

WESTVILLE TOWN COUNCIL
OCTOBER 10, 2023
REGULAR MEETING
100 SETSER DRIVE
7:00 P.M.

AGENDA

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

APPROVAL OF CLAIMS

UTILITIES

MCO REPORT

ORD 2023-9, AMENDING ORD 2022-9, USE OF NEW GROUNDWATER WELLS
MCMAHON CONTRACT

STREETS

DEPARTMENT HEAD REPORT

PARKS

POLICE

DEPARTMENT HEAD REPORT

A/C & FURNACE REPLACEMENT QUOTE

FINANCE

MISCELLANEOUS

WVFD ACTIVITY REPORT

CITIZENS COMMENTS

ANY OTHER MATTERS WHICH PROPERLY COME BEFORE THE COUNCIL

ADJOURNMENT

WESTVILLE TOWN COUNCIL

OCTOBER 10, 2023
MINUTES OF MEETING

The regular meeting of the Westville Town Council was held at the Westville Town Complex Community Room, 100 Setser Drive at 7:00 p.m. Present: Michael Albert, Nate Burnett, Deborah Kelly, James Bechinske, Lori Mercer, Clerk-Treasurer; Town Attorney, Doug Beige.

Absent: Olga Pothorski

The Pledge of Allegiance was recited.

A motion was made by Michael Albert to approve minutes of the September, 2023 meeting. James Bechinske, second. Roll Call: Burnett, yes; Bechinske, yes; Kelly, yes; Albert, yes.

A motion was made by Nate Burnett to approve claims for the month of September, 2023. James Bechinske, second. Roll Call: Burnett, yes; Bechinske, yes; Kelly, yes; Albert, yes.

UTILITIES

Michael Albert gave a summary of the MCO report in Nathan Howell's absence. It is attached.

Michael Albert reported Ordinance 2023-9 amends Ordinance 2022-9, Installation and Use of Groundwater Wells. This is related to the settlement agreement with the EPA for the Cam-Or site. The EPA had approved the site but IDEM wanted to look at it as well. They had questions about the map which needed to be amended due to incorrect parcel numbers and maps. Michael Albert read Ordinance 2023-9 by Title Only. Michael Albert made a motion to approve Ordinance 2023-9 on first reading. Deborah Kelly, second. Roll Call: Burnett, yes; Bechinske, yes; Kelly, yes; Albert, yes. Michael Albert made a motion to suspend the rules and adopt Ordinance 2023-9. Deborah Kelly, second. Roll Call: Burnett, yes; Bechinske, yes; Kelly, yes; Albert, yes.

Michael Albert reported that McMahon Associates submitted an agreement to allow engineering services to begin for the expansion of the sewer main from the current lift station to the new facility for the Westville Correctional Facility (WCC) project. The Department of Correction will pay the bill for the new line from the new facility to the brand-new lift station and it will be the Town's line. Michael Albert made a motion to approve the contract from McMahon Associates. James Bechinske, second. Roll Call: Burnett, yes; Bechinske, yes; Kelly, yes; Albert, yes.

Michael Albert reported that the water model system has been completed regarding WCC hooking into the Town's water.

STREETS

There was nothing to report in Streets.



PARKS

There was nothing to report in Parks.

POLICE DEPARTMENT

Chief Corey McKinney reported the monthly stats.

Corey McKinney stated the quote for the new furnace and air conditioner for the police department is \$10,234.00. The current system is 23 years old. Michael Albert made a motion to approve the purchase and installation of the new furnace and air conditioner at the police department to be paid from the ARP fund. Deborah Kelly, second. Roll Call: Burnett, yes; Bechinske, yes; Kelly, yes; Albert, yes.

Terry Scherer submitted a letter of recognition for Corey McKinney's assistance at the fireworks on Sept. 30, 2023.

FINANCE

There was nothing to report in Finance.

MISCELLANEOUS

CITIZENS COMMENTS

ANY OTHER MATTERS THAT COME BEFORE THE COUNCIL

A motion to adjourn was made by Michael Albert at 7:10 PM. Nate Burnett, second. Motion carried.

I, Lori Mercer, attest that these minutes are true and accurate.

Lori Mercer





Midwest Contract Operations

**Town of Westville
September Monthly Report of Operations
Prepared By: Nathan Howell
October 10, 2023**

WATER

New Items

1. There was a water leak on Valparaiso Street on September 3, 2023. We waited until September 5, 2023, to repair it. It was leaking at the service line to the Bomar housing complex. The installation of the service is poor, and the materials are in poor condition. We are planning to have Bowen replace the line. This will require most of Valparaiso Street to be shut down for several hours.
2. We are planning to repair the water service to Bomar in October.
3. We have met with Lori regarding the Lead and Copper Rule requirement for completing a water service line inventory. This is a very time-consuming project. Her staff will be doing much of the work to keep the Town in compliance.

