this reference (the "Indiana E-Verify Law"), Contractor is required to enroll in and verify the work eligibility status of its newly-hired employees using the E-Verify program affirming that it is enrolled and participating in the E-verify program and does not knowingly employ unauthorized aliens. In support of the Affidavit, Contractor shall provide the Owner with documentation indicating that it has enrolled and is participating in the E-Verify program. Should Contractor subcontract for the performance of any

work under and pursuant to this Agreement, it shall fully comply with the Indiana E-Verify Law as regards each such subcontractor. Should the Contractor or any subcontractor violate the Indiana E-Verify law, the Owner may require a cure of such violation and thereafter, if no timely cure is performed, terminate this Agreement in accordance with either the provisions hereof or those set forth in the Indiana E-Verify Law. The requirements of this paragraph shall not apply should the E-Verify program cease to exist.

D. Debarment and Suspension.

1. The Contractor certifies by entering into this Agreement that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

2. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Agreement and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the Owner if any subcontractor becomes debarred or suspended, and shall, at the Owner's request, take all steps required by the Owner to terminate its contractual relationship with the subcontractor for work to be performed under this Agreement.

3.2. Approvals.

Upon completion of the Project, the Contractor shall obtain approval of the installation of the Conservation Measures constituting the Project from the Indiana Department of Health, the Office of the State Fire Marshal, the Office of the State Building Commissioner, and any other State agency designated by the Act or any other State statute or regulation. The installation of the Conservation Measures constituted in the Project also shall be approved by an architect or engineer licensed under I.C. 25-4 or I.C. 25-31, such approval to be obtained at the expense of the Contractor. The receipt of all such approvals (together collectively, the "Approvals") shall constitute a condition precedent to the Contractor's entitlement to receive the final payment.

3.3. Indemnification.

Contractor shall indemnify and hold harmless the Owner, its agents, employees and representatives, and their respective successors and assigns, and any assignee of the Contractor (all of the foregoing, collectively, the "Owner Indemnified Parties") against all liability and loss as a result of negligence or misconduct in connection with the Project by Contractor, its permitted subcontractors, or the agents, employees, or representatives of Contractor or its permitted subcontractor(s), including any injury or death sustained by or any damage to the property of any person; provided however, that Contractor shall not be responsible for any injury or death, damage,

or loss, including reasonable attorneys' fees and costs or other disbursements, to the extent caused by the negligence of any Owner Indemnified Parties, nor shall Contractor be held responsible to the extent of any concurrent or contributory negligence of any Owner Indemnified Parties or non-party.

Owner shall indemnify, defend and hold harmless Contractor, and the officers, shareholders, directors, and employees of the Contractor (herein the "Contractor Indemnified Parties") against all liability and loss as a result of the negligence or misconduct in connection with the Project by Owner and agents, employees or representatives of Owner, including any injury (including death) sustained by or any damage to the property of, any person; provided, however, that Owner shall not be responsible for any injury (including death), damage or loss (including reasonable attorney's fees and disbursements) to the extent caused by the negligence of any Contractor Indemnified Parties, nor shall Owner be held responsible to the extent of any concurrent or contributory negligence of any Contractor Indemnified Parties or Non-Party.

3.4. Bonds.

If required by the Owner and before commencing the performance of this Agreement, the Contractor shall execute for the benefit of Owner, a good and sufficient Performance Bond and Payment Bond, in form acceptable to Owner and consistent with Article 5 of the General Conditions. Each bond shall be in an amount equal to the total GMP (as defined below in Section 5 of this Agreement), and the provisions of I.C. 36-1-12-13.1 and I.C. 36-1-12-14, if applicable to this Project, shall become a part of the terms of such bonds.

Notwithstanding any other provision of this Agreement or the bonds, in no event and in no manner shall coverage under the Performance Bond and Payment Bond extend to Contractor's guaranty obligations set forth in Exhibit C Performance Guarantee, or any related provisions.

3.5. Limitation of Liability.

Except for insured claims arising or resulting from bodily injury, death or damage to real or personal property, the total liability of Contractor party to the other on all claims, whether in contract, warranty, tort, strict liability, or otherwise, arising out of the performance of this Agreement, shall not exceed the Contract Price. EXCEPT FOR THE WILLFUL MISCONDUCT OR RECKLESSNESS OF A PARTY, OR FOR ANY LOSSES COVERED UNDER AN INSURED CLAIM FOR BODILY INJURY, DEATH OR DAMAGE TO REAL OR PERSONAL PROPERTY, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, SPECIAL, SPECULATIVE, PUNITIVE, OR REMOTE DAMAGES.

