# ORDINANCE NO. 12-2024 ADDITIONAL APPROPRIATION

of theDanville Town Councilo	f Town of Danville,			
(Adopting Body)	(Taxing Unit)			
y, Indiana have determined that it is no	w necessary to appropriate more			
than the amount that was fixed by the	ne <u>Danville Town Council</u> (Adopting Body)			
nual budget under Indiana Code 6-1.1;	and			
ven to the public in accordance with IC	6-1.1-18-5(a) and IC 5-3-1-2(b)			
ed additional appropriation and a public	c hearing was held on			
24 by the Danville Town Co.	anail regarding the same			
ear) (Adopting Rody)	ncil regarding the same:			
THEREFORE, BE IT ORDAINED (RESOLVED) by the Danville Town Council (Adopting Body)  Town of Danville Hendricks County, Indiana that a need now exists for an additional (Name of County)  appropriation out of the following fund or funds named, and for the purposes specified, subject to laws governing the same:				
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	(Adopting Body)  y, Indiana have determined that it is no than the amount that was fixed by the )  nual budget under Indiana Code 6-1.1;  yen to the public in accordance with IC ed additional appropriation and a public 24, by theDanville Town Cou ear) (Adopting Body)  NED (RESOLVED) by the _Danville  xsCounty, Indiana that a need e of County)  g fund or funds named, and for the pur  FUND INFORMATION  Development Income Tax Cedit  Additional Amount Requested \$ \$ \$ \$ \$67,500 \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$			

Duly ac	lopted by the	he following vote of the members of sai	id <u>Danville Town Council</u> (Adopting Body)	this <u>15th</u>
day of_	May	, 2024	(raoping body)	
	· , · · ·	ADOPTION INFO	RMATION	******
Officia	l Vote			
<u>Nay</u>	<u>Aye</u>	Name	Signature	
. =	eterno.	Christopher Gearld		
		Michael Chatham		
		Gregory Irby		
		Bret Doub		
£ 1		David Potter		
Atte	station by	Secretary of Governing Body		
		Date		

# **ORDINANCE 13 - 2024**

# An Ordinance to amend Ordinance 2 - 2024 "2024 Salaries and Other Compensation for Officials, Employees and Appointees of the Town of Danville".

**Whereas**, the Danville Town Council approved and adopted Ordinance 2 - 2024 which established wages and salaries of employees of the Town of Danville;

**Whereas**, the salary ordinance needs amended to Section 12: Full-Time Police Officer Field Training to be effective May 11, 2024;

Whereas, the Wage & Salary Section can be amended.

Now, Therefore, be it ordained that Ordinance 2 - 2024 be amended as follows:

The Town will provide each Field Training Officer with a \$3.00 per hour stipend when training.

So approved this 15<sup>th</sup> day of May, 2024.

TOWN OF DANVILLE

Christopher Gearld

Attest:

Carrie E Lofton, Clerk – Treasurer

Michael Chatham

Gregory Irby

Bret Doub

David Potter

#### AGREEMENT FOR ENGINEERING SERVICES

This Agreement is entered into as of this day of	, 2024, (hereinafter referred to as the
"effective date of the Agreement"), by and between V	S Engineering, Inc. hereinafter called the CONSULTANT
located at 4275 N. High School Rd, Indianapolis, Indiana	, 46254 and Town of Danville Town Council, hereinafter
called "Client," located at 49 N Wayne Street, Danville, Ind	diana, 46122.

#### WITNESSETH

WHEREAS, the Client is authorized to make and enter into all contracts or agreements which it determines are necessary or incidental to the performance of its duties and to the execution of the purposes of and the powers granted by the State of Indiana;

WHEREAS, in accordance with its procurement procedures, the Client has determined that it desires to hire THE CONSULTANT to perform Design Services for the construction of Main Street Trail, a 10-foot wide, asphalt multiuse path along the north side of Main Street between Wayne Street and County Road 200 E in the Town of Danville, Hendricks County, Indiana. A total length of 1.89 miles of trail, as set forth herein; and

WHEREAS, THE CONSULTANT desires to assist the Client as provided herein;

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements herein set forth, and the undertakings of each party to the other, the Client and THE CONSULTANT, acting as aforesaid and each binding itself, its successors and assigns, do mutually covenant, promise and agree as follows:

#### SCOPE OF SERVICES

THE CONSULTANT shall, in a professional manner, perform the services set forth in Exhibit A, attached to this Agreement.

#### II. TERM

This agreement shall be effective upon approval of the Client and shall remain in effect through <u>December</u> 31, 2027.

#### III. COMPENSATION

- A. THE CONSULTANT shall be compensated as set forth in Exhibit B and Exhibit B-1 for services rendered under this Agreement.
  - a. Phase 1-30% Design services, as set forth in Exhibit B-1, upon written "Notice to Proceed for Phase 1-30% Design services."
  - b. Total services, as set forth in Exhibit B, upon written "Notice to Proceed for Total services."
  - c. "Notice to Proceed for Phase 1-30% Design services" does not obligate the Client to issuance of "Notice to Proceed for Total services."

- B. THE CONSULTANT shall promptly bill Client for all professional fees and expenses incurred on a monthly basis, and Client shall make payment in full to THE CONSULTANT within 30 days of the date of each invoice.
- C. If the Client does not make payment in full to THE CONSULTANT within 90 days of the date of an invoice, THE CONSULTANT may suspend services upon 7 days written notice on the basis of non-performance on the part of the Client. When all payments due have been made, THE CONSULTANT will continue its services.

#### IV. PERIOD OF PERFORMANCE

THE CONSULTANT agrees to commence performance of services hereunder upon receipt of a written "Notice to Proceed." For Client recognizes that THE CONSULTANT's work and the completion thereof may be conditioned upon Client's review of THE CONSULTANT's work and/or the timely performance and completion of certain activities by Client. THE CONSULTANT shall not be held liable for delays in performance of services hereunder that arise from causes beyond THE CONSULTANT's reasonable control and without its fault or negligence.

#### V. CLIENT RESPONSIBILITY

- A. Client shall identify and coordinate all services to be performed hereunder.
- B. Client will verify that THE CONSULTANT has a complete understanding of the scope of services to be performed hereunder. Client shall provide THE CONSULTANT, in a timely fashion, all information reasonably required for the performance of the services by THE CONSULTANT to be performed hereunder.
- C. Client shall upon execution of the Agreement, designate **Will Lacey**, as coordinator of the project described herein and of the professional services to be performed under this Agreement.
- D. Client shall provide THE CONSULTANT with reasonable access to the premises necessary for the performance of the services required under this Agreement.

#### VI. INDEPENDENT CONTRACTOR

It is understood and agreed that THE CONSULTANT shall provide services under this Agreement as an independent contractor and that during the performance of services under this Agreement, THE CONSULTANT's employees shall not be considered employees of the Client.

#### VII. TERMINATION

It is hereby agreed that if either party should fail materially to fulfill its obligations under this Agreement, the other party may notify the breaching party of the intent to terminate the contract, in whole or in part, if the breach is not cured as provided in this Article. Such notice to the breaching party shall be given, in the manner required in Article XI of this Agreement, thirty (30) days prior to the effective date of the intended termination and shall identify the breach to be cured. The breaching party shall have thirty (30) days from

receipt of the notice to cure the breach identified in the notice. The failure to cure the breach within thirty (30) days shall entitle the nonbreaching party to terminate the Agreement at the end of thirty (30) days. THE CONSULTANT shall use reasonable efforts to minimize fees and expenses upon giving or receiving notice of any intended termination. Client shall pay THE CONSULTANT all fees and expenses accrued for services rendered up to the effective date of any termination.

#### VIII. INSURANCE

THE CONSULTANT shall maintain at THE CONSULTANT's own expense (1) Comprehensive General Liability Insurance, (2) Professional Liability Insurance for negligent acts, errors and omissions and (3) Worker's Compensation Insurance which insurance shall provide coverage for liabilities or claims for damages resulting from services performed or undertaken by THE CONSULTANT hereunder. Certificates of Insurance shall be furnished to Client upon request of Client.

#### IX. CHANGES

Changes or amendments to this Agreement may be made only in writing signed by a duly authorized representative of each of the parties. Changes in scope of the project dictated by the Client and changing conditions of law or schedule delays or other events beyond THE CONSULTANT's reasonable control will require contract price and/or date of performance revisions to reflect such changes or delays.

#### X. ASSIGNMENT AND DELEGATION

Neither party shall assign or delegate this Agreement or any right, duties or obligations hereunder to any person and/or entity without prior express written approval to the other.

## XI. TRADEMARK AND TRADE NAME

Notwithstanding any other provision of this Agreement, neither party shall have the right to use the trademark or trade name of the other without prior written approval of the other.

#### XII. NOTICES

All notices shall be in writing and be deemed to be given or made when delivered by hand or by regular U.S. mail as follows:

- A. Notices to THE CONSULTANT shall be addressed to: Sanjay B. Patel, P.E., President, 4275 N. High School Rd, Indianapolis, Indiana, 46254.
- B. Notices to the Client shall be addressed to: Will Lacey Assistant Town Manager & Parks Director, 49 North Wayne St, Danville, IN 46122.

## XIII. GENERAL PROVISIONS

A. Entire Agreement: This Agreement constitutes the entire agreement between the parties with respect to its subject matter and any prior agreements, understandings, or other matters, whether oral or written, are hereby merged into and made a part hereof, and are of no further force or effect. This

- agreement may be amended, changed, or supplemented only by written agreement executed by both of the parties hereto.
- B. Conflict: In the event of any conflict, ambiguity or inconsistency between this Agreement and any other document which may be annexed hereto, the terms of this Agreement shall govern.
- C. Waiver: No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of this agreement, or to exercise any option of election herein contained, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue and remain in full force and effect, and no waiver by any patty of any one or more of its rights or remedies under this Agreement shall be deemed to be waiver of any prior of subsequent rights or remedy hereunder or at law. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy available at law or in equity.
- D. Severability: If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the applications of such term or provisions of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- E. Captions: Captions and paragraph headings are inserted only as a matter of convenience and in no way define, limit, or describe the scope or intent of this Agreement.
- F. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

## XIV. ENGAGING IN ACTIVITIES WITH IRAN

By signing this Agreement, THE CONSULTANT certifies that it is not engaged in investment activities in the country of Iran as forth in I.C.5-22-16.5.

#### XV. NON-DISCRIMINATION

#### THE CONSULTANT agrees:

- A. That in the hiring of employees for the performance of work under this Agreement or any sub agreement hereunder, no consultant, or subconsultant, nor any person acting on behalf of such consultant, or subconsultant, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates;
- B. That no consultant, subconsultant, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, religion, color, sex, national origin or ancestry;

- C. That the Client may deduct from the amount payable to THE CONSULTANT a penalty of Five Dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the Agreement;
- D. If there is a second or any subsequent violation of the terms or conditions of this section, then this Agreement may be cancelled or terminated by the Client and all money due or to become due hereunder will be forfeited.

#### XVI. EMPLOYMENT ELIGIBILTY VERIFICATION

THE CONSULTANT affirms it does not knowingly employ unauthorized aliens. THE CONSULTANT shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in I.C. 22-5-1.7-3. THE CONSULTANT is not required to participate should the E-Verify program cease to exist. THE CONSULTANT shall not knowingly employ or contract with any unauthorized alien. THE CONSULTANT shall not retain an employee or contract with a person whom THE CONSULTANT learns is an unauthorized alien. THE CONSULTANT shall require all of its subconsultants, who perform work under this Agreement to certify to THE CONSULTANT that the subconsultant does not knowingly employ or contract with unauthorized aliens and that the subconsultant has enrolled and is participating in the E-Verify program. However, the subconsultant is not required to participate if the subconsultant is self-employed and does not employ any employees. THE CONSULTANT agrees to maintain this certification requirement throughout the duration of the term of its contract with a subconsultant.

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IN WITNESS WHEREOF, the parties by their duly authorized representatives have caused this agreement to be executed as of the date first written above.

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# VS ENGINEERING, INC.

Ву:	Ву:
	Sanjay B. Patel, P.E., CEO & President
	April 26, 2024
(Date)	(Date)
Ву:	By: Clufstyher L. Waid
	Christopher L. Waidner, P.E., Indiana Transportation Director
	April 26, 2024
(Date)	(Date)
Ву:	
(Date)	

#### **EXHIBIT A**

THE CONSULTANT is pleased to present this proposal to the CLIENT for Design Services for developing contract bid documents for the Main Street Trail, a 10-foot wide, asphalt multi-use path along the north side of Main Street between Wayne Street and County Road 200 E in the Town of Danville, Hendricks County, Indiana.

#### PROJECT DESCRIPTION

THE CONSULTANT will provide services of qualified CONSULTANTs, surveyors and support personnel as necessary to complete the scope of basic services outlined herein. Work items will include design documents, bidding, and construction administration.

The Main Street Trail project includes construction of a 10-foot wide, asphalt multi-use path along the north side of Main Street between Wayne Street and County Road 200 E, in the Town of Danville, Hendricks County, Indiana. A total length of 1.89 miles of trail, as shown in Exhibit A-1. The project includes the installation of a pedestrian bridge over the West Fork While Lick Creek, and ADA accessibility improvements to existing signalized intersection at Main St. (US 36) and Old Farm Rd.

#### SCOPE OF WORK

#### TOPOGRAPHIC SURVEY

CONSULTANT shall survey the project location and provide one set of original field notes, all field survey data collected via electronic media, and one set of master drawings. CONSULTANT shall obtain section corner, right-of-way, easement, and state plane coordinate information as necessary to satisfactorily complete the basic field survey services described herein within the project limits. CONSULTANT shall prepare and record a Location Control Route Survey. CONSULTANT work shall be in accordance with Indiana Code (I.C. 25-21.5); Indiana Administrative Code (865 I.A.C. 1-12); and the Design Manual, Indiana Department of Transportation, Part III, Location Surveys (Survey Manual), a copy of which is on file with INDOT. If there is any conflict between I.C. 25-21.5, 865 I.A.C. 1-12, or the Survey Manual, the order of precedence shall be:

- I.C. 25-21.5,
- 865 I.A.C. 1-12, and
- Survey Manual

Electronic files including the following shall be prepared and submitted by CONSULTANT as directed by client:

- Finished plan view of topographic survey in AutoCAD .dwg format
- 1-foot contours in AutoCAD .dwg format
- TIN from Civil 3D in .xml format
- Electronic points file in .txt or .xml coordinate format.
- Location Control Route Survey Plat in .pdf format.
- Survey Book in .pdf format.

The signature, seal, and registration number of the land surveyor, registered in the State of Indiana, who was in responsible charge of the survey, shall be affixed to the Location Control Route Survey Plat and survey book submitted. In addition, CONSULTANT shall complete the field survey as summarized below and as directed by the Client.

#### Survey Area

#### Main Street (US 36)

Beginning at the centerline of Wayne Street, survey easterly 4,025 feet to the centerline of Old U. 36. The width varies throughout the project, but will be approximately 100 feet from the centerline of the roadway. The intent of the width is to pick up features (parking lots, road side ditches, embankments, etc..) that are within 50-75 feet of the closest edge of pavement of the travel lane, which is, on average, approximately 100 feet from the centerline of the roadway, at maximum.

# Main Street (Old US 36)

Beginning at the centerline of Main Street (US 36), survey north and northeasterly approximately 5,775 feet. The width varies throughout the project, but will be approximately 100 feet from the centerline of the roadway. The intent of the width is to pick up features (parking lots, road side ditches, embankments, etc..) that are within 50-75 feet of the closest edge of pavement of the travel lane, which is, on average, approximately 100 feet from the centerline of the roadway, at maximum.

#### White Lick Creek

200 feet up and downstream will be surveyed of White Lick Creek. The limits will be 10 feet on each side of the top of bank. This amounts to four cross sections, up and downstream.

- Total survey includes 9,800 lineal feet of roadway by the widths described above, and the 8 total cross sections along White Lick Creek.
- Obtain last deed of record, subdivision plats, and section or auditor plats for all properties within the
  project limits from local and state agencies. The property information shall include parcel number,
  property owner's name, mailing address and property location. CONSULTANT shall provide a listing of all
  property information, deeds, plats, and maps.
- Send out survey notices together with questionnaires (if applicable) to all property owners within the project area. All survey notices and questionnaires shall be approved by Client prior to distribution.
- Establish Primary Horizontal Control within the project limits such that the survey base line(s) can be reestablished during construction. The coordinate system will be the Hendricks County Zone of the Indiana Geospatial Coordinate System (InGCS).
- Establish on-site elevation using NGS, DNR benchmarks or Hendricks County benchmarks. Set temporary bench marks within the project limits such that elevation datum can be re-established during construction.
- Tie in the survey base lines to available USPLSS section corners and/or existing property/right-of-way
  monumentation. All necessary section corners will be located or re-established to adequately define
  property lines along the limits of the project during the Right-of-way Engineering or Easement Acquisition
  phase.
- Plot right-of-way and property lines based on observed physical evidence and record documents acquired from local government agencies.

- Coordinate with all utility companies to locate and mark their utilities in field. CONSULTANT shall notify
  the utilities via the call before you dig notification system (Indiana Underground Plant Protection Service
  (I.U.P.P.S.)). CONSULTANT shall verify that each utility has field located their facilities during the course of
  the design survey. The existing facilities located, at the time of the field survey, shall be incorporated into
  the design survey. In addition, CONSULTANT shall provide listing of all utilities and all information
  available for that utility including address, and telephone number.
- Perform design survey in sufficient detail to obtain topographic data, buildings, walks, signs, vaults, and natural and man-made features, as evidenced by facilities at the ground surface and marks by others, necessary for the development of project plans, including all potentially affected trees, 6 inches in diameter and greater, identified by size. Individual trees will not be identified in wooded/brush areas.
- Take cross sections at specified intervals across the right-of-way of public roadways and or the project limits (as described above) whichever is further out. Additional cross sections shall be taken at intersection of streets, roads, railroads, driveways, etc. Obtain elevations of all existing structures such as drainage culverts, utilities and other structures.
- Provide a listing of all symbols, notations and legends used in the field survey. CONSULTANT shall furnish a
  hard copy together with all field survey information collected on electronic media. CONSULTANT shall also
  prepare master drawings (1-foot contours) from data collected in topographic survey using AutoCAD Civil
  3D, and shall submit a hard copy together with electronic format. CONSULTANT shall delineate and label
  the location of all buildings, structures, fences, railings, signs, walls, walks, paved areas, curbs and other
  permanent structures and existing improvements.
- Indicate spot elevations at all, break in grade, ramps, area ways, tree grates, etc. within the project limits, and at top and bottom of curb.
- Prepare and record a Location Control Route Survey Plat depicting existing alignments, right-of-way.
   Property lines and owner information for adjoining properties will be shown, but not dimensioned.