Old Items

1. GIS – Adam is continuing to work on the upgrade to the mapping system. Randy Decker from MCO is helping Adam with this since he is quite familiar with GIS.
2. We have been working with McMahon to complete the water model.

WASTEWATER

New Items

1. We will likely begin the contract with BCR for sludge disposal.

Old Items

1. The Nash Finch Lift Station flow meter will be installed this month.
2. The Westville Estates Pump Station is deteriorating rapidly. We have spoken with McMahon and Superior Pumping to renovate the Station. We are considering installing the used system from the old WWTP. We spoke with Gasvoda who provided pump selections to retrofit the old station with submersible pumps. This information has been given to McMahon for their input.
3. There is still an issue with the mapping system at Fieldstone Subdivision. The sanitary sewer locations on the atlas were wrong on two streets. We found three manholes which two are buried very deep and there may be severe conflicts with fences in the rear lots. We will contact a contractor to assist with this. We had M.E. Simpson on site to assist in locating services and shut off valves. We have found nearly half of the valves which could not be found. We are trying to find a contractor who will bring the manhole lids to grade.

4. We were involved with the sewer connection to the duplex built on Flynn Road across from the grocery store. We are still in the process of rectifying the situation. Charlie Ray is working on a solution.
5. The Coulter Road force main will need to be replaced. We have several ideas for this.
6. The manhole lid on one of the manholes on Flynn Road north of McDonald's broke into pieces. Adam found a lid which fit and sealed it to the frame with mastic. Bowen will replace two lids total. We are waiting for a proposal to replace two frames and lids. Bowen is trying to find the proper frame and lids.
7. The WWTP improvements are continuing. Following is the progress that has been made:
 - The lift station at WCC is about 95% complete with most of the building construction complete.
 - The force main is 99% complete. There are a few punch list items to address.
 - The solids building at the Wastewater Plant is 98% complete.
 - The sludge disinfection/conditioning system has been started up. It is 99% complete.
 - Raw and RAS piping is complete.
 - The splitter box for the new clarifier is complete. The effluent piping tie-in for the new clarifier is complete.
 - The oxidation ditch is completed. Railing, grating and aeration equipment have been installed and is about 85% complete.
 - All of the new aerators are installed, and the outer ring of the oxidation ditch is operational.
 - The old aerators have been reinstalled with the new slides. The walkway modifications are 85% complete.
 - The new headworks building is about 98% complete. Flow is being routed through the new building.
 - The old headworks equipment has been removed.
 - The new clarifier is 95% complete.
 - Both clarifier modifications are complete.
 - The generator has been moved twice, and the new generator is installed is operational.
 - A small shed to house the bypass pump was built and installed so it will work in case the raw pumps fail.
 - The new UV system has been installed.
 - The influent sampling structure is 80% complete.
 - The old aerator installation is 50% complete.
 - The new alum lines are 95% complete.

Town of Westville - Operational Summary for the Wastewater Treatment Plant

Influent

2023	Total Gallons	Flow			BOD		TSS		Ammonia		Phosphorus	
		Max. Daily	Min. Daily	Monthly Avg.	mg/l	#'s	mg/l	#'s	mg/l	#'s	mg/l	#'s
January	6,045,000	239,100	173,900	195,650	154	261	312	519	32.3	52.8	5.8	9.5
February	6,178,300	282,700	170,100	199,300	124	214	346	209	28	46.5	5.6	9.3
March	6,302,900	311,400	179,200	203,900	165	274	335	556	30.1	51.2	5.4	9.2
April	5,625,000	300,000	26,800	187,500	142	266	351	534	29	45.4	5.1	8.0
May	6,379,000	266,100	184,700	205,790	150	255	367	623	26.6	45.8	5.2	6.3
June	6,306,000	241,900	193,300	210,200	108	186	385	672	26.9	47.1	5.1	8.9
July	6,324,100	251,400	178,200	201,100	142	237	412	683	25.65	43	4.85	8.1
August	6,276,000	283,800	180,000	209,200	167	295	445	787	24	41.9	4.5	7.7
September	6,085,300	236,100	160,600	196,300	153	254	307	524	30.8	50.4	.6	8.7
October												
November												
December												