3.6. Insurance.

3.6.1. Obtaining Proper Insurance.

Contractor shall not commence performance hereunder until (i) it has obtained and Owner has approved all insurance coverage required by this Section 3.6 and consistent with Article 5 of the General Conditions; and (ii) Owner has been furnished with a certificate of insurance properly evidencing and confirming that (a) Owner is an additional named insured, and (b) such insurance coverage is in effect and will not be canceled or materially altered without thirty (30) calendar days prior written notice to Owner. All insurance provided by Contractor hereunder shall provide for a waiver of subrogation against Owner. In the event that permitted subcontractors are not covered by the Contractor's policies of insurance, each permitted subcontractor shall secure policies of insurance, which meet the requirements of this Section 3.6.

3.6.2. Amount of Insurance.

Contractor shall take out and maintain, at its sole cost and expense, the following insurance coverage during the term of this Agreement and all other times during which Contractor, its employees, agents, or subcontractors shall be present at the Facilities, whether performing or correcting any portion of the Project. Owner shall be named as an Additional Insured and be given a 30 day notice of cancellation, non-renewal or significant change of coverage. Contractor insurance shall be written on a "primary and non-contributory" basis.

a. Worker's Compensation, Employer's Liability, and Occupational Disease Insurance.

Statutorily required worker's compensation insurance, including employer's liability and occupational disease coverage, to the extent provided by the Worker's Compensation Act and the Occupational Disease Act of the State of Indiana, on all of Contractor's employees engaged in the Project and shall include a Waiver of Subrogation endorsement in favor of the Owner;

b. General Liability.

Commercial general liability insurance (including contractual, independent contractors, explosion, and product/completed operations (for at least two (2) years following completion) coverages) against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than One Million Dollars (\$1,000,000.00) in one occurrence, and to the limit of not less than Two Million Dollars (\$2,000,000.00) annual aggregate;

c. Automobile Liability.

Automobile liability insurance against damage because of bodily injury, including death, or damage to property of others as the result of the operation of any automobile, with such insurance to afford protection to the limit of not less than Five Hundred Thousand Dollars (\$500,000.00) for any one person, not less than One Million Dollars (\$1,000,000.00) in respect to any one accident, and not less than One Hundred Thousand Dollars (\$100,000.00) for property damage.

d. Excess Liability

Excess or umbrella liability insurance with limits of not less than Ten Million Dollars (\$10,000,000.00) per project or location aggregate (these limits apply in excess of each of the above-mentioned policies).

3.6.3 Builder's Risk Insurance.

Contractor shall provide Builder's Risk Insurance for the benefit of Owner, Contractor, Engineer, Engineer's Subconsultants, any and all of the permitted subcontractors as their interest may appear, and for the benefit of all parties furnishing financing to the Owner for construction to be done hereunder, all of the same to be named insureds on the said Builder's Risk policy. The perils covered shall include fire and extended coverage, plus other perils (including theft, vandalism and malicious mischief) which extend coverages to the broadest form of "all risk" coverage. This "all risk" coverage shall be in the amount of 100% of the completed insurable value of the Project. Proceeds of such Builder's Risk Insurance shall be payable to Contractor, as trustee for all interested parties, and Contractor shall adjust all losses and claims with the insurer, subject, however, to the rights of any mortgagee. Such coverage shall insure items of labor and materials connected with the Project, whether in or adjacent to the Facilities insured, materials in place or to be used as part of the permanent construction, including surplus materials, shanties, protective fences, bridges, temporary structures, miscellaneous materials and supplies incident to the work, and such scaffolding, stagings, towers, forms and equipment as are not owned or rented by Contractor, the cost of which is included in the cost of the work.

4. Building Insurance.

The Owner's fire and extended coverage insurance now in effect on the Facilities will cover the Owner's interest or equity in the Project; however, it will not cover the equity or interest of the Contractor nor of its materials and/or equipment at the Facilities. The coverage of the Contractor's equity and/or interest, as above, shall be the responsibility of the Contractor.