#### TRAIL DESIGN

#### **Project Management**

Project Management and Coordination: Provide overall direct project coordination stakeholders for the design, bidding, and construction of the project.

Project Management Control Schedule and Budget: CONSULTANT shall coordinate with the Contractor and prepare and submit for review and approval a detailed project management control schedule. CONSULTANT shall document any scope changes affecting baseline budget or schedule. Discuss and receive written approval of any scope changes prior to implementing.

Monthly Invoicing and Progress Reports: CONSULTANT shall submit project manager monthly invoices accompanied by written monthly progress reports. At a minimum for each task, the work completed during the past month and work anticipated during the next month by CONSULTANT shall be reported along with hours and direct costs expended on unit price, unit labor rate work tasks, and the percent complete on lump sum work tasks, and project costs and updates to the schedule. CONSULTANT shall also identify items requiring decisions or input. All work outside the contracted Scope of Services, which must be authorized in writing, shall be identified separately along with the invoice amount for the extra work. If no extra work was performed for the month,

CONSULTANT shall note in the monthly progress report. Invoicing shall indicate the project number, purchase order number, total contract amount, amount completed, amount previously invoiced, and current invoice amount.

Project Meetings: CONSULTANT shall conduct project meetings, as needed. For budgetary purposes, a total of 5 project meetings during design and construction are budgeted.

Meeting Minutes: CONSULTANT shall prepare and issue meeting minutes, and shall distribute the minutes within five calendar days of the meeting. CONSULTANT shall make meeting minutes corrections identified by OWNER and Contractor and distribute revised meeting minutes, if required. If comments are not provided on draft meeting minutes within five business days, CONSULTANT shall issue and distribute final meeting minutes.

Project Quality Control: The responsibilities of CONSULTANT include Quality Control (QC) of project deliverables. CONSULTANT shall review project deliverables prior to submittal, internally document comments and resolution, and assist in project quality assurance.

Public Outreach Coordination: CONSULTANT shall interface with OWNER and provide technical support and information for Public Outreach efforts, as requested.

## Trail Design

CONSULTANT shall prepare preliminary plans for a 10-foot wide asphalt pedestrian trail and preliminary estimates of cost, which shall be in accordance with the accepted standards for such work and in accordance with the following documents in effect at the time the plans or reports are submitted: American Association of State Highway and Transportation Officials' "A Policy on Geometric Design of Highways and Streets"; Indiana Department of Transportation's Standard Specifications; Manual on Uniform Traffic Control Devices; Road, Bridge and Traffic memoranda and INDOT Design Manuals, except as modified by supplemental specifications and special provisions.

CONSULTANT shall coordinate and resolved conflicts with utilities impacted by the project.

CONSULTANT shall design safety systems to provide safe passage for pedestrians across public roads.

CONSULTANT shall design the systems to meet stakeholder needs and include:

- Pedestrian signs
- Striping
- Crosswalk signs

Following approval of the preliminary plans, and approval of the environmental permitting agencies, CONSULTANT shall complete the final design and prepare contract plans, special provisions for the specifications, trail design, drainage, utility coordination and final cost estimates for the construction of the project.

Three submittals are anticipated to be made to OWNER.

- 1. 30% Plan submittal
- 2. 90% Plan submittal
- 3. Final Construction Document submittal

#### Drainage

CONSULTANT shall conduct Engineering and analysis of drainage improvements that will be associated with the trail. CONSULTANT will identify and provide design, calculations, and quantities associated with this work. Major items include:

- Hydrology of the watershed
- Project release rates
- Conveyance design
- Peak flood elevations

#### Signal

CONSULTANT shall conduct Engineering and analysis of existing signalized intersection at Main St. (US 36) and Old Farm Rd. of pedestrian ADA accessibility improvements that will be associated with the trail. CONSULTANT will identify and provide design, calculations, and quantities associated with this work. Major items include:

- Analysis of existing signal infrastructure
- Layout of pedestrian poles, push buttons and pedestrian heads in the NW and NE corners to facilitate protected crossing of the intersections north approach.
- Coordination with INDOT
- INDOT permit

### **Bidding Services**

CONSULTANT shall provide bidding assistance for one (1) construction contract letting. The elements associated with this task are as follows:

- Prepare bid advertisement to publish.
- Receive and respond to contractor inquiries regarding bidding documents.
- Issue addenda to Bid Documents
- Attend bid opening and prepare bid recommendation
- Receive and review bids for responsiveness.
- Prepare bid tabulation and make recommendation regarding award of construction contract.

#### **BRIDGE DESIGN**

The proposed trail crosses the West Fork White Lick Creek. CONSULTANT shall provide services, as presented in Exhibit A-2, for the analysis and installation of a structure for this crossing.

#### **UTILITY COORDINATION**

CONSULTANT will coordinate with utilities in accordance with the following tasks from Indiana Administrative Code (IAC) 105 Article 13: Utility Facility Relocations on Construction Contracts.

- Initial Notice of proposed improvement project
- Verification of existing utilities
- Work Plan development
- Relocation notification

#### Initial Notice will contain:

- Geographical limits of project and general description of work to be done.
- Anticipated Construction date
- CONSULTANT Utility Coordinator contact information

Verification of Existing Utilities will comprise of:

- Reviewing the accuracy of the field survey plan as to the location of existing facilities with utility.
- Acquire available depth information of underground facilities from utility.
- Revisions to plan depicting existing conditions based on direction from utilities.

#### Conflict Analysis will comprise of:

- Prepare, sign, and send to each utility a letter requesting they identify the conflicts between their facilities and the improvement project.
- Send letter to each utility with comments on recommended changes to the design.

#### Work Plan Development will comprise of:

- Prepare, sign, and send to each utility a letter requesting they prepare and submit their utility relocation work plan mapped on drawings.
- Follow up with each utility until work plans with the following information are received:
  - Work plan narrative;
  - Relocation drawing having station, offsets and elevations;
  - o Cost estimate; and
  - o Easement documents (if reimbursable).
- Review each utility relocation work plan to ensure that it is compatible and reasonable
- If necessary, prepare, sign, and send to the utility a letter notifying the utility that their relocation work plan is not acceptable and the reasons why not.

#### Utility Relocation will comprise of:

- Prepare color coded Master Utility Relocation plan set.
- Prepare exhibits for each utility relocating showing the elements (if any) the relocation is contingent upon.
  - o R/W Acquisition
  - o R/W (Tree) clearing
  - o R/W Staking
- Prepare Master schedule depicting when Utilities will be relocating.
- Coordinate with OWNER on issuance of relocation NTP.
- Confirm relocation of utility.
  - o Location to be based on As-Built information provided by Utility and on-site visual inspection.

#### **ENVIRONMENTAL COORDINATION**

The project will follow State Environmental Policy Act (SEPA) process that requires State agencies to study the consequences of their actions, including permitting, and to take all feasible measures to avoid, minimize, and mitigate damage to the environment. CONSULTANT shall provide services associated with SEPA. Services include:

- Analysis of three (3) potential hazmat sites.
- On-Site waters investigation and wetland delineation.
- Design shall take all feasible measures to avoid and discovered environmental items.
- Attendance at Section 106 State Review Board Meeting for Section 106 coordination and documentation.
- Environmental data collection for Indiana SEPA form.

Assume there are no below grade artifacts within the project limits. Mitigation services above and beyond those associated with planned permits, if deemed necessary, are not included in this proposal and would be an additional service. Red Flag Investigation and full Section 106 consultation are not included in the scope of this task.

#### **GEOTECHNICAL INVESTIGATION**

This consists of drilling, soil sampling, laboratory testing and foundation support recommendations for the proposed bridge structure.

- Explore the subsurface soil and groundwater conditions at the proposed site by drilling borings at the proposed bridge abutments.
- Split-spoon samples will be obtained for laboratory analysis. Standard Penetration Tests (SPT) values will be recorded for each split spoon samples. Groundwater observations will be made during, immediately and after about 24 hours (at selected locations) after completion of the drilling.
- Both boreholes will be backfilled in accordance with the specifications set forth by the INDOT "Aquifer Protection Guidelines".
- Exploration will include limited laboratory testing on representative soil samples to determine its classification and understand strength, compressibility and other Engineering characteristics.
- The results of the field exploration and laboratory tests will be utilized in the Engineering analysis in formulation of recommendations and will be presented in a written geotechnical report.

#### **PERMITTING**

CONSULTANT will provide agency coordination and submittals to obtain permits necessary for the proposed project. The West Fork White Lick Creek is a FEMA detailed floodway. Efforts assume that project impacts will result in a hydrologic and hydraulic analysis showing surcharges greater than 0.00 feet. fall within the guidelines to comply with the following permits.

#### IDEM Construction Stormwater General Permit (former Rule 5 permit)

Coordinate, develop, and submit erosion control plans and Stormwater Pollution Prevention Plan (SWPPP) in accordance with IDEM's Storm Water Quality Manual, and Town of Danville preferences.

- Coordinate and resolve comments from resource agencies
- Obtain approval of the SWPPP from the Hendricks County (IN) Soil and Water Conservation Service. Upon approval of the SWPPP, CONSULTANT shall satisfy public advertisement requirements, complete the IDEM Construction Storm Water General Permit Notice of Intent Form and submit the completed package to IDEM. Efforts assume that mitigation or a monitoring plan will not be necessary.

#### IDNR Construction in a Floodway (CIF) Permit-Modeling

Coordinate, prepare, and obtain approval of an IDNR Construction in a Floodway Permit utilizing IDNR's modeling worksheets.

- Coordinate with resource agencies, including IDNR and US Coast Guard, to determine permitting needs.
- Prepare application packet to include State Form, Modeling Worksheets; Change in Effective Cross Section
  Flow Area State Form, Public Notice State Form 50354, Adjacent Property Owners Listing State Form,
  project description, location and floodplain mapping, site photos, preliminary plans with erosion and
  sediment control, agency coordination, and other supporting documentation.
- Submit final application for signature and forwarding to resource agencies. Respond to any IDNR comments, excluding mitigation requirements.
- Address comments from adjacent landowners as notified through Public Notice.

• Submit final application for signature and forwarding to resource agencies. Respond to any IDNR comments regarding mitigation requirements.

## FEMA Conditional Letter of Map Revision (CLOMR)

Coordinate, prepare, and obtain a FEMA CLOMR prior to construction.

- Evaluate alternatives to the development that would meet the requirements of the designated floodway.
- Obtain concurrence of the Chief Executive Officer of any other community impacted by the proposed development.
- Certify that no structures would be impacted by the increased base flood elevations.
- Submit final application for signature and forwarding to resource agencies. Respond to any IDNR comments, excluding mitigation requirements.
- Address comments from adjacent landowners as notified through Public Notice.
- Submit final application for signature and forwarding to resource agencies. Respond to any FEMA comments regarding mitigation requirements.

#### FEMA Letter of Map Revision (LOMR)

Coordinate, prepare, and obtain a FEMA LOMR after construction.

- Develop maintenance program for altered channel.
- Submit final maintenance agreement for signature and forwarding to resource agencies. Respond to any FEMA comments regarding mitigation requirements.
- Post construction maintenance evaluation

#### **USACE 404 Regional General Permit**

Coordinate, prepare, and obtain approval of an USACE 404 Regional General Permit (Indiana Regional General Permit No.1).

- In the event that a site-specific Individual Section 404 Permit becomes required, an addendum to this Agreement shall be required.
- Demonstrate via letter from the United States Fish and Wildlife Service that no federal endangered, threatened, or rare species are documented on a permanent or seasonal basis within ½ mile radius of the proposed project site.
- Submit final application for signature and forwarding to resource agencies. Respond to any USACE comments regarding mitigation requirements.

#### IDEM 401 Regional General Permit

Coordinate, prepare, and obtain approval of an IDNR 401 Regional General Permit.

- In the event that a site-specific Individual Section 401 Water Quality certification becomes required, an addendum to this Agreement shall be required.
- Demonstrate via letter from the IDNR, division of Nature Preserves, that no state endangered, threatened, or rare species are documented on a permanent or seasonal basis within ½ mile radius of the proposed project site.
- Submit final application for signature and forwarding to resource agencies. Respond to any USACE comments regarding mitigation requirements.

#### **R/W ENGINEERING**

CONSULTANT will provide the following R/W Engineering services:

#### Title Research Services - T&E Reports

CONSULTANT will conduct 20-year chain of title search and prepare T&E reports

#### Right of Way Plan Development Services - R/W Engineering (Permanent)

CONSULTANT will produce legal descriptions, right-of-way parcel plats, acquisition instruments and other materials to be used in the acquisition of right-of-way. Major items include.

- Review LCRSP against design plans and generate report
- Review T&E report
- Create parcel worksheet
- · Confirm property lines and coordinate geometry
- Prepare Exhibit "A"
- Prepare Exhibit "B"
- Review parcel packet and certify

#### Additional Description

CONSULTANT will produce additional Legal Descriptions as required for conveyance of acquisition.

#### Right of Way Staking

CONSULTANT will stake the proposed Right of Way at all Design Bend Point and at Property Lines with a 12-inch hub and lathe in earthen areas and with 3 Mag Nail in pavement areas unless directed otherwise.

#### R/W Acquisition

CONSULTANT will manage all land acquisition procedures in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act (URA), using the Indiana Department of Transportation (INDOT) fee schedule for the following services:

#### **R/W Management**

Provide Project Management for Right-of-way Acquisition Services for the right of way to be acquired in accordance with the requirements of Hendricks County, Indiana.

#### Appraisal Problem Analysis (APA)

Prepare Appraisal Problem Analysis to be used in the acquisition of the right of way in accordance with the Indiana Department of Transportation (INDOT) Real Estate Division Manual, the Uniform Standards for Professional Appraisal Practice, current edition and the requirements of Hendricks County, Indiana.

#### **Appraisals**

Prepare Appraisals to be used in the acquisition of the right of way in accordance with the Indiana Department of Transportation (INDOT) Real Estate Division Manual, the Uniform Standards for Professional Appraisal Practice, current edition and the requirements of Hendricks County, Indiana.

#### **Review Appraisals**

Prepare Review Appraisals to be used in the acquisition of the right of way in accordance with the Indiana Department of Transportation (INDOT) Real Estate Division Manual, the Uniform Standards for Professional Appraisal Practice, current edition and the requirements of Hendricks County, Indiana.

#### **Negotiation & Buying**

Provide Negotiation Services to acquire the right of way in accordance with the Indiana Department of Transportation (INDOT) Real Estate Division Manual, current edition and the requirements of Hendricks County, Indiana.

#### Recording

Prepare Conveyance Documents to be used in the acquisition of the right of way in accordance with the requirements of Hendricks County, Indiana.

# **Contingency**

A contingency item is proposed to budget for inflation and other unknown real estate costs that may occur between now and when real estate services are necessary.

#### **CONSTRUCTION ADMINISTRATION**

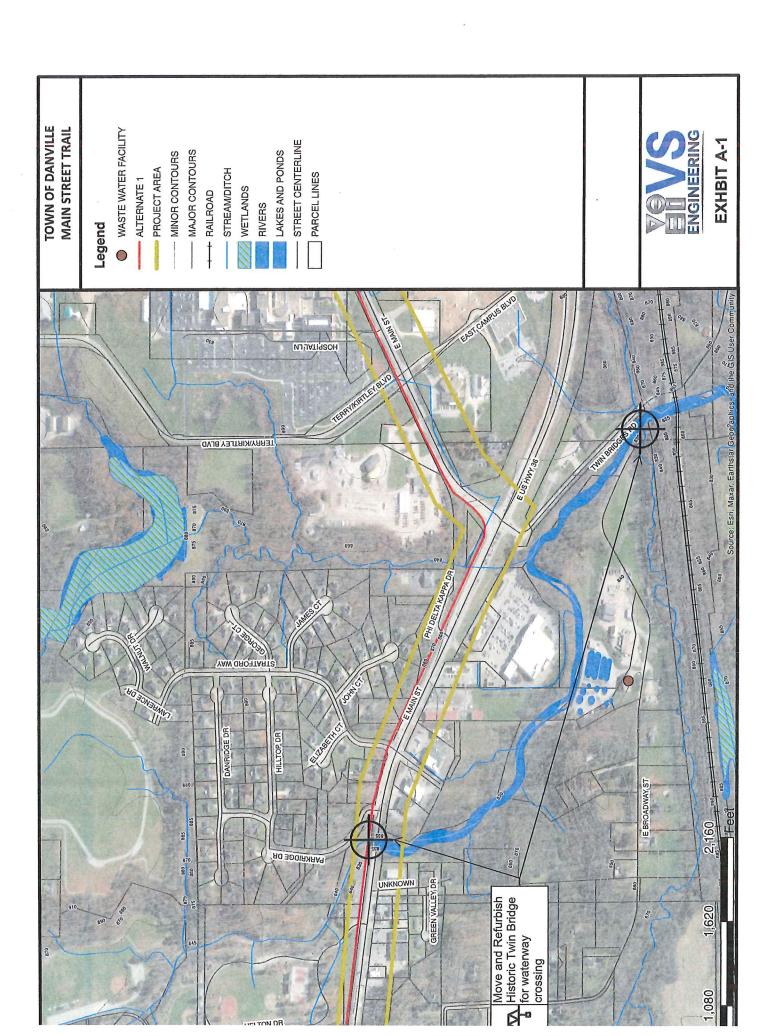
CONSULTANT shall provide construction administration assistance and design coordination during project construction for the following items.