Effluent

2023	Total Gallons	Flow			BOD		TSS		Phosphorus		Ammonia	
		Max. Daily	Min. Daily	Monthly Avg.	Monthly Avg.	% Removed	Monthly Avg.	% Removed	mg/l	% Removed	mg/l	% Removed
January	5,930,800	237,000	156,000	191,32	2.4	98.4	5.5	98.2	.2	96.4	.57	98.2
February	5,480,000	288,000	162,000	195,700	2.1	98.3	4.2	98.8	.2	97	.43	98.5
March	6,180,200	256,800	175,000	199,400	2.7	98.3	6.4	98.1	.3	95	.07	95
April	5,927,100	305,700	131,000	197,600	3.3	97.7	7.3	97.9	.4	91.2	.1	99.7
May	7,229,500	492,300	183,400	233,210	2.5	98.4	8.9	97.6	.1	99.6	.7	85.6
June	6,008,200	245,100	188,500	207,200	2	98.1	4	99	.5	89.5	.52	98.9
July	5,908,300	252,600	171,700	196,600	2.1	98.6	2.7	99.4	.4	92.3	.05	99.8
August	6,211,200	289,900	175,800	207,000	2.3	98.6	4.2	98.5	.5	89.9	.07	99.7
September	5,994,900	365,000	117,600	199,800	2.5	98.4	13.1	95.7	.6	89.1	.09	99.7
October												
November												
December												

Town of Westville – Operational Summary for the Water Treatment Plant

Month Ending	Total Monthly Flow	Maximum Daily Flow	Minimum Daily Flow	Average Daily Flow	Chlorine Usage (lbs.)	Fluoride Usage (lbs.)
01/31/23	4,855,200	255,200	11,000	155,300	68.2	0
02/28/23	4,542,800	235,400	78,500	162,200	67	0
03/31/23	5,261,600	273,800	82,900	169,200	73	0
04/30/23	5,241,000	319,100	0	175,600	69.6	0
05/31/23	6,489,00	314,600	80,000	206,400	86.1	0
06/30/23	6,165,500	391,500	85,300	224,600	84.4	0
07/31/23	6,256,700	312,600	81,800	201,300	76.8	0
08/31/23	4,944,000	272,700	76,700	162,100	64.8	0
09/30/23	4,844,100	272,700	77,200	159,600	71.2	0
10/31/23						
11/30/23						
12/31/23						

ORDINANCE Number 2023-9

AN AMENDED ENVIRONMENTAL RESTRICTIVE ORDINANCE OF THE
COUNCIL OF THE TOWN OF WESTVILLE, INDIANA
REGULATING THE INSTALLATION AND USE OF NEW GROUNDWATER WELLS AND
THE USE OF GROUNDWATER WITHIN A PORTION
OF THE TOWN OF WESTVILLE, INDIANA

WHEREAS, the Town of Westville previously passed Ordinance Number 2022-9 titled, "An Environmental Restrictive Ordinance of the Council of the Town of Westville, Indiana Regulating the Installation and Use of New Groundwater Wells and the Use of Groundwater Within a Portion of the Town of Westville, Indiana" with Exhibits. However, the Exhibits have changed, thus the Town of Westville desires to pass this "Amended Environmental Restrictive Ordinance of the Council of the Town of Westville, Indiana Regulating the Installation and Use of New Groundwater Wells and the Use of Groundwater Within a Portion of the Town of Westville, Indiana" with updated Exhibits. Otherwise the text of this Amended Ordinance remains the same as Ordinance Number 2022-9.

BACKGROUND: Groundwater within a portion of the Town of Westville, Indiana, is contaminated, or is adjacent to groundwater that has been contaminated, as a result of historic industrial activities at property formerly owned and operated by Cam-Or, Inc. ("Cam-Or Property"). The Cam-Or Property is located on State Road 2, west of the intersection of U.S. Highway 421 in the Town of Westville, Indiana. The Cam-Or Property is further identified as consisting of State Parcel Identification Numbers ("PINs") 46-09-29-226-004.000-028, 46-09-29-226-005.000-028, 46-09-29-226-003.000-028, 46-09-29-226-001.000-028, and 46-09-29-226-002.000-028.

The Cam-Or Property, and property where contamination has migrated, became a National Priorities List ("NPL") Superfund site referred to as the Cam-Or Superfund Site ("Site") in 1998. The Site is being remediated by Settling Work Parties with oversight by the U.S. Environmental Protection Agency ("U.S. EPA") and the Indiana Department of Environmental Management ("IDEM") as required by a consent decree for Remedial Design/Remedial Action entered on March 28, 2011, in the United States District Court for the Northern District of Indiana in the case entitled *United States and State of Indiana v. Alcoa, Inc., et al.*, Case No. 3:10-cv-00532, ("Consent Decree"). Information regarding the Site may be found on the IDEM's Virtual File Cabinet website at <https://vfc.idem.in.gov> under Agency Interest ID number 32885 which provides access to view all IDEM Cam-Or documents or enter 7500068 in the Full Text Search field to view only Cam-Or Superfund documents.