4.1. Title.

Title to all Conservation Measures shall vest with the Owner upon substantial completion and payment to the Contractor. Such title shall continue to be subject to the provisions of this Agreement. It is the intent of all parties that any transfer of title to Owner pursuant to this Agreement shall occur automatically without the necessity of any bill of sale, certificate of title, or other instrument of conveyance.

The Owner shall be responsible for operating, maintaining, and insuring all Conservation Measures that are installed, except as otherwise set forth in Agreement, from and after the date of substantial completion.

5. Cost and Payments.

5.1. Cost.

In consideration of Contractor's performance of the work necessary for the completion of the Project, Owner shall pay the Construction Costs, Contractors Fee, Construction Contingency and Allowances as detailed and further **described in Exhibit B and Exhibit B-1** (herein the "Contract Price). It is, however, recognized and agreed that the Contract Price is subject to the guaranteed maximum price set forth in Exhibit B-1 ("GMP"). Any cost and expense for the installation of the Project in excess of the GMP shall be and remain the sole and exclusive liability and obligation of Contractor, unless such additional cost results from the issuance of a Change Order by Owner that is approved by Contractor and signed by an authorized representative of Contractor and Owner.

By executing this Contract, Contractor represents that it has taken steps reasonably necessary to ascertain the nature and location of the Project, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Project or its costs, and has included provision for all such conditions in the GMP, including but not limited to: (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, or similar physical conditions at the Site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during performance of the Project. Contractor also represents that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Facilities, including all exploratory work done by Owner and made a part of this Contract, as well as from the specifications made a part of this Contract. Failure by Contractor to take the actions described and acknowledged in this paragraph will not relieve Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Project.

Prior to substantial completion, the Owner may retain 10 percent of the amount of each payment for the work completed. If the work has been 50 percent completed as determined by Engineer, and if the quality and progress of the work have been satisfactory to Owner and Engineer and in accordance with the Contract Documents, Owner, on recommendation of Engineer, may determine that as long as the quality and progress of the work remain satisfactory to them and in accordance with the Contract Documents, there will be no additional retainage; and 50 percent of cost of materials and equipment not incorporated in the work (with the balance being retainage). Upon substantial completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the work completed, less such amounts as Owner is entitled to withhold under this Contract and less 200 percent of Engineer's estimate of the value of work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of substantial completion.

Owner shall make progress payments on account of the Contract Price on the basis of Contractor's applications for payment on or about the 15th day of each month during performance of the Project. All such payments will be measured by the schedule of values.

Contractor shall include in each permitted subcontract a limitation on the markup that Subcontractors can include in approved Change Orders. The cumulative total of markup (subcontractor markup plus all lower-tier subcontractor markups) shall not exceed fifteen percent (15%) of the cost of any approved Change Order. As Contractor's markup is accounted for in the

fixed fee, there will be no additional Contractor's markup for changes in scope associated with Owner approved work that expends project savings.

6. Independent Contractor.

It is understood and agreed by the parties hereto that Contractor shall perform the Project according to its own means and methods and shall for all purposes be an independent contractor. All persons employed by Contractor in connection with the Project shall be subject only to its orders and supervision, and shall be paid directly by Contractor. Neither Owner nor its agents, servants, or employees shall have the right to direct, supervise, or control the manner or method in which Contractor or its subcontractors perform the Project, except as otherwise expressly provided herein; provided, however, Owner shall have the right to inspect the Project at any time for the purpose of determining whether the Project is being carried out in conformity with the Contract Documents.

7. Document Retention.

Contractor shall retain in its records copies of all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings or things which document the Project, its design, and its construction. Contractor shall maintain substantiating records for seven (7) years after the date of final payment or for any longer period of time as may be required by law or good construction practice. Contractor shall promptly make such construction records available for inspection by Owner upon request during such retention period. Cost of Work information will be provided to the Owner upon request provided that documents related to fee and rates are not subject to audit or review by the Owner. If Contractor receives a notification of dispute or the commencement of litigation regarding the Project within this seven (7) year period, Contractor shall continue to maintain all Project records until final resolution of the dispute or litigation.