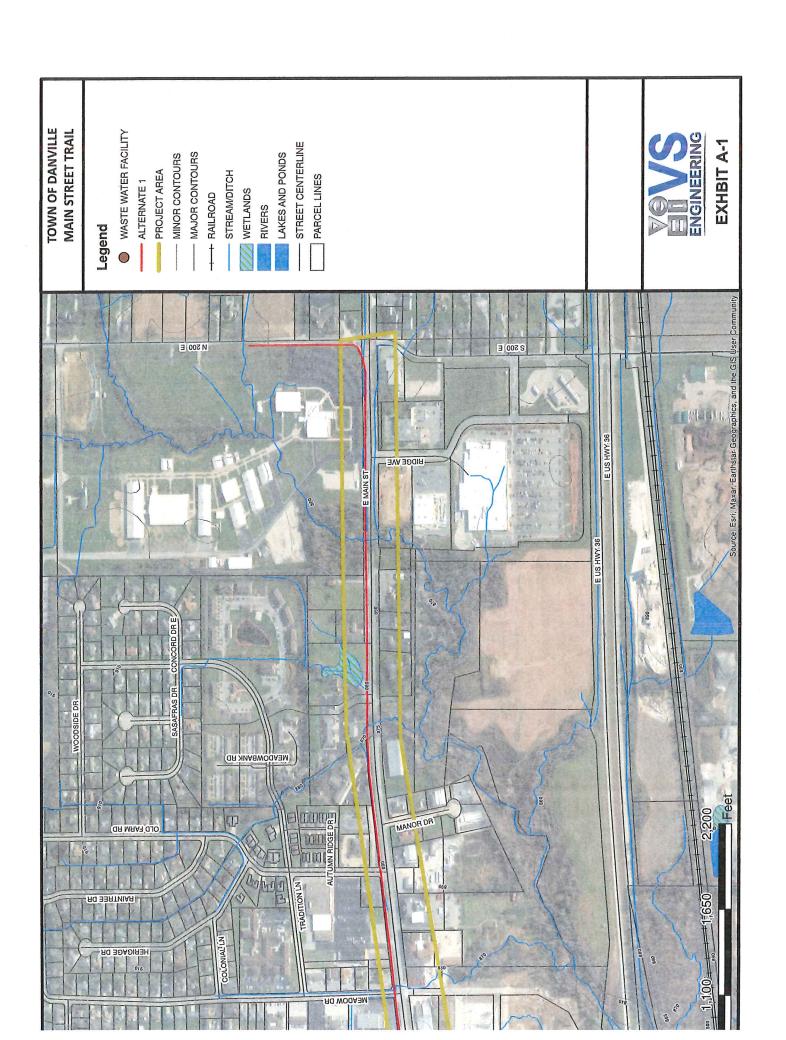
- Attend, administer, and document Pre-Construction meeting.
- Assist with responses to reasonable inquiries concerning the accuracy and intent of the design plan and contract documents.
- Review all applicable shop drawings in conformance to the standard specifications and special provisions.
- Revise design plans during construction phase is unforeseen conditions arise.

#### **SCHEDULE**

The tentative schedule developed for major milestones is as follows:

TASK	<u>COMPLETION DATE</u>
Notice to Proceed	June 2024
30% Plans	June 2025







#### **EXHIBIT A-2**

March 23, 2024

VS Engineering, Inc. Attn: Chris Waldner, PE 4275 N. High School Rd. Indianapolis, IN 46254

Email: cwaidner@vsengineering.com

Re:

Town of Danville - Main Street Trail Project

Scope & Fee Proposal - Hendricks 178 Truss Relocation

Dear Mr. Waidner,

Kurdziel Barker Engineering, Inc. (KB) is thankful to work with VS Engineering, Inc. (VS) to provide historic bridge design services for the Main Street Trail Project in the Town of Danville. Please find our Scope of Services and Associated Fees below.

**Project Description** 

The Main Street Trail project would like to use the Baltimore truss known as Twin Bridge, located approximately 0.5 miles the trail project, as a pedestrian crossing. The Twin Bridges include one Baltimore Through Truss and a three-span concrete open spandrel arch bridge, also known as the Big Four Railroad bridge.

The Baltimore truss, identified as Hendricks Co. Br. 178 was built in 1886 by the Indiana Bridge Company, which advertised themselves as the successor to the Indianapolis Bridge Company, which had closed its doors the same year. The Indiana Bridge Company constructed many bridges in Indiana and the region up until the early 1910s, at which point, moved into building construction. As World War I started up, the Indiana Bridge Company focuses on steel production for the war effort. There are very few remaining bridges constructed by the Indiana Bridge Company. This bridge is likely to be one of two remaining bridges from this builder and only one of three surviving Baltimore trusses in Indiana, which makes this particular bridge, a significant part of Indiana's history.

The truss spans 150 feet, is 16 feet wide and is a pin-connected through truss with fixed end connections. As with all Baltimore trusses, the bridge has half-hip bracing, with mid-panel pins that connect the counters and mid-height bracing passing through the main diagonals. The truss maintains most of its original members, and the repair work that has been done has maintained much of its historic authenticity.

Scope of Services

The purpose of this work is to assess the feasibility of relocating and rehabilitating a historic truss (Task 1) onto Main Street Trail. If found to be feasible, then the historic bridge would be designed (Tasks 2 & 3) and contract documents would be provided. A prefabricated bridge alternate (Task 4) can be included in the scope to either supersede the historic bridge design or be included as a bid alternate for the owner to select between once the bids are obtained. Regardless of the structure used, the proposed substructure will be designed (Task 5) to be included in the contract plans.

Task 1 - Historic Bridge Feasibility Report

The engineer's report will include site visits to the bridge to measure the overall bridge dimensions, inventory the members and assess the condition of each bridge element. Each member will have their material properties assessed, as the age of the bridge could include both steel and wrought iron. Photo documentation will be included during the site visit to be included in the report to showcase specific areas that need to be rehabilitated. Contractors will be contacted who specialize in relocating metal truss bridges to prepare the preliminary cost estimate. Separate contractors will be contacted for the actual repairs, the crane operations, bridge cleaning and painting and general contracting. This will all be summarized in a brief report for the client to assess whether relocating the bridge is practical.

Task 2 - Historic Bridge Design & Relocation

If relocating the historic bridge is pursued, then KB would move forward with designing the relocation and rehabilitation of the truss. Additional site visits will be required to assess the section loss of each member, which will affect the design of the structure. KB will perform the load calculations on the bridge and will prepare a finite element analysis model of the bridge to determine the forces acting throughout each member of the bridge. Each element will be designed for maximum loading effects, which will include partial live load cases across the bridge to create the maximum loading effect on the diagonals and counters. An existing



bridge load rating of the bridge can be provided, upon request. The structural analysis will then be modified to accommodate replaced and rehabilitated members to obtain the desired loading capacity of the structure. This will be a specific approach to modify only what is necessary to maintain as much historic integrity as possible. It is assumed that a new bridge deck and stringers supporting the deck will be replaced, but that will be determined during the initial site visit.

As with the design, the detailing will be very specific. The bridge detailing will include a general plan that includes all the data collected from the site visits as well as a legend, identifying each element that requires rehabilitation or replacement. The detail sheets will clearly show the necessary repairs and in such a way to maintain historic authenticity. All rehabilitation details will be designed to mitigate obtrusive or heavy-handed repairs and will favor repairs that are historically accurate.

In addition to the traditional bridge design tasks, KB will also calculate the lifting loads that contractors will use to lift the bridge off the original abutments and onto the proposed abutments. KB has a lot of experience relocating metal truss bridges and will identify several ways to lift the structure that can be used by the contractor at their discretion.

# Task 3 - Historic Bridge Specifications & Bidding

The construction specifications of metal truss bridges is very important, as there are not standards for this work that can be relied on. As such, KB will use its extensive history with these structures to build the necessary structural specifications to ensure that all work is completed to provide a quality project that will last. The specifications will explain the necessary repairs clearly to contractors, without being subjective, to increase contractor confidence and mitigating their risk, which commonly is reflected in lower bid prices.

KB will provide quantity calculations and a cost estimate for the owner to review prior to bidding the work. Cost estimate data will use many of the recently bid projects for historic metal bridges that KB has completed. These referenced prices will reflect mostly locally funded projects.

Once the project is advertised, KB will reach out to their trusted contractors near the area or that are known to have interest in this work to inform them of the project and request their review and bid. Contractors solicited by KB all have a long and successful history repairing and relocating metal trusses. Once the bids come in, KB will assist in the review of the bids to identify any discrepancies or errors among the bids.

# Task 4 - Prefabricated Bridge Alternate

This task only applies if the historic bridge option is not pursued, or if the owner desires to include a prefabricated bridge alternate in the project. KB has found that including a prefabricated option in the bid protects the client from being in a position subjected to prohibitively high costs without an alternative option. If both bid alternates are obtained, then the owner can select which option to go with based on the needs of the project once bids are received.

The prefabricated bridge will require a design provision that ensures that the proper structure is being ordered and that all the desired options are included in the contractor's bids. Quantity calculations of the deck and railing, which may not be included in the costs of the bridge, depending on material selections, will be provided. A cost estimate of the prefabricated bridge alternate will be provided so the owner can anticipate the costs of this option. General plan sheets will be provided for the contractor to review and base their bid on.

### Task 5 - Substructure Design & Detailing

Regardless of the structure that is selected, the proposed location will require a new abutment. The foundation that will be designed will be based on a geotechnical report provided by others. KB will request a shallow and deep foundation option from the geotechnical engineer. It is common for a pedestrian bridge to use a spread footing if the soils are good; however, if they are not, then deep foundations may be necessary.

Once the foundation is established and designed, KB will design the reinforcing to resist the internal forces in the abutment. The reinforcing and abutments will be detailed to include bar bending diagrams, section views, a plan view and an elevation. It is anticipated that both abutments will be identical, so only one will be designed. Quantity calculations and a bill of materials will be provided on the plan sheets so that contractors all bid on the same quantities for the abutment work.



**Task Cost** 

#### Fees for Services Provided

d.

The work associated with the aforementioned Scope of Services is as follows:

e. Pick Point Analysis & Lifting Loads

Bid Solicitation & Review

\$14,000 Task 1 - Historic Bridge Feasibility Report a. Site Visits, Data Collection, Photo Documentation \$ 3,000 \$ 4,000 b. Data Processing & Condition Assessment \$ 3,000 **Construction Cost Estimate** C. Report Preparation & Submission \$ 4,000 \$78,000 Task 2 - Historic Bridge Design & Relocation a. Measuring Cross-Sections & Lengths of Each Member \$ 6,000 b. Load Calculations & Finite Element Analysis \$17,000 Design Capacity of Each Member \$22,000 C, Bridge Detailing incl. General Plan

Task 3	- Historic Bridge Specifications & Bidding		\$16,000
a.	Construction Specifications	\$ 8,000	
b.	Quantity Calculations & Cost Estimate	\$ 5.000	

Task 4	Task 4 – Prefabricated Bridge Alternate				
a.	Design Specifications	\$ 2,000			
b.	Quantity Calculation & Cost Estimate	\$ 3,000			
^	Conoral Plan & Layout	¢ 7.000			

G,	General Plan & Layout	φ 7,000	
Task 5 -	- Substructure Design & Detailing		\$16,000
a.	Foundation Design	\$ 5,000	
b.	Reinforcing Design	\$ 4,000	
C.	Substructure Detailing	\$ 5,000	
d.	Quantity Calculations & Bill of Materials	\$ 2,000	

TOTAL: \$136,000

\$12,000

**Itemized Cost** 

\$23,000

\$10,000

\$ 3,000

Tasks 2 & 3 are optional and at the discretion of the owner. Once Task 1 is complete, the owner can weigh the costs and benefits of relocating the truss and decide whether or not they want to continue with the historic bridge option.

Task 4 is also optional if the historic bridge is decided to be used. However, with fluctuating market prices, KB has found it prudent to pursue both the historic bridge option and the prefabricated bridge alternate in the bid for many recent projects. This helps insulate the owner from risk if one option is prohibitively more expensive during bidding than the other. With the use of Next Level Trails funding, the contract book can be structured to accommodate this option.

Kurdziel Barker Engineering shall receive as payment for all work identified a total fee, not to exceed, \$136,000 unless a modification to this agreement is approved in writing. This work will be billed as a lump sum contract on a percent to complete basis. Any tasks eliminated from the project or not performed, will not be billed to the client.

KB Engineering looks forward to working with you. Please review this proposal and feel free to call (651.271.2568) or email me (dkurdziel@kbengr.com) with any questions you may have.

Sincerely,

Daniel Kurdziel, PE

Principal, Structural Engineer Kurdziel Barker Engineering, Inc.

## **EXHIBIT B**

In consideration for the scope of services stated in Exhibit A, THE CONSULTANT requests to be compensated on a Lump Sum basis as follows:

LUMP SUM ITEMS		COST
Topographic Survey		\$117,500
Trail Design		\$351,600
- Project Administration	\$42,400	
- Trail Design	\$256,100	ļ
- Drainage	\$26,500	
- Signal	\$20300	
- Bidding	\$6,300	
Bridge Design		\$136,000
- Historic Bridge Feasibility Report	\$14,000	
- Historic Bridge Design & Relocation	\$78,000	
- Historic Bridge Specifications & Bidding	\$16,000	
- Prefabricated Bridge Alternative	\$12,000	
- Substructure Design & Detailing	\$16,000	
Permitting		\$130,500
- Constr. Stormwater General Permit	\$10,400	
- 401 / 404 Permits	\$10,300	
- FEMA CLOMR	\$58,200	
- FEMA LOMR	\$40,700	
- IDNR CIF Permit	\$10,900	
Environmental Coordination		\$19,300
Geotechnical Investigation		\$17,500
Utility Coordination		\$25,400
SUB-TOTAL		\$797,800

The CONSULTANT shall be paid for Engineering services performed on a unit price basis per the schedule of values below:

R/W ENGINEERING - UNIT PRICE ITEMS	UNITS	UNIT COST	COST
T&E Reports	13	\$800	\$10,400
R/W Engineering (Permanent)	13	\$4,100	\$53,300
Additional Description	13	\$800	\$10,400
R/W Staking	26	\$800	\$20,800
SUB-TOTAL		·	\$94,900

R/W ACQUISITION - UNIT PRICE ITEMS	UNITS	UNIT COST	COST
R/W Management	13	\$1,500	\$19,500
APA's	13	\$300	\$3,900
Appraisals	13	\$3,400	\$44,200
Review Appraisals	13	\$1,600	\$20,800
Contingency	13	\$2,000	\$26,000
Buying / Negotiation	13	\$2,500	\$32,500
Recording of R/W Documents	13	\$400	\$5,200
SUB-TOTAL	\$152,100		

The CONSULTANT shall be paid for Engineering services performed on an hourly not to exceed basis per the schedule of values below:

HOURLY FEES ITEM	
Construction Administration	\$10,000
SUB-TOTAL	\$10,000

TOTAL	\$1,054,800

#### **EXHIBIT B-1**

CONSULTANT compensation shall be phased with Phase 1 covering design of the trail, utility impacts, property impacts, drainage, and bridge analysis are determined to a 30% design stage submittal to facilitate the Client to secure additional funding for the project. The Phase 1 - 30% Design includes the following tasks:

LUMP SUM ITEMS (Phase 1 – 30% Design)		COST
Topographic Survey		\$117,500
Trail Design		\$116,200
- Project Administration	\$6,400	
- 30% Trail Design	\$83,300	
- Drainage	\$26,500	
Bridge Design		\$14,000
- Historic Bridge Feasibility Report	\$14,000	
Utility Coordination		\$10,300
TOTAL (Phase 1 – 30% Design)		\$258,000

Services provided by CONSULTANT beyond Phase 1 - 30% Design services will only be conducted under written Notice to Proceed by the Client.

Any services provided by CONSULTANT beyond those specified will be considered additional services and will only be conducted under written Notice to Proceed by the Client.

# **TOWN OF DANVILLE**

# DEPARTMENT **EXPENDITURE REQUEST**

REQUESTING DEPARTMENT: Wastewa	ater .	
EULOSION OR MEST OF PROUESTED BUSOMASS.		MOODTANT
FUNCTION OR NEED OF REQUESTED PURCHASE:  The current Plant PLC is failing due to age, This upgrade will start the	ne process of having a trust	IMPORTANT:
orthy system again tha we can trust to give good results on what	t in acting on in the plan	All requests must pe submitted to the
		· ·
	No.	Town Manager
		<u>and Clerk-</u> Treasurer at least
		7 days prior to the
		next Council
FINANCIAL ANALYSIS:		meeting to be
COST PER ITEM \$ -	•	included on the
# OF ITEMS REQUESTED 0		agenda for Council
TOTAL AMOUNT REQUESTED \$ 48,188.00		consideration.
PURPOSE OF REQUEST New		
REVENUE IMPACTS:		Budget Review
IS THIS A REVENUE PRODUCING ITEM? NO		Recommendation: Town Manager &
IF YES, AVERAGE EXPECTED ANNUAL CHANGE	N/A	Clerk-Treasurer
COST IMPACTS (ADDITIONAL STAFF, INSURANCE, FEES, CON	TRACTS):	Approve, Disapprove, Further Review
out her hors (habittothia errat ; moord mean tame; e		Comments:
·		
		- 10 0
OTHER CONSIDERATIONS:		Janue & Hofton
IS RENOVATION REQUIRED no IS ADDITIONAL SPACE NEEDED no	11	and complete
EXPECTED LIFE	YEARS	101
Replacement of OLD		Jack / Plage
FUND/APPROPRIATION REQUESTED TO EXPENSE FROM:  AMOUNT		COUNCIL NOTES:
HOST (709)		
RAINY DAY (510)		
EDIT (102)		
GENERAL ()		
6207-5-500-73110 \$ 48,188.00		
HAVE YOU EXPENDED ALL OF YOUR DONATION, GRANT AND/OR APPROPRIATIONS FOR THIS FUNDING FIRST:	Yes / No	
REQUESTED BY: Tony Kirkpatrick	DATE	5/8/2024
TONY MICHAELICK	DA16	U/ U/ たりた <sup>ー</sup> T

# **Freelance Service**

6151 Canterbury Ct. Pittsboro IN 46167-9679 <a href="mailto:hbeckley@freelanceservice.us">hbeckley@freelanceservice.us</a> 317-727-2669

S04182402

\* 0007

Invoice # FS04182402

First Invoice Date: 05/02/2024

Customer PO:

Verbal Tony K.