This Ordinance seeks to control the use of groundwater that has been contaminated by hazardous substances within the Town of Westville. It seeks to protect human health by restricting unacceptable exposure to hazardous substances, contaminants, and pollutants in the groundwater. The Town Council has the authority to enact such an Ordinance pursuant to Indiana Code ("IC") §36-1-2-4.7.

1. **DEFINED TERMS** – As used in this Ordinance, terms shall have the following meanings:
 - a. “Subject Area” shall mean the real property depicted in **Exhibit A** and more specifically defined and described by State PINs in **Exhibit B**.
 - b. “Effective Date” shall mean the date that this Ordinance is enacted.
 - c. “Existing Water Well” shall mean a Water Well located in the Subject Area in existence on or before the Effective Date, including a Water Well in existence on or before the Effective Date which came to be within the Subject Area after the Effective Date.
 - d. “Groundwater Sample Results” means groundwater sampling performed by the Settling Work Parties in accordance with the Consent Decree or groundwater sampling performed by an Owner in accordance with a U.S. EPA-approved quality assurance plan and by a U.S. EPA-certified laboratory.
 - e. “Owner” shall mean the holder of an interest in real estate in the Subject Area that has an Existing Water Well.
 - f. “Prohibited Water Well” shall mean: (1) any Water Well located in the Subject Area installed after the Effective Date, or (2) any Existing Water Well contaminated by Site hazardous substances, pollutants or contaminants above the Site Specific Groundwater Cleanup Levels and that has not been properly closed per 312 Indiana Administrative Code (“IAC”) 13-10-2.
 - g. “Settling Work Parties” shall mean those parties identified as Defendants in the Consent Decree.
 - h. “Site Specific Groundwater Cleanup Levels” for groundwater chemicals of concern were established as a result of the U.S. EPA’s detailed Record of Decision, issued in June 2008. The Site Specific Groundwater Cleanup Levels are provided at Table L-4 in the June 2008 Record of Decision and were incorporated by reference in the Consent Decree and its statement of work at Appendix B, to identify the commitments of the Settling Work Parties thereunder, as modified by the Settling Work Parties’ Pre-Design Investigation Report reviewed and approved via letter dated October 12, 2021. The Site Specific Groundwater Cleanup Levels, as modified consistent with the Appendix B to the Consent Decree through the background studies, are provided in **Exhibit C** to this Ordinance and may be updated after adoption of this Ordinance in accordance with Section 8 of this Ordinance.

- i. "Variance Well" shall mean any well that would otherwise be a Prohibited Water Well but for receiving a variance from the Town of Westville consistent with Section 2 of this Ordinance.
- j. "Water Well" shall mean any encased excavation that derives water from below ground surface intended to supply water for any use. The term Water Well does not include dewatering wells for remediation cleanup projects, or wells installed for the purpose of environmental investigation or monitoring.

APPLICABILITY: This Ordinance applies only to the Subject Area.

PURPOSE: Adoption of an environmental restrictive ordinance by the Town of Westville is necessary in order to protect the public health and safety of residents living in the Subject Area to ensure that no person withdraws, consumes, or otherwise uses or exposes others to contaminated groundwater.

AUTHORITY: The Council of the Town of Westville, as the legislative body of a municipal corporation, may adopt an environmental restrictive ordinance as defined in IC §36-1-2-4.7 and §13-11-2-71.2 that limits, regulates, or prohibits withdrawal, human consumption, and any other use of groundwater.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Westville, as follows:

2. PROHIBITIONS OF NEW WATER WELLS WITHIN THE SUBJECT AREA – No person, including, but not limited to, any corporation, partnership or association, shall allow the installation of, drilling, or otherwise installing of a new Water Well, or modify or cause to be modified an Existing Water Well, as defined in this Ordinance, within the Subject Area after the Effective Date. A variance to this prohibition in Section 2 of this Ordinance may be requested in writing for a modification of an Existing Water Well located within the Subject Area but also located outside the Buffer identified on **Exhibit A**; provided, however, any such request shall include sampling data that demonstrates that each contaminant is below the Site Specific Groundwater Cleanup Level listed in **Exhibit C**. Such variance request shall be submitted by Owner to the Town of Westville and shall be subject to written approval by the U.S. EPA and IDEM in addition to the Town of Westville. If such variance is approved by the Town of Westville, U.S. EPA, and IDEM, the Owner of the Prohibited Water Well receiving said variance ("Variance Well") shall then be subject to the Existing Water Well provisions of this Ordinance.