8. Termination for Failure to Perform; Rights Thereunder.

The Contractor shall use all due diligence in an effort to complete the entire work required by this Contract in accordance with the project schedule. Should the Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or materials of the proper quality, or fail to prosecute the work with promptness and diligence, the Owner may, after fourteen (14) days written notice to the Contractor and Contractor's failure to remedy the problem within that time period, provide sufficient labor or materials and to deduct the costs thereof from any money then due or thereafter to become due to the Contractor under the Contract, and the Owner shall also be at liberty to terminate this Agreement with the Contractor for the Project and to enter upon the Project and take possession for the purpose of completing the work to be done under this Contract, to use all materials of the Contractor available for such work, and to employ any other person or persons to finish the work and to provide such additional materials therefore as may be necessary; and in case of such discontinuance of the employment of the Contractor, the Contractor shall not be entitled to receive any further payment under this Contract until the said work shall be wholly finished, at which time if the unpaid balance of the amount to be paid under the Contract shall exceed the expense incurred by the Owner in finishing the work, such excess shall be paid

by the Owner to the Contractor, but if such expense shall exceed such unpaid balance, the Contractor shall pay the balance to the Owner. The expenses incurred by the Owner as herein provided, either for the furnishing of materials or for finishing the work, and any damage incurred through such fault of the Contractor shall be substantiated by the Owner for payment by the Contractor.

9. Extension of Time for Completion of Project.

Should the Contractor be obstructed or delayed in the prosecution or completion of the Project by the act, negligence, delay, or default of the Owner or by any other damage or act beyond the reasonable control of Contractor or any subcontractor, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all of the causes aforesaid, but no such allowance shall be made unless a claim therefore is presented in writing to the Owner within five (5) business days of the occurrence of such delay. Contractor's nonperformance of its obligations under this Contract will be excused (or, if practicable, the time period within which Contractor may perform an obligation shall be extended) if and solely to the extent: (i) Contractor's failure to perform, or failure to timely perform, an obligation results from Owner's failure to perform or failure to timely perform its responsibilities, (ii) Contractor provides Owner with prompt and reasonable notice of Owner's nonperformance, and (iii) Contractor uses commercially reasonable efforts to perform its duties notwithstanding Owner's failure to perform.

10. No Acceptance of Defective Work.

No certificate given or payment made under this Contract, except the final certificate and final payment thereon, shall be conclusive evidence of the performance of this Contract either wholly or in part; provided, that no payment or certificate, including, without limitation, the final payment and certificate, shall be construed to be an acceptance of defective work, improper materials or unauthorized substitutions.

11. Contractor to Furnish Required Statements.

The Contractor shall, at no additional cost, provide all statements, affidavits, waivers, and other instruments required by state or federal law or regulation (including, without limitation, the Act) or by local ordinances or rules, at such times and in the form required by said laws, regulations, ordinances, or rules, and the Contractor hereby acknowledges receipt of notice from the Owner to furnish same.

12. Nondiscrimination in Hiring Employees.

The Contractor, as required by I.C. 5-16-6-1 *et seq.* and I.C. 22-9-1-10, shall comply with the following:

A. The Contractor, any subcontractor, any supplier or any sub-supplier of a party to this Contract shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract with respect to his or her hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment,

because of his race, color, religion, sex, disability, national origin, or ancestry. Breach of this provision may be regarded as a material breach of this Contract.

B. This Contract involves the construction, alteration, or repair of a public building or public work, therefore the Contractor further agrees:

(1) That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not, 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;

(2) That the Contractor, a subcontractor, or any person on his or their behalf shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, religion, color, sex, national origin, or ancestry;

13. Miscellaneous Provisions.

13.1. Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana.

13.2. Notices.

Unless otherwise specifically provided herein, any notice, consent, request, demand, report or statement (herein "Notice"), which is required or permitted to be given to or served upon either party hereto by the other party hereto under any of the provisions of this Agreement shall be in writing and deemed to be duly delivered when (i) personally delivered to the addressee, in the case of a Notice to be given to Contractor, or personally delivered to the addressee in the case of a Notice to be given to Owner, or (ii) upon the earlier of actual receipt or refusal of delivery when sent via traceable overnight courier (e.g., FedEx) or when sent in the United States mail, registered or certified, postage prepaid, and properly addressed as follows:

If to Owner: Barry Lofton, Utilities Director
 Town of Danville
 49 North Wayne Street
 Danville, IN 46122

If to Contractor: John Dettman, Vice President
Bowen Engineering Corporation
8802 N. Meridian Street
Indianapolis, IN 46260

With Copy to: General Counsel

13.3. Assignment.

Without Owner's prior written consent, Contractor shall not, and will not, assign, transfer, pledge, hypothecate, or grant any security interest in, or otherwise dispose of, this Agreement, or any portion of this Agreement.