**Total Due:** 

\$ 27,587.00

SHIP TO:

Tony Kirkpatrick

Town of Danville WWTP

49 N Wayne St, Danville IN 46122

Quote Total: \$ 27,587.00

BILL TO:

Tony Kirkpatrick
Town of Danville WWTP
49 N Wayne St, Danville IN 46122
317-626-9019
tkirkpatrick@danvilleindiana.org

## Project:

#### Replace WWTP control room PLC with ControlLogix PLC system

DESCRIPTION	ОТУ	UNIT PRICE	TOTAL
WWTP Control Room PLC replacement	1	\$27,587.00	\$27,587.00
Project consists of demolishing existing control room PLC and replacement with	arangan tanan sa		
new Allen Bradley CompactLogix processor and IO cards. The project scope includes			
PLC hardware installation, wiring, programming and startup. Also included is			
required programming for each remote PLC and SCADA PC insuring proper		3	
communication with all remote PLCs over new plant PLC network.			
<ul> <li>A second of the control of the control</li></ul>		Andrews (1997) The Common States (1997)	
A design and the control of the cont	)		
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# Thank you for your business!

#### **Terms & Conditions**

Purchase Order required before project work may begin.

Customer's issuance of Purchase Order serves as agreement to Freelance Service Terms & Conditions.

Scheduling established after receipt of Purchase Order.

All quoted parts subject to availabilty. Substitutions may be necessary affecting schedule and final project amount.

Orders cancelled after PO issued are subject to charges based on amount of work performed.

Control panels are NON-Refundable

All shipping and handling charges are extra and added to final invoice.

Full manufacturers warranty on parts, 90 days labor.

Payment due on receipt.

# **Freelance Service**

6151 Canterbury Ct. Pittsboro IN 46167-9679 hbeckley@freelanceservice.us 317-727-2669

DV0100 # FS0418240

Invoice # FS04182401

First Invoice Date: 05/02/2024

**Customer PO:** 

Verbal Tony K.

Total Due:

\$ 20,601.00

SHIP TO:

Tony Kirkpatrick Town of Danville WWTP

49 N Wayne St, Danville IN 46122

BILL TO:

Tony Kirkpatrick Town of Danville WWTP 49 N Wayne St, Danville IN 46122 317-626-9019 tkirkpatrick@danvilleindiana.org

#### Project:

## Replace WWTP radio sytem with new 900Mhz radio PLC Network

DESCRIPTION	ΘΤΥ	UNIT PRICE	TOTAL
WWTP Radio System Replacement	1	\$20,601.00	\$20,601.00
Project consists of demolishing existing radio system and replacement with new	) 		and the second s
900Mhz radio plant PLC network. The project scope includes new radio & antenna		1	
installation at remaining remote PLC panels (6 total), Installation of new antenna at	3		
plant office radio, re-locate control room antenna, radio network programming and			
troubleshooting. Also included is reprogramming old hardware and software allowing	1		The second secon
existing hardware to communicate over new PLC network to SCADA PC and between			rent mental sentin in the contract of the
remote PLCs.			entre the control and although the comme
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# Thank you for your business!

Quote Total: \$ 20,601.00

#### **Terms & Conditions**

Purchase Order required before project work may begin.

Customer's issuance of Purchase Order serves as agreement to Freelance Service Terms & Conditions.

Scheduling established after receipt of Purchase Order.

All quoted parts subject to availability. Substitutions may be necessary affecting schedule and final project amount.

Orders cancelled after PO issued are subject to charges based on amount of work performed.

Control panels are NON-Refundable

All shipping and handling charges are extra and added to final invoice.

Full manufacturers warranty on parts, 90 days labor.

Payment due on receipt.

# Capital Asset Notification Form

Department:						
This Notification is for: Addition Update Transfer Disposal						
Acquisition is by: (Attach Copy) Purchase Donation Lease Transfer  Date of Transaction:  PO No:						
				Estimated Life Expectancy: Mileage or Hours:		
				CIP Number:	Location:	
Serial or VIN Number:						
Total/Partial Value of Asset:						
Donated, attach docur and date board approv	ard copy of check(s) to document costs. If assets were mentation of fair market value of asset, how to determined ved.					
Type and if equipped v	nust include square footage, building materials, roof with sprinkler systems or boiler)  Model No:					
Year:	License No:					
Gross Vehicle Weight (trucks	only):Type of Fuel:					
Disposal of Capital Asset: _						
-	Trade-in Scrapped End-of-Lease Stolen/Wreck					
Amount of Cash Received or	r Trade-In Value (if applicable)					
Supervisor Signature:						
lf Transferred- Receiving Per	rsons Signature:					
	Print Name:					
Clerk-Treasurer's Use Only	Received					
	Enter Capital Asset					
	Insured					
	Clerk Treasurer's Initial					



# CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGE PROTECTED COMMUNICATION

April 26, 2024

# VIA EMAIL & U.S. MAIL

Mark Morgan Town of Danville 49 North Wayne Street Danville, IN 46122

# Re: ACTION REQUIRED - Opioid PBM Update

Dear Mark Morgan:

Over the course of the last eight years, your opioid consortium has now recovered approximately \$60 billion from pharmaceutical manufacturers, distributors, and pharmacies. These funds will go a long way to helping abate the opioid crisis, but our work is not done.

As part of our continued efforts to help remedy the effects of the opioid crisis in your community, our consortium has been investigating the role that pharmacy benefit managers (PBMs) played in contributing to the crisis. PBMs are companies who administer prescription drug plans for health insurers, self-insured employers, and governments; negotiate drug prices and availability with drug manufacturers; process and pay claims; review drug utilization data and operate mail-order pharmacies.

Judge Polster recently opened a new bellwether track of cases against Express Scripts and OptumRx, two of the three PBMs with the largest market share in the United States<sup>549</sup>. We are in the process of drafting a motion that would give all plaintiffs in the MDL the right to amend their claims by opting-in to a master pleading which follows the existing bellwether complaints (available here) and sets forth the legal and factual basis for claims against the PBMs. In connection with this effort, we are recommending that, subject to our obtaining Court approval, you agree to amend your current complaint to add claims against Express Scripts and OptumRx and their relevant subsidiaries (the PBM Defendants) concerning their role in fueling the opioid crisis<sup>550</sup>.

<sup>&</sup>lt;sup>549</sup> The other of the three largest PBMs in the country, CVS Caremark/Caremark Rx, is a subsidiary of CVS Health. Caremark was included in the recent national CVS settlement.

<sup>550</sup> The relevant Express Scripts entities are: Express Scripts, Inc.; Express Scripts Administrators, LLC; Medco Health Solutions, Inc.; ESI Mail Order Processing, Inc.; ESI Mail Pharmacy Service, Inc.; Express Scripts Pharmacy, Inc.; Evernorth Health, Inc. (formerly Express Scripts Holding Company); and Express Scripts Specialty Distribution Services, Inc. The relevant OptumRx entities are: UnitedHealth Group, Inc., Optum, Inc., OptumInsight, Inc., OptumInsight Life Sciences, Inc., OptumRx, Inc., OptumRx Discount Card Services, LLC; Optum Perks, LLC; OptumHealth Care Solutions, LLC; OptumHealth Holdings, LLC; and Optum Health Networks, Inc.



To understand the PBM Defendants' ability to impact the opioid crisis, one need look no further than the statements of their own employees who, in internal emails, stated as follows:

"No component of our healthcare system is in a better position to deliver more immediate and more impactful changes to the current course of this crisis than our nation's PBMs. . . . PBM's are in a very powerful position to deploy systems based claims edits that can ensure that physician prescribing and pharmacy dispensing is in line with the most-up-date scientific evidence and national consensus guidelines . . . PBMs also bring enormous clinical and analytic horsepower to the table to be able to more effectively screen for aberrant prescribing and dispensing of opioids by our nation's physicians and pharmacies; to risk stratify patients based upon potentially for dependency, addiction and overdose; and the ability to deploy numerous interventions targeted at both the provider and the patient themselves to clinically intervene in a more timely and effective manner to decrease such risks. As an intermediary between the physician, pharmacist, patient, pharmaceutical manufacturer, health systems, and other components of the industry, the PBM is also in an ideal position to drive improvements in education and awareness of the dangers of opioid therapy and the various tools available for all constituents to contribute to positive change in the course of this epidemic."

Despite all these resources and a raging epidemic, one can only wonder why the PBM Defendants failed to act. Again, to answer this question, we need look no further than their own documents. For example, in 2017, when clients and government agencies were "demanding" change to limit the flow of pills, Express Scripts concluded that if they "were to implement either the 7 day or 10 day limit on short acting opioids which are most profitable for us we are looking to lose \$10-\$20 Million in margin." In other words, Express Scripts knew that if they put tools in place to restrict short acting opioid prescription fills to seven or ten days, it would cost them \$10 to \$20 million per year.

The PBM Defendants' role in creating and sustaining the opioid epidemic has been largely hidden from public scrutiny. However, evidence recently developed in the MDL, including the documents described above, reveals that the PBM Defendants, hired by third party payors, insurers, and health plans to design formularies and administer prescription drug programs and colluded with the Opioid Manufacturers to make opioids more available. The PBM Defendants had a broad scope of knowledge concerning the opioid crisis by virtue of their access to opioid utilization data for the individuals covered by the insurance plans they administer, their contracts with over 98% of the retail pharmacies in the country, and the detailed dispensing data they collect with respect to the opioid prescriptions filled at every pharmacy in their networks.

Instead of using this data, however, to identify concerning red-flag opioid prescriptions and implement restrictions that would have curtailed the flow of pills, the PBM Defendants knowingly ignored this information and, to increase their profits, they permitted their pharmacy networks to dispense billions of opioid pills into communities across the country. These actions by the PBM Defendants allowed the market to be flooded with prescription opioids and facilitated the opioid epidemic. Based on their conduct, the PBM Defendants would be sued in their



capacities as: (1) PBMs; (2) data, analytics, research, and marketing providers; and (3) mail-order pharmacies.

If the Court permits it, amending your complaint will ensure that you have the opportunity to participate in any recovery if there is a favorable resolution of claims against the PBMs. Public entities that amend their complaints potentially could recover from the PBMs, while cities and counties who do not amend may be unable to participate in any recovery.

Please respond by Friday, May 17, 2024 confirming that you agree to the amendment of your complaint to add the PBM Defendants, including related subsidiaries. Alternatively, if you have any questions about the case against the PBMs or the proposed amendment process, let us know.

Send all responses and inquires on this topic to Aaron Harrah at Hill, Peterson, Carper, Bee & Deitzler, PLLC at <a href="mailto:amendmycomplaint@hpcbd.com">amendmycomplaint@hpcbd.com</a>.

For your convenience and to assist us with tracking responses, if your subdivision agrees to amend its complaint to add the PBM Defendants, in the subject line of your responsive email, please use the following format: [State abbreviation]\_[ Subdivision name]\_[Subdivision type (County, Tribe, Parish, City, Town)]\_[Agree].

As an example, if Greenbrier County, West Virginia, agrees to amend its complaint to add the PBM Defendants the subject line of its responsive email would be: WV\_Greenbrier\_County\_Agree.

A Tribe's response would be: MT\_Blackfeet\_Tribe\_Agree.

A Parish's response would be: LA\_St. John's\_Parish\_Agree.

The same format would apply similarly to Cities and Towns.

We look forward to hearing from you. Thank you for the continued opportunity to serve your community.

Thank you,

#### **Aaron Harrah**

amendmycomplaint@hpcbd.com
Hill, Peterson, Carper, Bee & Deitzler, PLLC | Attorney 800.822.5667
304.414.4198 Direct Dial
www.hpcbd.com

#### Mark Pifko

Baron & Budd, P.C. | Shareholder 310.467.7799 mobile 818.839.2325 direct 818.839.2333 main www.baronandbudd.com

# IMPORTANT INFORMATION REGARDING EMAIL COMMUNICATIONS

Our Consortium regularly sends communications to our clients via email. However, we have noticed that our emails have a very low open rate, meaning that you are potentially not receiving the most up-to-date information in the case, often due to email security settings or SPAM filters.

The attached letter was also sent via email from OpioidLitigation@LevinLaw.com, with a subject line of: ACTION REQUIRED - Opioid PBM Update - PROTECTED - CONFIDENTIAL - ATTORNEY CLIENT PRIVILEGED. We ask that you take a moment to ensure you received that email.

To ensure prompt delivery of our emails, we ask that you work with your IT staff to "whitelist" or add OpioidLitigation@LevinLaw.com to your safe senders list.

We also strongly recommend whitelisting or adding the following domain names to your safe senders list:

LevinLaw.com

BaronBudd.com

FarrellFuller.com

McHughFuller.com

GreeneKetchum.com

**HPCBD.com** 

PowellMajestro.com

Whitelisting varies by email client, internet security provider, and service provider. Please ask your IT staff to assist you in this process.

Please keep us informed of any changes to contact information, so that our communications get to the right people.

# PUBLIC PRIVATE AGREEMENT (Phase 1 – Eastside Interceptor Sewer Capital Improvements Project BOT)

This Public Private Agreement (Eastside Interceptor Sewer Capital Improvements Project BOT) (the "Agreement") is executed this \_\_\_\_\_ day of \_\_\_\_\_\_, 2024 (the "Effective Date"), by and between Bowen Engineering Corporation, (the "Developer"), and the Town of Danville, Indiana (the "Town").

#### Recitals

WHEREAS, the Town has adopted the necessary resolution to enable the Town to procure projects via Indiana Code § 5 – 23 et seq. (the "Act").

WHEREAS, the Act grants the Town the authority to enter into agreements with private entities for the planning, design, development, reconstruction, or repair of any public facility;

WHEREAS, pursuant to the Act, the Town issued a Request for Proposals and Qualifications to Design, Build, Operate, and Transfer the Phase 1 – Eastside Interceptor Sewer Capital Improvements Project Through a Public Private Agreement on January 1st 2024 (the "RFPQ").

WHEREAS, on January 18, 2024, the Town received responses to the RFPQ;

WHEREAS, after conducting a thorough analysis of all responses to the RFPQ, the Town's evaluation committee (the "Committee") determined that the Developer's proposal met the selection criteria set forth in the RFPQ and recommended to the Town Council that a public private agreement be awarded to Developer;

WHEREAS, as required by the Act, after receiving the recommendation of the Committee and after publishing notice on February 29, 2024, the Town Council held a public hearing on March 6, 2024, at which it accepted the recommendation of the Committee and determined that the Developer should be designated as the preferred offeror for the final negotiation and execution of this Agreement;

WHEREAS, this Agreement, along with any Ancillary Agreements (as hereinafter defined), collectively constitute a public-private agreement as contemplated under the Act, and is hereby entered into in accordance with the Act and the provisions of the RFPQ;

WHEREAS, the Town and the Developer desire to enter into this Agreement to formalize the terms and conditions upon which the Project shall be delivered.

#### Agreement

#### 1. Defined Terms.

**Ancillary Agreements** shall mean the agreements necessary to complete the Project, which may include but shall not be limited to, Development Easements, Disbursement Agreements, and if applicable, Financing Documents.

**Assessments** shall mean all general and special governmental and utility assessments levied on, against, or with respect to the Project Site.

**Available Funds** shall mean the Town funds to be used for the design, development, and construction of the Project, which shall be any duly appropriated and legally available funds identified by the Town in its sole discretion, and which may include, without limitation, local funds, bond proceeds, and/or state or federal grant funds.

BIM shall mean Building Information Modeling.

**Bonds** shall mean surety bonds provided on behalf of Developer for the construction of the Project, specifically: (a) a performance bond in the amount of 50% of the portion of the respective Project Budget for the design and construction of the respective Project; and (b) payment bond for 100% of the respective Project Budget; including any contingency, consulting, construction management, and/or developer fees. The Bonds shall be effective within 30 days of the respective Notice to Proceed.

**Books and Records** shall mean all of the books and records pertaining to: (a) the acquisition of materials to construct, and the construction of, the Project in accordance with this Agreement and the respective Construction Contract; and (b) the operating of the completed Project during the Operating Period.

Change Order shall mean a change order executed by Developer and Town finalizing the inclusion into the Final Plans of a change proposed in a Change Order Request, which change has been approved; provided that, in the case of a Permitted Change, such change order shall be effective if executed only by Developer.

Change Order Request shall mean a written request for a change to Final Plans.

Claims shall mean claims, judgments, damages, liabilities, injuries, losses, costs, and expenses (including, without limitation, reasonable attorneys' fees).

Closing shall mean the date on which the Developer: (a) executes the Ancillary Documents; and (b) the Available Funds are available for disbursement pursuant to this Agreement and the Disbursement Agreement and/or the Trust Indenture, as the case may be. At the Closing, the Developer and Town execute the Closing Documents.

Closing Date shall mean the date of the Closing.

Closing Documents shall mean the documents described in Section 7.

**Commissioning** shall mean the process by the Town and its Commissioning Agent shall have the opportunity to inspect, test, and operate the Project and its systems.

**Commissioning Agent** shall mean the company or person selected by Town, which may include Town personnel, to assist it in performing the Commissioning.