Contractor, without the consent of the Owner, may assign its right to receive payment hereunder in whole or in part to various assignees, their agents or trustees (each and any one hereinafter referred to as an "Assignee"). Any such assignment to an Assignee may provide that Contractor or the Assignee shall act as a collection and paying agent for holders of certificates of participation in this Agreement, or may provide that a third party trustee or agent shall act as a collection and paying agent for any Assignee, provided Owner receives written notification of the name and address of the trustee or the agent and a copy of the pooling and fractionalization agency or trustee agreement, if any such Assignee shall have all or a part of the assigned rights of Contractor under this Agreement. Subject to the foregoing, this Agreement shall inure to the benefit of and is binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto. Any assignment or reassignment of any of Contractor's right to receive payment hereunder shall be effective upon receipt by Owner of a duplicate original of the counterpart document by which the assignment or reassignment is made, disclosing the name and address of each such Assignee, and where applicable, to whom further payments hereunder should be made. Owner agrees to acknowledge, in writing, any assignments if so requested.

Owner agrees that, upon notice of assignment of payment rights, if so instructed, it shall pay directly to the Assignee, or its Trustee or Agent without abatement, deduction or setoff (except as permitted by this Agreement), all amounts, which become due hereunder.

Contractor does hereby assign to Owner, to the greatest extent permitted by law, all warranties of any manufacture of supplies, equipment, and all other materials used in the performance of the Project. Contractor agrees to use reasonable efforts to assist Owner in seeking any redress under any such warranties.

13.4. Nonwaivers and Defaults.

The failure of either party hereto to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a

waiver of any such provision or the relinquishment of any such rights. Except as otherwise expressly provided herein, no default by either party hereto in the performance of any of its covenants or obligations hereunder, which except for this provision would be the legal basis for the rescission or termination hereof by the other party hereto, shall give or result in such a right unless and until the party committing such default shall fail to correct the same within fifteen (15) calendar days after written notice thereof is given to such defaulting party by the other party hereto.

13.5. Remedies Cumulative.

Each remedy provided for by the Contract shall be cumulative and in addition to every other remedy provided for herein, by law or in equity.

Upon the occurrence of a default, either party, or its assignee, may, at its option, exercise any right, remedy, or privilege which may be available to it under applicable law, including the right to (i) proceed by appropriate court action to enforce the terms of this Agreement, (ii) recover damages for breach of this Agreement. Notwithstanding the exercise of any right, remedy or privilege, the parties shall remain liable for all covenants and indemnities under this Agreement, and for all legal fees and other costs and expenses, including court costs, incurred with respect to the enforcement of any of the remedies listed above or any other remedy available to either party to this Agreement.

Except as otherwise provided in this Contract, in the event of a claim, controversy or dispute between Owner and Contractor, the performance of any portion of the Project, the delivery of any materials, the payment of disputed monies or otherwise (the parties acknowledging that undisputed monies will be paid when due), Owner and Contractor agree that pending the resolution of such claim, controversy or dispute, Owner and Contractor shall continue to perform their respective obligations under this Contract without interruptions or delay, and Contractor agrees not to directly or indirectly stop or delay the performance of the Project, including the delivery of materials to the Project.

13.6. Amendments.

No amendment, supplement, or modification hereof shall be effective for any purpose unless the same is in writing and signed by both parties hereto, and the Contractor's assignee, if any.

13.7. Headings.

The headings of sections and subsections of this Agreement are for convenience of reference only and shall not constitute, affect the meaning, construction, or effect of, any provision hereof.

13.8. Entire Agreement.

This Agreement, together with the Contract Documents, represents the entire agreement between the parties hereto and supersedes all prior negotiations, representations and agreements whether written or oral. To the extent of any conflict between this Agreement and its Exhibits and the Specifications and Drawings, General Conditions and Supplementary Conditions, the terms

and conditions of this Agreement shall prevail and supersede solely to the extent of any such conflict.

Authority to Execute Contract. This Contract is executed for Town of Danville, Indiana pursuant to a resolution of its Board, duly adopted at its regular meeting duly called and held on

_____.

Name, member

Name, member

Name, member

Name, member

Name, member

ATTEST:

Name, Clerk Treasurer

Date: _____

BOWEN ENGINEERING CORPORATION

By: _____

Printed: _____

Its: _____

ATTEST:

By: _____

Printed: _____

Its: _____

EXHIBIT A

SCOPE OF WORK

Projects will be completed in accordance with the Contract Documents. In recognition of the mutual benefits of the design assist process, it is an expectation that the details of the scope of work will change as key design decisions are made with related Project savings or changes documented by a Scope Modification Agreement.

Project: Southside Interceptor Improvements

Scope of Work:

Scope of work is based on drawings dated May 16, 2024 provided by Banning Engineering and site visits.

Clarifications:

1. In lieu of the layout on C299 showing a new MH 21 in Wayne St, Bowen will install new manholes at the locations of existing MH 5894 & MH 5895, install a new 6" pipeline connecting the two manholes, and connect the new 18" sewer to MH 5895.
2. Replacement of trees removed within the right-of-way is not included.
3. Bowen has included costs to connect up to five existing 6" laterals utilizing Inserta-Tees.
4. The Town of Danville is to arrange for Bowen to disposal of clean spoils and at no charge to Bowen at the Twin Bridges Security Landfill. The landfill is to provide all knock-down services.
5. Existing storm inlets and castings, when removed for installation of the new sewer line, will be re-installed in their original position.
6. All state and regulatory permits are to be provided by others. Bowen will acquire all local permits as required.
7. Based on the results of the provided Geotech report, we do not anticipate the need to install deep well dewatering pumps.
8. Removal of contaminated soils and treatment of contaminated groundwater, if encountered, has not been included.
9. Heavy construction equipment has the potential to damage roadways. No considerations have been made for roadway/bridge bonds, roadway frost laws, or costs related to post road use damage bonds.
10. Prior to tree removal, Bowen will conduct a study of the east end of the project for the protection of the Indiana Brown Bat.

EXHIBIT B

PROPOSAL & OPEN BOOK STRUCTURE

This is a "Cost Plus a Fixed Fee" proposal with a "Guaranteed Maximum Price" or "GMP". Exhibit B-1 is hereby incorporated by reference into, and made a part of, this Exhibit B. In exchange for payment by the Owner to Contractor, Contractor shall complete, without exception, and shall furnish required process know-how, labor, supervision, materials, tools, equipment, transportation, permits, and incidentals to accomplish the Project, including, without limitation, the following:

- B-1. **Construction Costs:** The following project specific personnel costs including, but not limited to, Operations Manager, Project Manager, Project Engineer, Project Coordinator, Safety Manager, Corporate Safety Director (site visits only), General Superintendent (site visits only), Project Field Superintendent, Project Quality Manager (site visits only), Project Field Engineer are all eligible personnel. In addition the following project cost including, but not limited to, project materials, consumable materials, subcontracted work, heavy equipment usage, mobilization & demobilization costs, office/tool trailers, initial site surveying, rental charges, taxes, permits, fees, licenses, tests, construction laydown/parking area requirements, water, power, fuel, medium tools, dumpsters, drinking water, drawing/specification, reproductions, insurance costs, on-site phones, faxes, computers, printers, losses, expenses, costs, fees and damages not compensated by insurance, dispute resolution fees and costs other than those arising from disputes between the Parties, subsistence and other travel expenses, sanitary facilities and utility consumption charges are all eligible for reimbursement and all other costs directly incurred by Contractor in connection with the Work. Contractor shall provide a labor rate exhibit for personnel costs. Mobilization & demobilization is limited to 5% of construction cost on the schedule of values and the full amount will be billed in the first payment of application.
- B-2. **Fixed Contractor Fee:** Contractors fee for overhead and profit. The Contractor Fee will appear as a line item on the schedule of values and will progress on a percentage basis of project completion.
- B-3. **Contractor's Contingency:** The Contractor's GMP Proposal contains, as part of the estimated Cost of the Project, the Contractor's Contingency, a sum agreed upon to cover costs which are properly reimbursable as a Cost of the Project, whether or not such cost is the basis for a Change Order. The Contractor shall regularly (no less than on a monthly basis during the term of this Agreement) provide the Owner with an accounting of all charges against the Contractor's Contingency.
- B-4. **Allowances:** The Contractor GMP may contain allowances to cover costs that are properly reimbursable as a Cost of the Project. To the extent the actual Costs of the Work incurred by the Contractor to complete an Allowance Item is more or less than the applicable Allowance Amount, that Allowance Amount shall be adjusted (either

increased or decreased) to correspond to the actual Cost of the Work incurred for that Allowance Amount and the GMP shall be increased or decreased (as appropriate) by the same amount.