Construction Commencement shall mean the date construction commences on the Project.

**Construction Commencement Notice** shall mean the written notice of the respective Construction Commencement provided by Developer to Town.

Construction Contract shall mean the contract executed by and between Developer (or Developer's assignee under Section 20 of this Agreement) and General Contractor for construction of the Project in accordance with the respective Final Plans, the approved Project Budget, and the terms and conditions of this Agreement.

**Construction Drawings** shall mean construction drawings completed for the Project, which shall be consistent with the Design Development Documents and the Laws.

**Construction Manager** shall mean an employee of the Developer, its affiliate, or the respective General Contractor that shall fulfill the requirements of Section 5(b).

**Construction Schedule** shall mean a reasonably detailed schedule for construction of the Project, which shall cause such Project to be completed no later than the dates listed in the respective GMP Report and Construction Schedule.

Construction Trade shall mean any trade or other discrete aspect of construction of the Project.

Cure Period shall mean a period of 30 days after a party failing to perform or observe any term or condition of this Agreement to be performed or observed by it receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within 30 days, despite the exercise of reasonably diligent efforts, then the 30-day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (a) commences to remedy the failure within the 30-day period; and (b) diligently pursues such remedy to completion.

**Design Development Documents** shall mean reasonably detailed design development drawings that are consistent with the Schematic Design Drawings and the Laws.

**Development Easement** shall mean the access and construction easement on the Project Site granted by Town in favor of Developer for the purpose of constructing the Project.

**Development Work** shall mean the work to be performed by Developer in accordance with the terms of this Agreement as detailed in Final Documents and Drawings and GMP Report both of which are attached hereto as Exhibit F.

**Disbursing Agent** shall mean the Town, unless Developer and Town expressly agree to identify another disbursing agent.

**Disbursement Agreement** shall mean, if required by the source of the Available Funds, an agreement executed by and between Town and Developer that shall outline the process for approval and payment of Disbursement Requests.

**Disbursement Request** shall mean a written request by Developer for a disbursement of Available Funds, which request shall: (a) specify the total amount of Available Funds being requested; (b) include invoices to be paid (or amounts to be reimbursed to Developer) with the disbursed funds; and (c) include such supporting documentation as would be required for Developer to obtain a disbursement of construction loan proceeds (other than any supporting documentation: (i) specific to investment of Developer equity; or (ii) related to updating any policy of title insurance).

**Documentation Costs** shall mean all fees, costs, and expenses incurred by Developer in connection with drafting and negotiating: (a) this Agreement; and (b) any other documents contemplated by this Agreement to be executed in connection with the Project.

**Encumbrances** shall mean any Liens, leases, mortgages, security interests, charges, judgments, judicial awards, attachment or encumbrance of any kind with respect to the Project.

**Engineer of Record** shall mean a firm which employs persons licensed to practice engineering in Indiana who have or will have prepared, signed, and sealed the Final Plans for a Project. The Engineer of Record for the Project is Banning Engineering, Inc.

Event of Default shall have the meaning set forth in Subsection 18(a).

E-Verify Program shall mean: (a) the program currently operated by the U.S. Department of Homeland Security that electronically confirms an individual's eligibility to work in the United States, authority for which is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, 110 Stat. 3009 (USC §1324a), as amended; or (b) any successor work authorization program designated by the U.S. Department of Homeland Security or such other federal agency as may be authorized to verify the work authorization status of newly-hired employees. The E-Verify Program is the "E-Verify Program" defined in Indiana Code § 22-5-1.7-3.

Final Documents a	nd Drawings	shall mean the specifications dated	, Construction
Drawings dated		, the final Construction Schedule, and the	GMP Report.

Final Observation shall mean an observation of the Project by Town after substantial completion thereof.

Final Plans shall mean the aggregated Final Documents and Drawings,

**Force Majeure** shall mean, with respect to a party: (a) an act or omission of the other party; or (b) any other cause that is not within the reasonable control of such party (including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services or labor; and (iii) utility or energy shortages or acts or omissions of public utility provider.

**GMP Report** shall mean a report including the: (a) inclusions, exclusions, and qualifications not otherwise addressed in this Agreement; (b) Project Budget and Construction Schedule; (c) allowances and contingencies; and (d) list of plans and specifications; related to the Project, which has been accepted by the Town and which report is incorporated herein by reference and attached as Exhibit F.

In Balance shall mean that the total of Available Funds, as presented by Developer to Town at Town's request, shall equal or exceed (without duplication) the aggregate of: (a) the amount required to be paid as retainage to persons who have supplied labor, services, or materials to the Project, including without limitation, the General Contractor, engineers and/or design professionals, and all subcontractors; (b) the amount required for any additional contingencies; and (c) the amount necessary to pay for all unpaid Project Costs incurred or to be incurred in the completion of the construction of the Project.

**Incurred Costs** shall mean the costs and expenses incurred by Developer in connection with complying with the terms and conditions hereof, including but not limited to: (a) the cost to develop and prepare the Final Plans for that respective Project; and (b) costs and expenses related to preparation and improvement of the Project Site prior to execution of this Agreement.

**Key Personnel** shall mean the key members, including but not limited to the Project's executive, manager, and site superintendent, for the Project.

**Latent Defect** shall mean those material defects in the construction of the Project that: (a) are not discovered; and (b) reasonably are not discoverable; by Town during a Permitted Observation or the Final Observation.

**Laws** shall mean all applicable: (a) laws, statutes, and/or ordinances; (b) governmental rules, regulations, and/or guidelines; and (c) judicial orders, consents, and/or decrees.

Lien shall mean any and every lien against the Project or against any monies due or to become due from the Town to Developer under this Agreement, for or on account of the Development Work, including but not limited to: (a) mechanics' liens; (b) materialmens' liens; (c) laborers' liens; (d) architect's liens; (e) engineer's liens; (f) land surveyor's liens; and/or (g) lenders' liens.

**Material Defect** shall mean any item or component of the Project that: (a) contains a material defect in workmanship or materials; (b) deviates materially from the Final Plans; or (c) has not been constructed materially in accordance with the terms and conditions of this Agreement.

**Non-Compliance Notice** shall mean a written notice from Town that identifies Material Defects with respect to the Project discovered by Town during a Permitted Observation or the Final Observation.

**Nonconforming Work** means Development Work which is not conforming to the terms of this Agreement or the Final Plans and for which Town gives notice to Developer and an opportunity to cure in accordance

with Section 12(b)(v) hereof. Damage or defect to the Development Work caused after the Transfer by abuse, alterations to the Project not performed by Developer or its subcontractors and/or vendors, improper or insufficient maintenance, improper operation, or normal wear and tear or normal usage that directly and materially contributes to such nonconformity shall not constitute Nonconforming Work.

**Notice to Proceed** shall mean the written notice, which form of notice may include electronic mail, from the Town to the Developer in accordance with Section 10(f).

Observation shall mean a Permitted Observation or the Final Observation, as applicable.

**Operating Period** shall mean the period: (a) commencing on the Substantial Completion Date; and (b) ending on the earlier of the date: (i) that is 10 days after the Substantial Completion Date; or (b) that is specified in a written notice delivered by Town to Developer; unless the Town and Developer agree to a longer operating period by executing a separate operating agreement.

**Owner's Representative** shall mean a person or persons designated by Town in writing to observe performance of the Development Work for the Project. If so designated, the Owner's Representative shall have the authority to act for and on behalf of Town on all decisions required by Town under this Contract. In the event the Town does not designate an Owner's Representative, the Board of Town Council shall act for and on behalf of Town under this Contract and shall be the intendant hereunder.

Permitted Change shall mean any change proposed by Developer or Town to the Final Plans of the Project, so long as such change: (a) is not inconsistent with the specifications or Final Plans approved by Town for the Project; (b) does not result in the Final Plans containing structurally flawed elements; (c) is in conformity with the Laws; (d) does not reduce the quality or the finish level of the Project; and (e) does not make it unlikely, impracticable, or impossible for Developer to complete the Project, or any component thereof, by the applicable date set forth in the approved Construction Schedule for the Project.

Permitted Encumbrances shall mean, from time to time, any one or more of the following: (a) utility charges, taxes, rates, and assessments not yet delinquent or otherwise appealed; (b) any encumbrance arising out any judgment rendered which is being contested diligently and in good faith by Developer; (c) any encumbrance arising in the ordinary course of business imposed by law dealing with Liens, the validity of which is being contested diligently and in good faith by Developer and against which Developer has established appropriate reserves; (d) licenses, easements, encumbrances, restricts, or other rights-of-way which shall not in the aggregate materially and adversely impair the construction of the Project; (e) applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants, which do not materially interfere with the construction of the Project; (f) encumbrances created on or before the Effective Date; (g) encumbrances created by a change in law on or after the Effective Date; and (h) any encumbrance created by an act or omission of any governmental entity or with respect to which the Town has given its consent.

**Permitted Observation** shall mean an observation by Town of any item or component of the Project when reasonably deemed to be necessary or appropriate by Town.

**Plan Refinement Process** shall mean the process set forth in Section 10 for completion of the Final Plans and the Project Budget.

**Plan Schedule** shall mean the schedule in accordance with which Developer shall prepare and provide to Town the Construction Schedule and any other schedules related to the Project, which schedules shall be set forth in the GMP Report.

**Project** shall mean the Phase 1 – Eastside Interceptor Sewer Capital Improvements Project, and shall include construction, repair, and/or transfer of utility, infrastructure, and related site work and sewer upgrades on the Project Site, along with all related appurtenances and improvements, as further described in the Reference Information Documents.

**Project Approvals** shall mean the approvals required by Town, its agencies, or its departments related to construction of the Project, including but not limited to plan commission approvals.

**Project Budget** shall mean the budget for the Project Costs, as further described in the GMP Report. The Project Budget for the Project is as set forth in Exhibit F.

**Project Costs** shall mean the fees, costs, and expenses to be incurred in connection with the Project, including but not limited to: (a) the Documentation Costs; (b) the costs incurred in connection with determining that all of the conditions set forth in Section 8 have been satisfied and/or will be waived by Developer and/or Town; (c) the costs incurred in connection with the Closing (to the extent that such costs are not included in the Documentation Costs); (e) the cost to develop, design, and construct the Project in accordance with the terms and conditions of this Agreement; (f) contingencies in the amount approved within the Project Budget; (g) the developer fee in the amount approved within the Project Budget; (h) a construction management fee in the amount approved within the Project Budget; and (i) any other obligations set forth in the Reference Information Documents, provided that in no event shall the Project Costs exceed the Project Budget approved by the Town in the GMP Report unless approved and authorized by the Town pursuant to Section 10(f) hereof.

**Project Funding** shall mean, for the Project, the Available Funds approved for use to pay the Project Costs of that particular Project.

**Project Site** shall mean only that portion the real estate on which the Project is to be constructed, as further identified on Exhibit A.

Real Estate Taxes shall mean all real estate taxes that may be attached to a property tax bill in the same manner as real estate taxes, levied on, against, or with respect to the Project Site and/or the Project.

Required Permits shall mean all permits, licenses, approvals, and consents required by the Laws for the construction of the Project.

**RFPQ** shall mean that certain Request for Proposals and Qualifications issued by the Town on January 1st, 2024.

Sales Tax Exemption Form shall mean Indiana Department of Revenue Form ST-105 (General Sales Tax Exemption Certificate), pursuant to which Town shall represent that the acquisition of the materials to construct the Project is exempt from Indiana sales and use tax.

**Substantial Completion Date** shall mean the date on which: (a) Developer delivers to Town a copy of the certificate of substantial completion of the Engineer of Record which indicates that the Project has been completed substantially in accordance with the Final Plans, subject to "punch-list" items to be identified in connection with the Final Observation, which "punch-list" items do not materially affect the use of the Project for its intended use.

**Town** shall mean the Town of Danville, Indiana, and, unless otherwise expressly stated, any promise by or obligation of the Town hereunder shall be carried out by and through the Town Council of the Town of Danville, Indiana, or its designated representatives.

Town Approvals shall mean the approvals required by the Town of Danville, Indiana, its agencies, or its departments related to the design and construction of the Project, including but not limited to zoning approvals.

**Town Funds** shall mean legally available, duly appropriated funds of the Town for payment of Project Costs for a Project in accordance herewith.

**Transfer** shall mean the conveyance of the Project and all Project Documents by Developer to Town in a form acceptable to Town that transfers all Developer's rights in that Project to Town or its designee free of all Liens and/or Encumbrances at: (a) the expiration of the Operating Period; or (b) upon termination of this Agreement in accordance with the terms and conditions of Section 22.

**Trust Indenture** shall mean a trust indenture executed by and between the Town or its designee and the Trustee relative to the issuance of municipal bonds, if municipal bonds are the source of Available Funds for the Project.

Trustee shall mean the "Trustee" under the respective Trust Indenture.

Unauthorized Alien shall have the meaning set forth in 8 U.S.C § 1324a(h)(3).

**Utility Services** shall mean gas, electricity, telephone, water, storm and sanitary sewer, fiber and/or internet access, and other utility services.

### 2. General Obligations.

- (a) Developer. Subject to the terms and conditions of this Agreement, Developer shall: (A) enter into the Ancillary Documents; (B) perform the Development Work; (C) provide preconstruction services of design-assist, estimating services and constructability review in an amount not to exceed \$25,000 (which services and amount will not be reimbursed if a respective project is not commenced) ( (E) construct the Project on the Project Site; (F) operate the Project until the expiration of the Operating Period; and (G) upon the expiration of the Operating Period, execute the Transfer.
- (b) Town. Subject to the terms and conditions of this Agreement, Town shall: (A) enter into the Ancillary Agreements; (B) design the Project; (C) take such action as necessary or reasonably appropriate to provide for the Town Approvals; (D) upon Closing, obtain and make available the Project Funding, if applicable; and (E) upon the end of the Operating Period, execute the Transfer.
- (c) Cost of Performance. All obligations undertaken by each party shall be performed at the cost of the party undertaking the obligation or responsibility, unless the other party has explicitly agreed herein to bear all or a portion of the cost either directly, by reimbursement to the other party, or through a Change Order.
- (d) Utility Availability. Town, at its cost and expense, shall ensure that there are Utility Services in adjoining public rights-of-way or properly granted and recorded utility easements that serve the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement, including, without limitation, that Town, at its cost and expense, shall make any improvements outside the Project Site that are necessary for Town to satisfy the foregoing obligation with respect to Utility Services, unless otherwise negotiated by the parties in the Project Development Proposal. Developer shall notify Town of any deficiency in the Utility Services serving any Project Site prior to providing the Final Project Budget.
- (e) Required Permit and Project Approvals Fees. Town shall, where possible to reduce the potential fee assessed, complete an application as the "Owner" of the Project for the Required Permits, the Town Approvals, and/or Project Approvals.
- (f) Project In Balance. Notwithstanding anything to the contrary contained in this Agreement, it is expressly understood and agreed that the Project at all times shall be In Balance relative to the

Final Budget and Available Funds. Developer and Town agree that Developer will be responsible for paying all costs for completing the Development Work which exceed the Project Budget, as such Project Budget may be adjusted in accordance with the Contract Documents.

**3. Term.** This Agreement shall be effective as of the Effective Date and shall continue until the earlier to occur of: (a) termination of this Agreement by either party pursuant to its terms and conditions; or (b) the Transfer of the last Project.

### 4. [Intentionally Omitted.]

### 5. Development Work.

- (a) Staffing Requirements. All persons engaged by Developer for Development Work shall have requisite skills for the tasks assigned. Developer shall employ or engage and compensate professionals and other consultants to perform all services required for the Development Work. All firms and personnel performing Development Work, including all professionals and consultants, the General Contractor, subcontractor firms, and other personnel, shall meet the licensing and certification requirements imposed by applicable Laws.
- (b) Construction Manager. Developer shall designate a Construction Manager, who shall be present on the Project Site when the Developer is performing the Development Work as necessary to ensure the complete and accurate development of the Project. The Construction Manager shall, among other things, attend all meetings with the Town relative to the development of the Project.
- (c) Compliance with Laws.
  - (i) Compliance Obligations. Developer shall perform the Development Work in compliance with all applicable Laws and shall cause each General Contractor and its subcontractors to comply with the Laws.
  - (ii) Governmental Approvals. Town shall make all filings, applications, and reports necessary to be made to obtain and maintain all governmental approvals required for the performance of the Development Work (except for those governmental approvals that are the responsibility of the Developer as specified herein) and shall comply with the terms of such governmental approvals.
  - (iii) Registration, Licensing, and Certification Requirements. Developer shall ensure that all persons performing the Development Work, including each General Contractor and all subcontractors, comply with all registration, licensing, and certification requirements imposed by the Laws.
- (d) Right of Entry. On or after the issuance of the Project Request Notice for the Project, and pursuant to the terms of the respective Development Easement, Developer and its authorized subcontractors shall have the right and a non-exclusive license to enter on the respective Project Site, and other lands as may be specified in writing by the Town and that are owned by or in possession and control of the Town or subject to a right of entry or access in favor of the Town, for the purpose of carrying out Developer's obligations under this Agreement. The Development Easement may be subject to interim limits on activities as directed by the Town. Absent agreement by the parties to a later date, the Development Easement for the Project shall automatically terminate upon the earlier to occur of: (i) the respective Substantial Completion Date; or (ii) at the end of the Term.
- (e) Developer Control of Development Work; No Town Responsibility. Developer shall have total control of the Development Work and shall effectively direct and supervise the Developer Work so that it is undertaken in compliance with the terms of this Agreement. Developer shall have the sole and exclusive responsibility and liability for the design, construction, and performance of the

Project during the Term. Nothing in this Agreement shall be interpreted as giving any responsibility for the Development Work to the Town or its advisors. The Town may, at its cost, retain an Owner's Representative or advisors prior to and during the period of the Development Work to consult with and advise the Town, but the Town's advisors shall have no authority to render decisions for or otherwise bind the Town. Town may, via written notice to Developer, delegate its decision-making authority to its Owner's Representative for a respective Project or a series of Projects. Town may share with its advisors all information which the Town receives and/or develops with respect to the Project and the Town's advisors may, at the request or direction of the Town, attend all meetings related to the development, design, and construction of the Project to which the Town has the right to be present. Town's advisors shall be retained solely for the benefit of the Town and the Town's advisors do not owe any duty or responsibility to the Developer. The Town's decision to retain advisors shall in no manner change, affect, limit, or otherwise diminish the duties and responsibilities of the Developer as established in this Agreement.