- B-5. Final Report, Project Savings: At the time of Final Completion, the Contractor shall provide a Final Contract Price Report with an invoice to the Owner that includes the cost of Project to date. If at such time the Final Contract Price is less than the Guaranteed Maximum Price referenced in Exhibit B-1, then the Owner shall keep 100% of the savings. Reports, referred to as buy sheets, will be given to the Owner by the Contractor monthly or bimonthly during construction documenting savings or losses.

Exhibit B-1
CONTRACTOR'S OPEN BOOK PRICING MODEL & PROPOSAL

Project: Southside Interceptor Improvements

Construction Cost	\$	1,624,995.00
Fixed Provider/Contractor Fee	\$	136,500.00
Construction Contingency	\$	81,250.00
Guaranteed Maximum Price	\$	1,842,745.00

EXHIBIT C

PERFORMANCE GUARANTEE

SAVINGS GUARANTEE

The Contractor guarantees that the program described in the Guaranteed Savings Contract (the "Agreement") to which this Performance Guarantee is attached as Exhibit C will recover a total of **\$1,976,240** in savings during the first twenty (20) years of operation, beginning on the first day of the month following substantial completion by the Owner regarding the installation of the equipment provided under the Agreement.

If, at the end of any year during the guarantee period, the program has failed to achieve the annual guarantee of savings, the Contractor will pay the Owner the difference between the annual guarantee and the actual savings amount.

Savings that are achieved by the upgrades and the modifications in the Agreement prior to completion of the entire retrofit project (construction period savings) will be added to the first year actual annual savings amount.

The Contractor and the Owner also agree that if the actual annual savings amount exceeds the annual guarantee amount, such excess savings amounts will be added to the savings for any future year before calculating the savings amount.

This guarantee, whether or not exercised, is the Contractor's sole liability with respect to any claim of savings.

METHODOLOGY

The savings are calculated using Microsoft Excel spreadsheets. All assumptions, variables, and equations are shown on each page. The total annual savings, including, operational savings, are stipulated between the Owner and the Contractor in the Agreement. Stipulated savings are savings that are agreed to be satisfied throughout the term of this performance guarantee. Any changes to the operation of the equipment or systems can be accounted for through calculation and the annual savings adjusted accordingly. The Tables below summarize the guaranteed annual savings from the calculations. This saving guarantee is dependent upon these conditions being met.

Any shortfall payments between the Owner and the Contractor will be made within 90 days of the end of each annual period.

Table 1: Annual Savings Summary

ECM	Description	Wastewater & Energy Savings	Cost Avoided Operational Savings	Total Annual Savings
1	Southside Interceptor Improvements	\$ 1,377	\$97,435	\$98,812

Table 2: Annual Guaranteed Savings by Year of Contract

Contract Year	Annual Savings (\$)
1	\$98,812
2	\$98,812
3	\$98,812
4	\$98,812
5	\$98,812
6	\$98,812
7	\$98,812
8	\$98,812
9	\$98,812
10	\$98,812
11	\$98,812
12	\$98,812
13	\$98,812
14	\$98,812
15	\$98,812
16	\$98,812
17	\$98,812
18	\$98,812
19	\$98,812
20	\$98,812
Total	\$1,976,240

Table 3: Savings

SAVINGS CALCULATION

Town of Danville, IN

**ECM: Treatment Savings from
Collection System Improvements that
Results in the Reduction of I&I**

Facility: Wastewater Treatment Plant

Calculation Knowns:

Engineer's Assessment of Potential I&I Elimination for the Southside Interceptor replacement=
650 GPM (for the 2hr storm event)

Treatment Cost/Thousand Gallon = \$4.50 *Average WWTP cost based on MGD Rating

INFLOW & INFILTRATION COST/YEAR EXISTING SYSTEM

ID	I&I Flow Per Year (gal)	Treatment \$/Gal	Operational Cost/Yr
System Treatment	340,000	\$ 0.00450	\$ 1,530.00