- (f) Materials, Labor, and Services. Developer shall furnish all necessary, labor, materials equipment, supplies, tools, scaffolding, transportation, utilities, insurance, temporary facilities and utilities, completed structures, assemblies, fabrications, acquisitions installations, testing, and things and services reasonably inferable from and in accordance with the Final Documents and Drawings. The materials, machinery, structures, improvements, and equipment to be furnished as part of the Development Work shall be new, of recent manufacture, and of good quality.
- (g) Standards of Workmanship and Materials. Where this Agreement does not specify any explicitly quality or standard for construction material or workmanship, the Developer shall use only workmanship and new materials of a quality consistent with that of construction workmanship and those methods, means, techniques, standards, and practices, which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good practice in the delivery of public or institutional facilities serving purposes similar to the Project.
- (h) Quality Assurance and Quality Control. The Developer shall have the full responsibility for quality assurance quality control of the Development Work.
- (i) Laydown Areas. Laydown and staging areas for construction materials shall be as approved in the GMP Report. Developer shall bear all responsibility for arranging and, if necessary, paying for the laydown and staging area indicated in the GMP Report. If required, Developer shall also provide construction office space at its own cost and expense. If at any time during the Developer's work on the Project Site the Town should require that Developer's laydown and staging areas be relocated, Town shall bear all responsibility for arranging and, if necessary, paying for the new laydown and staging area and the relocation of materials thereto.
- (j) Security of the Project Site. During performance of the Development Work, the Developer shall be responsible for the and security of the Project Site. The Developer shall keep the Project Site neat and orderly at all times, and shall clean up and remove all rubbish and construction debris from the Project Site as they accumulate.
- (k) Title and Risk of Loss. Title to the structures, improvements, fixtures, machinery, equipment, and materials constituting the Project shall pass to the Town upon incorporation into the Project, free and clear of all Liens as provided in this Agreement. The Developer shall bear all risk of loss concerning the Development Work during the term of the Development Work, regardless of the extent to which the loss was insured or the availability of insurance proceeds.
- (I) Encumbrances. The Developer shall not directly or indirectly, without the Town's consent, create or permit to be created or to remain, and shall promptly discharge or bond over any Encumbrance arising on the Project, the Project Site, or the Development Work, other than the Permitted Encumbrances, arising out of the Developer's construction of the Project. To the extent permitted by the Laws, the Developer waives any right or claim to any Lien or Encumbrance upon

the Project or the Project Site that may exist under the Laws or in equity for failure of the Town to pay amounts due to the Developer.

- (m) [Intentionally Deleted.]
- (n) [Intentionally Deleted.]
- (o) Commissioning. During the period between substantial completion of the Project and the Transfer, Developer shall: (a) coordinate the Commissioning of the Project with Town and its Commissioning Agent; (b) provide all relevant documents, including any results of any Commissioning Tests; and (c) promptly address all issues identified by Town and its Commissioning Agent during such process.
- 6. Closing. Subject to the terms and conditions of this Agreement, the Project Closing shall occur on or before \_\_\_\_\_\_\_, 202\_\_. The Closing Date shall be established mutually by Developer and Town, and the Closing shall take place at such location as Developer and Town mutually agree. At Closing, the Available Funds (less any amount thereof to be disbursed at Closing) shall be available for disbursement in accordance with the terms and conditions of this Agreement and the Trust Indenture or the Disbursement Agreement, as the case may be.
- 7. Closing Documents. At each Closing, the documents and instruments set forth in this Section shall be executed and/or delivered, including:
  - (a) the Ancillary Agreements;
  - (b) a confirmation by each of Developer and Town of the applicable representations and warranties set forth in Section 9:
  - (c) an affidavit affirming that Developer: (i) is enrolled in the E-Verify Program; (ii) is participating in the E-Verify Program; and (iii) does not knowingly employ, or contract with, any Unauthorized Aliens:
  - (d) copies of such resolutions, consents, authorizations, and other evidence as either party reasonably may request to establish that: (i) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action of Developer or Town, as the case may be; and (ii) the execution and delivery of such documents, and the performance by Developer or Town of its obligations hereunder and under the foregoing documents, have been authorized by Developer or Town, as the case may be; and
  - (e) such other customary documents and instruments as either party reasonably may request in connection with each Closing.

### 8. Conditions.

- (a) Mutual. Unless waived in writing by both of Developer and Town prior to each Closing, the obligation of each of Developer and Town to proceed to each Closing is subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection.
  - (i) Town and Developer have agreed on the form and substance of the Closing Documents.
  - (ii) Developer has obtained, or Developer and Town are satisfied that Developer will be able to obtain, all Required Permits, Project Approvals, and Town Approvals.

- (ii) Developer shall have submitted to Town, and Town shall have approved, the GMP Report and related materials.
- (iv) Developer is enrolled in the E-Verify Program.
- (v) Developer has adopted or anticipates adopting all resolutions necessary to authorize the execution of, and the performance of its obligations under, the documents to be executed by it in connection with the Development Work and the Project.
- (b) Developer. In addition to the conditions set forth in Subsection 8(a), the obligation of Developer to proceed to Closing is subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection.
  - (i) Developer has not discovered any condition with respect to the Project Site that would interfere with, or prohibit the construction of the Project in accordance with the terms and conditions of this Agreement.
  - (ii) There is no continuing breach by Town of this Agreement.
- (c) Town. In addition to the conditions set forth in Subsection 8(a), and except to the extent waived by Town prior to the Closing, the obligation of Town to proceed to the Closing is subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection.
  - (i) There is no continuing breach by Developer of this Agreement.
  - (ii) Town has obtained all necessary approvals for, and has determined that it will be able to sell any instruments required for, the availability of the Available Funds, including, but not limited to, legislative approval.
  - (ii) All of the representations and warranties of Developer set forth in Section 8 are true and accurate in all respects.
- (d) Condition Failure. If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, the applicable party either may elect to: (a) waive satisfaction of the conditions and proceed to Closing; or (b) terminate this Agreement, as it relates to that respective Project, by a written notice to the other party; provided that, with respect to breaches of this Agreement by a party, the other party shall have the rights and remedies set forth in Section 13. Notwithstanding anything to the contrary set forth herein, Developer and Town shall work diligently and in good faith to satisfy the conditions set forth in this Section.

### 9. Representations and Warranties.

- (a) Town. Town represents and warrants that: (i) it is a public body organized and existing under the laws of the State of Indiana; (ii) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) it has the power to enter into this Agreement and to perform its obligations hereunder; (iv) it has been authorized by proper action to execute and deliver this Agreement, and to perform its obligations hereunder; and (v) this Agreement, once executed, is its legal, valid, and binding obligation.
- (b) Developer. Developer represents and warrants that: (i) it is a corporation organized and existing under the laws of the State of Indiana; (ii) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) it has the power to enter into this Agreement and to perform its obligations hereunder; (iv) it has been

authorized by proper action to execute and deliver this Agreement, and to perform its obligations hereunder; (v) this Agreement, once executed, is its legal, valid, and binding obligation; (vi) there is no legal proceeding in process, pending, or overtly threatened or publicly announced, that could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement; (vii) the Developer has carefully reviewed the whole of this Agreement and all Laws and as taken all steps it considers reasonably necessary to satisfy itself that nothing contained herein inhibits or prevents the Developer from developing the Project in accordance with this Agreement; (viii) it is in compliance in all material respects with the Laws applicable to Developer's business and services.

(c) Continuing Accuracy of Developer Representations. During the Term, the Developer shall not take any action, or omit to perform any act, that results in a representation and warranty made in this Section 9 becoming untrue. Developer shall promptly notify the Town if any such representation and warranty becomes untrue.

### 10. Plan Refinement Process.

- (a) Design Considerations. The design of the Project undertaken and performed by the Town and its Engineer of Record shall be undertaken by a design team exercising such degree of care, skill, and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature, and complexity to the design, as of the date of this Agreement.
- (b) Approvals. Developer, at its cost and expense, shall submit to Town for its approval, the Construction Schedule, and the GMP Report for the Project. Within ten days after Town receives the Construction Schedule, and GMP Report, Town shall deliver to Developer written notice of approval or rejection of the submitted documents, or schedule; provided that, in the case of a rejection, such notice shall: (i) specify the part or parts that the Town is rejecting; and (ii) include the specific basis for such rejection. Upon approval of each of the Construction Schedule, and the GMP Report, the respective Construction Schedule, and GMP Report, respectively, shall be final, subject to modifications by Change Orders. As of the effective date of this Agreement, the GMP Report and Construction Schedule are approved by the Town, and attached hereto and incorporated herein as Exhibit D & F.
- (c) Re-submissions. If, at any stage of the Plan Refinement Process, Town rejects any drawings, documents, or schedules, then, within ten days after Developer receives notice from Town of such rejection, Developer shall revise, and submit to Town, the applicable drawings, documents, or schedules. Within ten days after Town receives the resubmitted drawings, documents, or schedules, Town shall deliver to Developer written notice of approval or rejection; provided that, in the case of a rejection, such notice shall: (i) specify the part or party that Town is rejecting; and (ii) include the specific basis for such rejection. Upon approval of the resubmitted drawings, documents, or schedules, the resubmitted drawings, documents, or schedules shall become part of the Final Plans subject to modifications by Change Orders.
- (d) Final Plans. Upon completion of the Final Documents and Drawings through the Plan Refinement Process, the aggregated Final Documents and Drawings shall constitute the complete Final Plans, subject to modification by Change Orders. All references herein to the Final Plans shall be deemed to be references to the Final Documents and Drawings, until such time as all of the Final Documents and Drawings are completed; provided that, when all of the Final Documents and Drawings are completed, all references herein to the Final Plans shall be deemed to be references to the Final Plans, as modified by Change Orders.

#### (e) Budget/Costs.

(i) As of the Effective Date, Developer has established the Project Budget for the Project and committed to the delivery of the Project in accordance therewith.

The Project Budget shall be submitted by Developer and approved by the Town within the GMP Report.

- (ii) The Project Budget shall be the Final Project Budget for the Project, subject to modifications by Change Orders. Final approval of the Project Budget by Town shall be evidenced by issuance of the Notice to Proceed.
  - Notwithstanding any other provision of this Agreement and unless otherwise set forth in the Project Development Proposal, the Project Budget shall not include any costs related to the mitigation or remediation of environmental or geotechnical conditions existing on, in, or at the Project Site prior to the commencement of construction by Developer, unless such funds related to unforeseen environmental or geotechnical conditions have been released by Town to Developer. In the event that Developer identifies any potential environmental or geotechnical issues at the Project Site, Developer shall: (A) immediately cease construction activity; and (B) provide written notice to Town of such environmental Town shall, within 30 days of such written notice, commence condition. remediation of such environmental or geotechnical condition, unless otherwise negotiated by the parties in an approved Project Development Proposal. The cost of such remediation shall be at the sole expense of the Town, unless otherwise negotiated by the parties in an approved Project Development Proposal. The Substantial Completion Date for such Project shall be extended on a day for day basis for every day construction is delayed by Town remediation activity, unless otherwise negotiated by the parties in an approved Project Development Proposal.

### (g) Sales Tax.

- (i) As soon as reasonably is practicable, Developer shall submit the Construction Contract for the Project to Town for its review.
- (ii) Promptly after Town's receipt of the executed Construction Contract from Developer, Town shall deliver the Sales Tax Exemption Form to Developer at the notice address set forth in the Construction Contract.
- (iii) Upon any assessment, or threatened assessment, of Indiana sales and/or use tax in connection with the purchase of any materials to construct, install, and/or complete the Project, Developer promptly shall notify Town in writing. From and after receipt of the foregoing notice, Town shall provide such cooperation, information, and assistance as Developer and/or its contractor reasonably shall request.
- (iv) Town shall indemnify and hold harmless Developer and the members, directors, officers, and employees of Developer, from and against any and all Claims arising from, or connected with: (A) the charging of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials incorporated into the Project; and/or (B) any interest and penalties assessed by the Indiana Department of Revenue with respect to the non-payment or late payment of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials to construct, install, and/or complete the Project; including, without limitation, reasonable attorneys' fees and court costs. Town shall not be responsible for the charging of any tax related to Developer's failure to cooperate with any audit or investigation of the Indiana Department of Revenue regarding the Town's sales tax exemption used as part of this Project. The obligations of Town under this clause shall survive the termination of this Agreement.

- (h) Documents. Developer shall maintain: (a) at the Project Site all design and construction documents, including a complete set of record drawings; and (b) electronic access to all such documents through FTP or other project share site reasonably acceptable to Town. These documents shall be available to the Town for reference.
- (i) Ownership of Design. All Final Plans are documents prepared for hire and are the property of the Town, including transfer of all intellectual property rights and all other tangible and intangible property interest.

### 11. Change Orders.

(a) Developer Changes. If Developer desires to make any changes to the Final Plans and/or scope of the Development Work, then Developer shall submit a Change Order Request to Town for review and approval, together with an estimate of any increases or decreases to the approved respective Project Budget that would result from the change proposed in the Change Order Request. Within ten days after Town receives the Change Order Request, the Town and Developer shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such Change Order Request provided that the Town shall have the final authority to reject or accept the proposed Change Request in its sole discretion. I If Town approves a Change Order Request for a change that would result in an increase in the respective Project Budget, then, notwithstanding anything to the contrary set forth herein, the amount of such increase shall be paid by Town as such costs are incurred and in a manner consistent with the current payment procedure. If Town rejects all or any part of the Change Order Request, then such notice shall: (i) specify the part or parts that Town is rejecting; and (ii) include the specific basis for such rejection. If Town approves a Change Order Request, then Developer and Town shall execute a Change Order.

### (b) Town Changes.

- (i) If Town desires to make any changes to the Final Plans or modification of the Development Work, then Town shall submit a Change Order Request to Developer for review and approval. Within ten business days after Developer receives the Change Order Request, Developer shall deliver to Town written notice stating whether the change proposed in the Change Order Request would result in an increase in the respective Project Budget; provided that, if the proposed change would result in an increase, then such notice also shall include an estimate of the amount of the increase.
- (i) If the foregoing notice states that the change proposed in the Change Order Request would not result in an increase in the respective Project Budget, then, within five business days after delivery of such notice, Developer shall deliver to Town written notice that it approves or rejects the Change Order Request; provided that Developer shall not withhold its approval unreasonably.
- (iii) If the foregoing notice states that the change proposed in the Change Order Request would result in an increase in the respective Project Budget, then: (A) such notice also shall include an estimate of the amount of the increase; (B) within five business days after receipt of such notice, Town shall provide written notice to Developer as to whether Town would like to withdraw the Change Order Request. If Town does not elect to withdraw the Change Order Request, then, within five additional business days, Developer shall deliver to Town written notice that it approves or rejects the Change Order Request; provided that Developer shall not withhold its approval unreasonably.
- (iv) If Developer approves a Change Order Request, then Developer and Town shall execute a Change Order. If the approved Change Order Request is for a change that will result in an increase in the Project Budget, then,

notwithstanding anything to the contrary set forth herein, the increase in the Project Budget shall be paid by Town in accordance with Section 10(a); provided that, in no event shall Developer have any obligations with respect to the payment of the amount of such increase.

- (v) If Developer rejects all or any part of the Change Order Request, then such notice shall: (A) specify the part or parts that Developer is rejecting; and (B) include the specific basis for such rejection.
- (vi) Notwithstanding any other provision of this Section, the Developer may pre-approve the cost of certain Town Change Order Requests, by including reference and the proposed amount of such Change Order Request within the GMP Report. For the avoidance of doubt, Town shall have the right to exercise any Change Order Request without further approval of Developer at the cost included within the GMP Report upon such Change Order being expressly referenced within the GMP Report.
- (c) Permitted Change. Notwithstanding anything to the contrary set forth herein: (i) Developer shall not be required to obtain the approval of Town with respect to a Permitted Change; and (ii) a Change Order with respect to a Permitted Change shall be effective if executed only by Developer.

#### 12. Construction.

- (a) Permits. Prior to commencing construction of the Project, Developer shall obtain and submit to Town for its review the Required Permits.
- Construction. Developer shall construct the Project: (i) in a good and workmanlike manner; (iii) in accordance with the Final Plans (as modified by any Change Orders) and the terms and conditions of this Agreement; (iii) in compliance with the Laws and the Required Permits; (iv) and provide the Town with a warranty that: (A) the materials and equipment furnished will be of good quality and new unless the Final Plans require or permit otherwise; and (B) the Project has been constructed in compliance with the Final Plans; (v) provide the Town with as-built Plan and to the extent granted to Developer, grant to Town a license to use such Final Plans in the use, occupancy, operation, maintenance, repair, alterations, and additions to the Project; and (vi) provide the Town with an assurance that the Developer will, for a period of one (1) year from the date of Substantial Completion of the Development Work for the Project, correct or commence and continue a satisfactory correction of any Nonconforming Work within 7 days after receipt of written notice from the Town to do so, unless the Town has previously given Developer written acceptance of such Nonconforming Work, provided a Latent Defect in such previously accepted Nonconforming Work shall not have been deemed accepted unless such Latent Defect is expressly identified in such written acceptance. If the Town fails to: (i) notify the Developer of alleged Nonconforming Work with the one-year period; and (ii) provide the Developer the cure period described herein to correct the Nonconforming Work; then Town waives the right to require correction of the Nonconforming Work by the Developer and waives the right to make a claim for breach of the Developer's obligations under this section of the Agreement. If the Developer fails to correct Nonconforming Work within such time as prescribed above, the Town may: (i) correct the Nonconforming Work; and (ii) submit an invoice for reimbursement of the costs associated with such cure of the Nonconforming Work, which shall be paid by Developer within thirty (30) days of submission thereof. Notwithstanding any provision contained herein, restrictions on the length of warranties shall only apply to labor and/or workmanship. Developer acknowledges that it shall assign to Town the respective manufacturer's warranties, without limitation to time period. The provisions of this Section shall survive termination of this Agreement.
- (c) Safety and Security. Developer shall maintain safety at the Project Site during the term and security at the Project Site during the period of the Development Work at a level consistent

with the standards for such similar projects in the immediate geographic area. Without limiting the foregoing, Developer shall:

- (i) take all necessary precautions for the safety and security of the Development Work and provide all reasonable protection to prevent damage, injury, or loss for: (A) workers at and visitors to the Project Site; (B) passersby, neighbors, and adjacent properties; and (C) materials and equipment under the care, custody, or control of Developer or its subcontractors on the Project Site;
- (ii) establish and enforce all necessary safeguards for safety and protections, including posting danger signs and other warnings against hazards;
- (iii) implement a comprehensive safety program in accordance with the Laws;
- (iv) give all notices and comply with the Laws relating to the safety of persons or property or their protection from damage, injury, or loss;
- (v) operate and maintain all equipment in a manner consistent with the manufacturer's safety requirements;
- (vi) provide for safe and orderly vehicular movements;
- (d) Operation. Developer shall operate the completed Project during the Operating Period; provided that Town shall be responsible for the direct payment of all costs and expenses incurred in connection with such operation and Developer shall have no obligation to make any payment related to the operation of the Project during the Operating Period, unless otherwise agreed to by the parties in an approved Project Development Proposal. Notwithstanding the foregoing, the Parties mutually acknowledge that Developer is not a certified water/wastewater operator, and that nothing contained within this Agreement shall require the same. The Developer and Town agree that the Project shall be operated under the Town's certification.
- (e) Records. Developer shall keep and maintain true, correct, accurate, and complete Books and Records. All Books and Records shall be kept and maintained in accordance with generally accepted accounting principles consistently applied. Town and its attorneys, accountants, representatives, architects, engineers, and consultants at all reasonable times shall have: (i) free access to, and rights of inspection of, the Books and Records; and (ii) the right to audit, make extracts from, and receive from Developer originals or accurate copies of, the Books and Records. Nothing contained in this Section 12(e) shall be construed as making the Books and Records public records under the applicable Laws.
- (f) Bonds. Upon the issuance of the Construction Commencement Notice for the Project and until that Project has: (i) achieved Substantial Completion; and (ii) Developer has demonstrated that all outstanding payments have been made to subcontractors performing work and those persons or entities providing labor, materials and services for the Project, subject to amounts withheld in dispute or in retainage, to the sole satisfaction of the Town; the Bonds for that respective Project shall be in effect. Notwithstanding the obligation of the Developer to provide the Bonds as provided for in this Agreement, the Developer also has an affirmative obligation to timely pay any and all subcontractors, suppliers, laborers, and service and to take all other action necessary to prevent the filing of Liens on the Project Site.
- (g) Warranties of Development Work. Developer shall, for the protection of the Town, obtain from each General Contractor, all subcontractors, vendors, suppliers, and other persons from which Developer procures structures, improvement, fixtures, machinery, equipment, and materials to be incorporated in to the Project such warranties and guarantees as are normally provided with respect thereto and as are required under the Final Plans, each of which shall be assigned to the Town from and after the expiration of the Term to the full extent of the terms thereof. No such warranty

shall relieve Developer of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment, or materials or a failure or refusal of a contractor or supplier to honor its warranty obligations shall be the cause for any increase in the respective Final Project Budget Costs or excuse any non-performance of the Development Work unless such failure is related to a breach of this Agreement by Town.

- (h) Unauthorized Aliens. Developer: (i) shall verify the work eligibility status of all newly-hired employees through the E-Verify Program; and (ii) shall not: (A) knowingly employ, or contract with, an Unauthorized Alien; or (B) retain an employee, or contract with a person, that Developer learns is an Unauthorized Alien. To the extent required by Indiana Code § 22-5-1.7, Developer shall require its contractor and each subcontractor to certify to Developer that, at the time of certification, the contractor or such subcontractor: (i) does not knowingly employ, or contract with, any Unauthorized Aliens; and (ii) has enrolled, and is participating, in the E-Verify Program. Developer shall maintain such certifications on file until the construction contract or the applicable subcontract expires or is terminated.
- (i) No Discrimination. Developer shall not discriminate against any employee or applicant for employment because of race, sexual orientation, gender or gender identity, religion, color, national origin, ancestry, age, disability, or United States Military service veteran status. Developer agrees to, or cause its contractor or its subcontractors to: (i) post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this Subsection; and (ii) state, in all solicitations or advertisements for employees placed or published by or on behalf of Developer, that all qualified applicants will receive consideration for employment without regard to race, sexual orientation, gender or gender identity, religion, color, national origin, ancestry, age, disability, or United States Military service veteran status.

#### 13. Observation.

- (a) Observation. Upon reasonable written notice delivered to Developer, which notice shall specify the portion of the construction to be observed, Town may perform a Permitted Observation. If applicable after a Permitted Observation, Town shall deliver a Non-Compliance Notice to Developer.
- (b) Final Observation. Developer shall deliver to Town a written request for the Final Observation of the Project at least five business days prior to the respective Substantial Completion Date. On or before the later of the date that is five business days after: (i) receipt by Town of such request; or (ii) the respective Substantial Completion Date; Town shall: (i) conduct the Final Observation; and (ii) deliver to Developer, if applicable, a Non-Compliance Notice. Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to Subsection 13(c); Town shall have no further inspection rights pursuant to this Agreement with respect to the Project. Within five business days after Town conducts the Final Observation, Developer and Town shall identify the "punch-list" items. Developer shall complete all "punch-list" items within 60 days after the "punch-list" items are identified.
- (c) Non-Compliance. If Town delivers to Developer a Non-Compliance Notice following an Observation in accordance with this Section or after deemed acceptance as provided for in Section 12(b), then Developer shall correct, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice. All items or components of the Project with respect to which: (i) an Observation is conducted; and (ii) no Material Defects are identified in a timely Non-Compliance Notice; shall be deemed to be accepted by Town.
- (d) Latent Defects. Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by Town pursuant to this Section shall be applicable with respect to any Latent Defects.
- (e) General,

- (i) In connection with any Observation pursuant to this Section, Town shall: (A) comply with all health and safety rules of which Town has been informed that have been established for personnel present on the construction site; and (B) coordinate the observations so that the observations do not interfere with the performance of construction. Developer shall have the right to accompany, and/or have its construction manager accompany, Town during any Observation.
- (ii) An acceptance, or deemed acceptance, by Town pursuant to this Section shall not mean that Town has accepted, or Developer has been relieved of, responsibility for: (A) compliance with the Laws; (B) the proper application of construction means or methods; or (C) correcting any portion of the Project if it later is determined that such portion is inconsistent with the as-built plans as described in Section 11(b) or proper completion of a subsequent portion of the Project.
- (iii) Performance of an Observation by Town shall not relieve Developer of its obligations to obtain all inspections required by the Laws.

#### 14. Disbursements.

- (a) Requests. Upon the receipt from the Developer of a Disbursement Request with respect to the respective Project Costs (including the required accompanying documents and in the form attached hereto as Exhibit E), Town shall request that the Disbursement Agent or the Trustee, as the case may be, disburse a corresponding amount of Available Funds to parties identified in the Disbursement Request pursuant to the terms and conditions of the Disbursement Agreement and/or the Trust Indenture, as the case may be, which may include the Developer if: (i) the Developer has previously paid costs identified in the Disbursement Request; or (ii) the Developer is owed fees, other expenses, or unused contingency pursuant to the respective Project Budget; provided that, the Town shall have the right to withhold payment of any amount in dispute, and/or in an amount reasonably sufficient to protect itself from a continuing Event of Default by Developer that is occurring beyond the applicable cure period.
- (b) Frequency. Town shall make monthly progress payments to Developer on the basis of Developer's Disbursement Request. All such payment will be measured by the Project Schedule, as approved by Town in connection with the GMP Report. Town shall not be required to disburse Available Funds more frequently than monthly.

### 15. Insurance.

(a) Insurance Policies. During construction of the Project and terminating upon the respective Substantial Completion Date, Developer shall maintain the policies of insurance, including but not limited to Builder's Risk, General Commercial Liability, and Workers Compensation, reflected on the certificate attached hereto as Exhibit B. Each such policy shall be written by a company reasonably acceptable to Town, and Developer shall provide notice of any intended modification to, or cancellation of, such policy to Town at least 30 days in advance. The policies of insurance required by this Section to be maintained by Developer shall name Town as an additional insured except Workers Compensation and Professional Liability. Developer shall deliver to Town certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies.

(b)

### 16. Key Personnel.

- (a) Key Personnel Identified. Developer shall make commercially reasonable efforts to retain, employ, and utilize the individuals specifically identified in Exhibit C to fill the corresponding positions listed therein for the Initial Project. Key Personnel for subsequent Projects shall include the individuals set forth as such in the approved Project Development Proposal. Developer shall not change or substitute such individuals except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment, or as otherwise approved by the Town pursuant to Subsection 16(b).
- (b) Replacement. Developer shall provide notice to the Town of any proposed replacement for any Key Personnel positions. The Town shall have the right to review the qualifications and character of each individual to be appointed to a key personnel position (including, personnel employee by contracts to fill any such position) and to state any basis for disapproving Developer's use of such individual in such position prior to the commencement of any services by such individual.
- (c) Commitment to Project. Developer shall cause each individual filling a Key Personnel position to dedicate the full amount of time necessary for the proper prosecution and performance of the Development Work. Developer shall commit each of the Key Personnel identified in Exhibit C or an approved Project Development Proposal, as the case may be, to the respective Project such as to reasonably ensure that all such individuals shall be able to fulfill their respective duties on the Project.
- 17. Transfer. Upon the: (a) expiration of the applicable Operating Period; or (b) a termination of this Agreement pursuant to Section 22; Developer and Town shall execute the Transfer; provided that, a Transfer executed for the expiration of the applicable Operating Period shall only apply to the Project for which the Operating Period is expiring. At the Transfer, the following Project Documents and instruments shall be executed and delivered:
  - (a) any documents reasonably required by Town to evidence the conveyance of the Project to the Town or its designee;
  - (b) a confirmation by each of Developer and Town of the applicable representations and warranties set forth in Section 8;
  - (c) "as-built" drawings, in the form of marked-up drawings maintained by Developer or its subcontractors showing significant or material changes or deviations made from the respective Final Plans during construction. Developer shall compile a set of final drawings, incorporating the "as-built" information from the "as-built" drawings provided to it. Town shall be entitled to assume the information provided on the "as-built" drawings to be reliable and to accurately reflect the actual, as-built conditions of the Development Work so depicted;
  - (d) copies of such resolutions, consents, authorizations, and other evidence as either party reasonably may request to establish that: (i) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action of Developer or Town, as the case may be; and (ii) the execution and delivery of such documents, and the performance by Developer or Town of its obligations hereunder and under the foregoing documents, have been authorized by Developer or Town, as the case may be; and
  - (e) such other customary documents and instruments as either party reasonably may request in connection with the Transfer.

#### 18. Default.

(a) Events of Default. It shall be an "Event of Default" if either party fails to perform or observe any term or condition of this Agreement to be performed or observed by it: (i) with respect to the

obligation to pay money, if such failure is not cured within ten days after such payment is due; and (ii) with respect to any other obligation, if such failure is not cured within the Cure Period.

- (b) Remedies. Whenever an Event of Default occurs, the non-defaulting party may take such actions at law or in equity as are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement (including, without limitation, reasonable attorneys' fees and court costs), then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses (including, without limitation, reasonable attorneys' fees and court costs), together with interest at the rate of 10% per annum.
- (c) No Remedy Exclusive. No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Section or by the Laws.
- (d) Waiver. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.
- (e) No Special, Consideration, or Punitive Damages. In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other party any special, incidental, consequential, punitive, or similar losses of damages based upon claims arising out of or in connection with the performance or nonperformance of its obligations or otherwise under this Agreement, or any representation made in this Agreement being materially incorrect, whether such claims are based upon contract, tort, negligence, warranty, or any other legal theory. This Section shall not limit the recovery of any such losses or damages under Section 19 (Mutual Indemnification) in respect of claims by third parties.
- (f) Failure to Meet Schedule. If Developer does not obtain Substantial Completion of each respective Project by the earlier of the Substantial Completion Date, as specified in the approved Project Schedule, if applicable, and subject to Force Majeure, such failure shall constitute an Event of Default, with such Event of Default continuing each day until the respective Project is substantially complete. Developer acknowledges that failure to reach substantial completion by such date will have a material impact on the Town. For the purposes of this Subsection (f), "substantially complete" shall mean the issuance of a certificate of substantial completion by the respective Project engineer which indicates that the Project has been substantially completed in accordance with the Final Plans, subject to "punch-list" items to be identified in connection with the Final Observation, which "punch-list" items do not materially affect the use of the Project for its intended use. Any damages (whether actual or liquidated) resulting from such failure to achieve Substantial Completion for the Project shall not exceed an aggregate amount equal to 1% of the amount paid to Developer by the Town.

#### 19. Mutual Indemnification.

- (a) Developer. Developer shall indemnify and hold harmless Town from and against any and all Claims arising from or connected with: (i) mechanics' liens filed against the Project or the Project Site for work performed by Developer or any party acting by, under, through, or on behalf of Developer but only to the extent that Town has paid all amounts due and not in dispute to the Developer; (ii) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iv) the negligence or willful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; or (v) the breach by Developer of any term or condition of this Agreement, including but not limited to the failure of Developer to timely pay subcontractors, suppliers, laborers and service providers.
- (b) Town. Town shall indemnify and hold harmless Developer from and against any and all Claims arising from or connected with: (i) the negligence or willful misconduct of Town or any party acting by, under, through, or on behalf of Town; or (ii) the breach by Town of any term or condition of this Agreement.

Notwithstanding anything to the contrary set forth herein, the obligations of the parties under this Section shall survive the termination of this Agreement.

- 20. Assignment. Neither Town nor Developer shall assign this Agreement without the prior written consent of the other party, provided that: (a) without the prior written approval of Developer, Town may assign this Agreement to another agency or instrumentality of the Town that is legally able to perform the obligations of the Town hereunder; and (b) without the prior written approval of Town, Developer may assign this Agreement to any entity in which the principals of the Developer hold a controlling interest. Notwithstanding any assignment permitted under this Section, Developer or Town, as the case may, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release Developer or Town, as the case may be, from such performance.
- 21. Notice. Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Developer at [8802 North Meridian, Indianapolis IN 46260], Attn: John Dettman (VP of Operations), with a copy to Town at 49 N. Wayne Street, Danville, Indiana 46122, Attn: Town Manager, with a copy to Taft Stettinius & Hollister, One Indiana Square, Suite 3500, Indianapolis, Indiana 46204, Attn: Cameron Starnes. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.
- **22. Termination.** If this Agreement terminates pursuant to the terms and conditions of this Agreement, Developer shall: (a) assign to Town its right, title, and interest in and to the Final Plans and the materials obtained by it in connection with the due diligence undertaken by Developer, if any, which rights, title, and interest shall not prohibit Town from using the Final Plans and materials in connection with the construction of the Project; and (b) in accordance with the terms and conditions of this Agreement, cause and complete the Transfer; within 10 days of notice of such termination.
- 23. Authority. Each undersigned person executing this Agreement on behalf of Developer and Town represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of Developer and Town, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement have been authorized by Developer and Town, respectively.
- 24. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or

condition of, this Agreement as a result of Force Majeure; then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

**25.** Taxes. Town shall be solely responsible for, and shall pay and discharge when due all taxes, assessments, and other governmental charges that are lawfully imposed upon the Project Site, the Project, or any party thereof.

### 26. [Intentionally Deleted.]

- 27. Non-Discrimination. In accordance with Indiana Code § 22-9-11-10, the Developer shall not discriminate against any employee or applicant available for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, and conditions or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, or ancestry.
- **28. Dealings with Iran.** In accordance with Indiana Code § 5-22-16.5, by executing this Agreement, Developer certifies that Developer is not engaged in investment activities with Iran.

### 29. Debarment and Suspension.

- (a) Developer 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. The term "principal" for the purposes of this Section means an officer, director, owner, partner, key employee, or other person with primary or supervisory responsibility, or a person who has a critical influence or substantive control over the operations of the Developer.
- (b) Developer 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 the use of a suspended or debarred subcontractor. Developer shall immediately notify the Town if any subcontractor becomes debarred or suspended, and shall, at the Town's request, take all steps required by the Town to terminate Developer's contractual relationship with the subcontractor for work to be performed under this Agreement.
- **30. Ownership of Project.** The Project and Project Site shall be owned by the Town at all times. Developer shall not have any legal, equitable, or other ownership interest in any Project.
- 31. Relationship of the Parties. Developer is an independent contractor of the Town and the relationship between the parties shall be limited to performance of this Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Agreement shall be deemed to constitute either party a partner, agent, or legal representative of the other party. No liability or benefits, such as worker compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract employee as a result of this Agreement or the performance thereof.
- 32. Developer Assumption of Risk. Except to the extent expressly allocated to the Town or otherwise provided for under this Agreement, all risks, costs, and expenses in relation to the performance by the Developer of the obligations under this Agreement are allocated to, and accepted by, Developer as its entire and exclusive responsibility.