TREATMENT COST SAVINGS = \$ 1,530.00

% Variability = 90%

GUARANTEED ANNUAL SAVINGS = \$ 1,377.00

Table 4: Operational Savings (Future Capital Cost Avoided)

Future Capital Cost Avoidance Savings							
Town of Danville, IN							
ID	Description	RS Means Cost Data	Unit	\$/Unit	Value	% Replaced	Project Cost
1	Southside Interceptor Replacement	Historical Data	Project	1842745	\$ 1,842,745	100%	\$ 1,842,745.00
2	Commissioning	01-91-13.50-0150	Project	1.25%	\$ 1,842,745	100%	\$ 23,034
3	Construction Management	01-11-31.20-0020	Project	4.50%	\$ 1,842,745	100%	\$ 82,924
TOTAL PROJECT COST=							\$ 1,948,703
Notes:					Annualized Savings =	\$97,435.14	
All data based on MS Means 2010 Building Construction Data Handbook					Given:	Term(yrs) =	20
Value = Qty x \$/Unit							
Term = life of the contract							
% Replaced = amount of system or facility that is affected through this project							
Annualized Savings Includes Time Value of Money Given Project Cost and Term							

EXHIBIT D

SUPPORT SERVICES

ANNUAL AUDITS

As part of the Guarantee, Bowen Engineering Corporation agrees to complete the annual report to be filed with the Department of Local Government Finance (see example on this page).


 GUARANTEED ENERGY SAVINGS CONTRACT ANNUAL SAVINGS REPORT <small>State Form 55898 (R / 10-15) Department of Local Government Finance</small>						
Guarantee Period Covered by this Report (M/D/Yr):		1/0/00	through	12/30/00	Report Year: 1	
Institution: 0			Contractor: Bowen Engineering			
Contact: 0			Contact: Teddy Deahl			
Telephone: 0			Telephone: 317-408-9960			
Address: (number and street, city, state, and ZIP code) 0			Address: (number and street, city, state, and ZIP code) 8802 N. Meridian St. Indianapolis IN 46260			
Contract Dates : Signed (M/D/Yr):		1/0/00	Expires (M/D/Yr):		1/0/00	
Project Dates : Initiated (M/D/Yr):		1/0/00	Completed (M/D/Yr):		1/0/00	
Total Project Cost (with Financing): \$0			Total Guaranteed Savings: \$0			
	(A) Baseline Constant (from contract)	(B) Actual Post-Project	(C)* Adjustment	(D) ** Savings (A-B+C)	(E) Guaranteed Savings (From Contract)	(F) Difference + or - (D minus E)
1. Energy Saved (MMBTU):				0.00	0.00	
2. Energy Costs Saved:				\$0.00	\$0.00	
3. Operating Costs Saved:				\$0.00	\$0.00	
4. Total Costs Saved:				\$0.00	\$0.00	
5. Total Thru Previous Years:				\$0.00	\$0.00	
6. Accumulated Totals Thru This Period (4 + 5):				\$0.00	\$0.00	
* Note: Provide attachment showing all assumptions (bill totals, measurement and verification, stipulations) and calculations used to determine adjustments.						
** Note: If column A, B, or C is blank or the listed savings have not been calculated using actual utility bills and operating costs, the reported figures have been stipulated and represent an estimation of savings.						
Total Square Footage of Buildings in GESC:		0.00	Pre-project Energy Cost:		\$0	
Buildings Included in Contract: 0			Savings Measures Included in Contract: 0			
Name and Organization of Person Filing this Report: Teddy Deahl Bowen Engineering			Approved by and Title of Authorized Institution Official:			
Send annually to the Department of Local Government Finance, 100 N Senate Ave, IGC-N, Room N1058, Indianapolis, Indiana, 46204 no later than sixty (60) days after the anniversary of each savings guarantee period.						
Questions? Call the DLGF at (317) 232-3777.			Email to: gesc_reports@dlgf.in.gov			

EXHIBIT E

PROJECT COMPLETION SCHEDULE

Substantial Completion	4 months after Notice to Proceed
Define Punch List Items	after Substantial Completion
Final Project Completion	60 days after Substantial Completion