- 33. Actions of the Town in its Governmental Capacity. Nothing in this Agreement shall be interpreted as limiting the rights and obligations of the Town (or any department or agency thereof) under the Laws in their governmental capacity.
- **34. Wages.** Nothing in this Agreement shall require Davis Bacon or prevailing wages, unless otherwise expressly included within an approved Project Development Proposal.
- 35. Tariffs/Impositions/Trade Restrictions. Any tariffs, impositions, or trade restrictions on materials or equipment that result in a material price escalation and that are not in place at the time of the Project Development Proposal being approved shall cause a Force Majeure event, which Force Majeure event shall last the duration of that the tariff, imposition, or trade restriction causes a material price escalation on such materials or equipment.
- Miscellaneous. Subject to Section 17, this Agreement shall inure to the benefit of, and be binding 36. upon, Developer and Town, and their respective successors and assigns. This Agreement constitutes the entire agreement between Developer and Town with respect to the subject matter hereof, and may be modified only by a written agreement signed by both Developer and Town. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. Whenever in this Agreement a singular word is used, it also shall include the plural wherever required by the context and vice versa. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hendricks County, Indiana, or the federal courts with venue that includes Hendricks County, Indiana. Developer and Town waive, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Developer may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, Developer and Town have executed this Public Private Agreement (Phase 1 – Eastside Interceptor Sewer Capital Improvements Project BOT) as of the date set forth above.

DEVELOPER:
[Bowen Engineering Corporation]
By: Clf M
Printed: CHRIS L- MANGES
Fillited. Official of Hymoto-
Title: OPERATIONS MANAGER

[Public Private Agreement (Phase 1 – Eastside Interceptor Sewer Capital Improvements Project BOT) – Developer Signature Page]

TOVVN:
Town of Danville, Indiana
Ву;
Printed:
Title:

[Public Private Agreement (Phase 1 – Eastside Interceptor Sewer Capital Improvements Project BOT) – Developer Signature Page]

### **INDEX TO EXHIBITS**

Exhibit A Depiction of Project Site

Exhibit B Required Insurance Coverages (Developer)

Exhibit C Key Personnel (PM Resume)

Exhibit D Project Schedule

Exhibit E Form of Disbursement Request

Exhibit F Final Documents and Drawings and GMP Report

### **EXHIBIT A**

### **Depiction of Project Site**

#### **EXHIBIT B**

### Required Insurance Policies (Developer)

### 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.

### 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.

### 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;

### 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;

### 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.

### **Excess Liability**

Excess or umbrella liability insurance with limits of not less than Five Million Dollars (\$5,000,000.00) per project or location aggregate (these limits apply in excess of each of the above-mentioned policies).

### 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.

### EXHIBIT C

### **Key Personnel**



#### Office:

317,842,2616

#### Mobile:

317,697,5615

### Email:

dbernath
@bowenengineering.com



# Dan Bernath Project Manager

### Experience

### **Project Manager**

Bowen Engineering Corporation, 2006-Present

### **Key Projects**

- \$2.8M Shelbyville WWTP & Sewer Improvements (3 GSCs) Shelbyville, IN
- \$8.7M Fishers WWTP & Sewer Improvements (4 GSCs) Fishers, IN
- \$16.7M Plainfield Public Safety Facilities (4 GSCs) Plainfield, IN
- \$8M Cheeney Creek WWTP Expansion Fishers, IN
- \$1.7M Lebanon Utilities Sugar Creek WTP (GSC) Lebanon, IN
- \$0.7M Kokomo WWTP Centrifuge Kokomo, IN
- \$51M Plainfield WWTP & WTP (17 GSCs) Plainfield, IN
- \$1.2M Yorktown Lift Station and Forcemain (GSC) Yorktown, IN
- \$2.1M Bremen WWTP Rehabilitation (GSC) -- Bremen, IN
- \$8M Oak Valley WRF, Illinois American Water Homer Glen, IL
- \$8M Happy Hollow WTF, Indiana American Water West Lafayette, IN
- \$2.5M Columbus WTF (GSC) Columbus, IN
- \$10M Westfield WWTP Expansion Westfield, IN
- \$3.3M Westfield Lift Station (GSC) Westfield, Indiana
- \$1M Westfield Grassy Branch Sewer, Westfield, IN
- \$0.8M Wapakoneta WWTP (GSC) Wapakoneta, OH
- \$6.3M Blucher Poole WWTP, Bloomington, IN
- \$2.5M Dillman Road Pump Station Bloomington, IN
- \$0.7M Dillman Road Disinfection and Dechlorinization Bloomington, IN
- \$2.7M Cloverdale WWTP Cloverdale, Indiana
- \$1M Winchester WWTP (GSC) Winchester, IN
- \$2.6M City of Fishers Hague and Allisonville Road Lift Station Improvements Fishers, IN

### **Project Engineer**

Bowen Engineering Corporation, 1999 - 2006

### Purdue University - West Lafayette, Indiana

B.S. Building Construction Management

### Vincennes University - Vincennes, Indiana

A.S. Land Surveying

A.S. Architectural Drafting

#### **Professional Associations**

Associated General Contractors - Future Leaders Organization

#### **Bowen Achievements**

BEC University 101 & 201

Bowen Leadership Challenge Graduate and Presenter

### Community

Run for Riley Children's Burn Unit - Creator

Disaster Relief Team Leader - White River Christian Church

### **EXHIBIT D**

### Project Schedule

Activity ID	Activity Name	Duration Start	Finish		2024	24			
				May Jun Jul	Aug	Sep	og	Nov	Dec
Danville E	Danville Eastside Interceptor Sewer Improvements	103 15-May-24	09-Od-24						
Admin /	Admin / Milestones	103 15-May-24	09-Oct-24						
A1310	Contract Award	0 15-May-24*		◆ Contract:Award		••••	••••		
A1000	NTP	0 13-Jun-24*		¢ v			••••		
A1400	Culver's Sanitary Active	0	08-Aug-24		◆ Culver's Sanitary Active				
A1010	Substantial Completion	0	27-Sep-24			◆ Sut	Substantial Completion		
A1020	Punchlist	3 07-0ct-24	09-Oct-24			••••	■ Punchlist		
A1030	Final Completion	-	09-Oct-24				◆ Final Completion	uc	
Procurement	nent	20 15-May-24	12~Jun-24				•••		
A1280	24" PVC Pipe PO	H	12-Jun-24	24" PVC Pipe PO		••••		••••	
A1290	Manholes PO	20 15-May-24	12-Jun-24	Manholes PO					
A1300	Bowen Project Setup / Purchase Orders / Subcontracts	-	Ë	Bowen Project Setup / Purchase Orders/ Subcontracts	Orders!/ Subcontracts	••••			
Construction	tion		04-Oct-24			••••			
Site Prepa	ration	9 13Jun-24	25-Jun-24			••••			
A1060	Install Access Roads / Laydown / Erosion Control	3 13-Jun-24	17-Jun-24	Install Access Roads	Install Access Roads / Laydown / Erosion Control		••••	••••	
A1040	Mobilize Equipment / Boxes	3 18-Jun-24	20-Jun-24	■ Mobilize Equipment / Boxes	11 / Boxes				
A1050	Locates / Vac Utilities / Layout	3 18-Jun-24	20-Jun-24	■ Locates / Vac Utilities / Layout	ies / Layout	••••	••••	••••	
A1520	Unload Pipe / Manholes	3 21-Jun-24	25-Jun-24	Unload Pipe / Manholes	Manholes				
Pipe Insta	lation I was a second of the s		02-Oci-24			••••			
A1070	Install Pipe EX1-10 [9LF]	2 26-Jun-24	27-Jun-24	☐ ∫nstall Pipe EX1-10 [9LF]	X1-10 [9LF]				
A1080	Install MH 10	1 28-Jun-24	28-Jun-24	I Install MH 10					
A1090	Install Pipe 10-11 [483LF]	7 01-Jul-24	10-Jul-24	Insta	Install Pipe 10-11 [483LF]	••••	•••		
A1100	Install MH 11	1 11JuF24	11-Jul-24	I Insta	Install MH 11				
A1110	Install Pipe 11-12 [39LF]	1 12-Jul-24	12-Jul-24	I Inst	Install Pipe 11-12 [39LF]	••••	••••		
A1120	Install MH 12	1 15Jul-24	15-Jul-24	_	Install MH 12				
A1130	Install Pipe 12-13 [130LF]	4 16Jul-24	19-Jul-24		Install Pipe 12-13 [130LF]	•••	•••		
A1140	Install MH 13	1 22-Jul-24	22-Jul-24		I Install MH 13			••••	
0010		+	31-JUF24		Install Pipe 13-14 [407LF]	407LF]			
A1160	Install MH 14	+	01-Aug-24		I Install MH 14		•••		
0/11A	Install Pipe 14-15 [80LF]	+	07-Aug-24		Install Pipe 14-15 [80LF]	-15 [80LF]			
ATTSO	Install MH 15	+	08-Aug-24		I Install MH 15:	••••	••••		
71200		4 08-Aug-24	14-Aug-24		Install Pipe	Install Pipe 15-16 [261LF]	•••	•••	
A1230	Install Mr 10	+	15-Aug-24		I Install MH 16	116			
41320	Install MH 17	4 16-Aug-24	27-Aug-24		Instal	Install Pipe 16-17 [246LF]	••••		
A1330		4 22-Aug-24	+		Insta	Install MH 17			
A1340	Install MH 18	╁	29-A110-24		]	I install Pipe 17-18 [255L	5		
A1350	Install Pipe 18-19 [145LF]	5 30-Aug-24	+		;·•	Install Will To	246	•••	
A1360	Install MH 19	+	09-Sep-24			Install MH 19		••••	
A1540	Fine Grade Main St. / Air Test 18-19	1 10-Sep-24	10-Sep-24			Fine Grade Mai	Fine Grade: Main St / Air Test 18-19	σ	
A1370	Install Pipe 19-20 [115LF]	4 11-Sep-24	16-Sep-24			Install Pipe 19-20 [115LF]	3 19-20 M15LFI		
A1380	Install MH 20	1 17-Sep-24	17-Sep-24			I Install MH 20	120	•••	
A1270	Install Laterals	2 19-Sep-24	20-Sep-24			□ Install Laterals	aterals		
A1480	Finish Grade	8 23-Sep-24	02-0d-24				Finish Grade	••••	
A1510	Hydroseed	2 01-0ct-24	02-0d-24			. <u> </u>	Hydroseed		
Second	rew	31 22-Aug-24	04-Oct-24						
Rema	Remaining Level of Effort Remaining Work	Danville Eastsid	e Interceptor Se	Danville Eastside Interceptor Sewer Improvements	000		Ÿ		
Actua	Actual Level of Effort Critical Remaining Work		Proposal Sched	tule		2			
Actua	Actual Work	Run D	Run Date: 07-May-24 Pag	Page 1 of 2			DUWEN		
							1][4		

Activity ID	Activity Name	Duration Start	Finish		2024			9
?			$\dashv$	May Juh		g	Nov	Dec
A1450	Air Test MH EX1 to MH 14	+	+		Air Test MH EX1 to MH 14	MH 14		
A1410	Install Curbs	10 27-Aug-24	+		Install Cur	Install Curps	••••	
A1240	Pave Road Crossings	5 11-Sep-24	-24 17-Sep-24		Pave	Road Crossings		
A1460	Air Test MH 14 to MH 18	1	-			OL CIVIL 14 IN		
A1470	Air Test MH 19 - MH 20	-	-+		₹	Lest MH 19 - MH ZU		
A1430	Fine Grade / Pave / Restore Fairgrounds Entrance	+	+			Tipe Grade / Pave / Restore Fairgrounds Entrance	store rangrounds Emilar	<u></u>
A1530	Mandrel Testing	3 25-Sep-24	5-24 27-Sep-24			Mandrel lesting		••••
A1550	Demob	5 30-Sep-24	-			. Пещор		
			if cife interest and the cife interest and t	Source Improvements		<u>"</u>		
Rer Act	Remaining Level of Effort Remaining Work Actual Level of Effort Official Remaining Work Actual Work A Milestone		stside Interceptor Proposal Sch Run Date: 07-May-24	Danville Easts ide Interceptor Sewer Improvements Proposal Schedule Run Date: 07-May-24 Page 2 of 2		BOWEN		

### **EXHIBIT E**

### Form of Disbursement Request

APPLICATION AND CERTIFICATE FOR PAYMENT TO OWNER: Town of Danville	TIFICATE FOR PAYN	MENT PROJECT:	Danville Easts	Danville Eastside Interceptor Improvemer	APPLICATION NO.	豈
49 North Wayne Street Danville, IN 46122			Job#		PERIOD FROM: PERIOD TO:	* OWNER * ENGINEER  CONTRACTOR
FROM CONTRACTOR: Bowen Engineering Con 8802 N. Meridian Street Indianapolis, IN 46260 CONTRACT FOR: General Construction	neering Corporation idian Street I, IN 46260	VIA ENGINEER:	Banning Engineering 853 Columbia Road S Plainfield, IN 46168	Banning Engineering 853 Columbia Road Suite #101 Plainfield, IN 46168		
CONTRACTOR'S APPLICATION FOR PAYMENT Application is made for payment, as shown below, in connection with the Contract Continuation Sheet is attached.	ON FOR PAYMENT low, in connection with the Contract.			The undersigned Contractor certifie mation and belief the Work coveree in accordance with the Contract D Contractor for Work for which previous the contract for the work for which previous the contract for when the Contract	The undersigned Contractor certifies that to the best of the contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Whork for which previous Certificates for Payment were issued and payment expension from the Contract natural payment where issued and payment expension.	owledge, infor- been completed en paid by the used and pay-
1. ORIGINAL CONTRACT SUM				MORA TOOLOGY GOLD AGENOUS NOG	POWEN ENGINEERING CODE ATION	
2. Net change by Change Orders					EN ENGINEERING CORPORATION	
3. CONTRACT SUM TO DATE		69		By:		Date:
4. TOTAL COMPLETED & STORED TO DATE						
(Column G on Page 2)				State of: Indiana		AMBER CARLTON Nouty Page, State of Industra
5. RETAINAGE: a. 10% of Completed Work (Columns D + E on Page 2)				ro To	of April 2024	Action (Control of Control of Con
b. 10% of Stored Material (Column F on Page 2) Total Retainage (Line 5a + 5b or	ug.		ı	Notary Public: My Commission expires:	Amber Carlton 2/9/2031 HW	Hundon Court
Total in Column I of Page 2)	us l			CONSTRUCTION ADMINIS	CONSTRUCTION ADMINISTRATOR'S CERTIFICATE FOR PAYMENT	IR PAYMENT
6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total)		\$0.00		In accordance with the Contract Comprising this application, the E	In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Engineer certifies to the Owner that to the best of the	tions and the data the best of the
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	DAYM ENT			Engineer's Knowledge, information quality of the Work is in accordan is entitled to payment of the AMOUI	Engineer's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.	d as indicated, the nd the Contractor
8. CURRENT PAYMENT DUE				AMOUNT CERTIFIED		8
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	AINAGE \$ -		ı	(Attach explanation if amount cer all figures on this Application and conform to the amount certified)	(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified)	cd for. Initial e changed to
CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS	IONS	Banning Engineering		
Total changes approved in previous months by Owner			· •	By: Print:		Date:
Total approved this Month	<b>.</b>		,			
NET CHANGES by Change Order	ω, ω			Town of Danville		Date
				Print:		, date,
				This Certificate is not negotiable. T	This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Con-	nly to the Con-
				tractor named nerein. Issuance, prejudice to any rights of the Ow	tractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.	ent are without

### **EXHIBIT F**

### **GMP Report**









### March 26, 2024

**Town of Danville** 49 North Wayne Street Danville, IN 46122

RE: Guaranteed Maximum Pricing

**Eastside Interceptor Sewer Improvements** 

### Mr. Barry Lofton (Director of Utilities):

Bowen Engineering Corporation (Bowen) is pleased to submit a GMP Proposal for the Eastside Interceptor Sewer Improvements.

Pricing is based on drawings dated Feb. 26, 2024 provided by Banning Engineering and site visits.

Sanitary Sewer Construction	Costs:	\$ 2	2,474,842
Construction Contingency:		\$	111,367
Contractor Fixed Fee:		\$	206,896
Total Construction Cost		\$ 2	2,793,105

### **General Proposal Clarifications and Exceptions:**

- 1. Geotech reports have not been provided for this pipeline. From previous visits this area is believed to have a high water table. Bowen has included drilling 29 dewatering wells, installation of a discharge forcemain, and dewatering equipment.
- 2. In an effort to be complete and roadways open prior to the Hendricks County Rib-fest on June 29<sup>th</sup> and the 4-H Fair on July 16<sup>th</sup>, Bowen has included costs to work 5-10's. Holiday and weekend costs are not included.
- 3. Bowen would like to offer the following VE option:
  - a. Elimination of MH 10. This manhole is very close to the existing manhole on the south side of the pipe route. Piping could be modified to run directly from MH 20 into the existing manhole. **Potential saving** = \$26,000.
- 4. Bowen has included costs to install up to five 6" lateral taps utilizing Inserta-Tees. These taps will be brought up to the desired elevation and capped for future connection.
- 5. 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.
- 6. Existing storm inlets and castings, when removed for installation of the new sewer line, will be re-installed in their original position.
- 7. All state and regulatory permits are to be provided by others. Bowen will acquire all local permits as required.
- 8. Bowen will provide the permits needed for the discharge of temporary construction groundwater dewatering systems. This will be acquired via the Owner's Rule 5 permit.









- Dewatering discharge will be taken to the retention pond on the south side of the Walmart parking lot and to the drainage ditch on the south side of Main Street.
- 9. Removal of contaminated soils and treatment of contaminated groundwater, if encountered, has not been included.
- 10. 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.

Respectfully submitted,
BOWEN ENGINEERING CORPORATION

## **Chris Manges Operations Manager**

CC: Teddy Deahl – Bowen Business Development Chris Manges – Bowen Operations Manager Alan Dale – Bowen Project Manager Dan Bernath – Bowen Project Manager Rob Morton – Bowen Sr. Estimator