3. PROHIBITIONS AGAINST USE OF EXISTING WATER WELLS WITHIN THE SUBJECT AREA – No person, including, but not limited to, any corporation, partnership or association, shall operate an Existing Water Well within the Subject Area to withdraw, consume, or otherwise use groundwater unless the Owner submits to the Town of Westville, within 90 days of the Effective Date of this Ordinance, and continues to annually submit, Groundwater Sample Results from the Existing Water Well that demonstrate each contaminant is

below the Site Specific Groundwater Cleanup Level listed in the Table in **Exhibit C**. If Groundwater Sample Results for an Existing Water Well indicate any contaminant levels above Site Specific Groundwater Cleanup Levels, then, within 180 days of the Owner's receipt of such sample results, the Owner – or if the Owner submits a written request in compliance with Section 7 of this Ordinance to the Settling Work Parties and enters into a written agreement with the Settling Work Parties that also provides access to the Settling Work Parties, IDEM, and EPA for the purpose of closing the well, then the Settling Work Parties – shall close the Existing Water Well per 312 IAC 13-10-2. Failure to close the Existing Water Well within 180 days of the receipt of any Groundwater Sample Results above the Site Specific Groundwater Cleanup Levels, causes the well to be a Prohibited Water Well and subjects the Owner to enforcement under Section 4 of the Ordinance until the conditions are corrected.

4. **ENFORCEMENT OF PROHIBITED WATER WELL** – The Town Council of the Town of Westville is authorized to enforce this Ordinance and to collect any fines generated as a result of violations of this Ordinance. Each day that a violation continues or remains uncured shall constitute a separate offense. Violations of this Ordinance shall be punishable by a fine not to exceed Two thousand Five Hundred (\$2500.00) per day. Each day after the Effective Date that a Prohibited Water Well remains on a property in the Subject Area is a continuing violation until the Prohibited Water Well is properly closed pursuant to 312 IAC 13-10-2. No enforcement remedy is a prerequisite or a bar to any other remedy. Any enforcement remedy further does not relieve the user of liability for any violation occurring before or after the implementation of any respective enforcement remedy. The Settling Work Parties shall not be subject to any fines under this Section if the Owner fails to close the Existing Water Well or notify, and enter into any necessary agreement with, the Settling Work Parties consistent with Section 3 of the Ordinance.

5. **GROUNDWATER SAMPLING** – To the extent that the Settling Work Parties are relying on this Ordinance as part of any institutional control plan required by the Consent Decree or consistent with any agreement regarding the Site and the Consent Decree that they may enter into with the Town of Westville, the Settling Work Parties have agreed to conduct groundwater sampling and provide Groundwater Sample Results for Owners who request groundwater sampling. Such sampling shall not be required of the Settling Work Parties more often than annually for an Existing Water Well. The Settling Work Parties also shall provide technical support to the Town of Westville in the collection of data from Owners and sending the documentation to IDEM and EPA.

6. **IDEM AND U.S. EPA NOTIFICATION** – The Clerk-Treasurer of the Town of Westville is hereby directed to provide IDEM, and copies to U.S. EPA, the written notice required pursuant to IC § 36-1-6-11 within thirty (30) days after passage of this Ordinance. The IDEM will provide the Town with written notice, pursuant to IC 13-25-5-8.5(f), if IDEM relies on this Ordinance as part of an approved risk-based remediation proposal conducted under IC 13-22; IC 13-23; IC 13-24; IC 13-25-4; or IC 13-25-5. If IDEM provides such notice to the Town, then the Clerk-Treasurer shall also provide IDEM written notice and copies to U.S. EPA, not later than sixty (60) days before any future amendment or repeal of this Ordinance; and with written notice not later than thirty (30) days after any such amendment or repeal of this Ordinance. The Town of Westville shall also provide, on an annual basis, IDEM and U.S.

EPA with copies of Existing Groundwater Wells Groundwater Sample Results. These written notices shall be mailed or delivered to the following addresses:

IDEM, Office of Land
Remediation Services Branch
Attn: Branch Chief
IGCN – Suite 1101
100 N. Senate Avenue
Indianapolis, IN 46204-2251

Remedial Response Branch
Superfund and Emergency Response Division
Attn: Cam-Or NPL Site, Westville, IN
U.S. EPA Region 5 C-6J
77 W. Jackson Boulevard
Chicago, IL 60604

Office of Regional Counsel
Attn: Cam-Or NPL Site, Westville, IN
U.S. EPA Region 5 C-14J
77 W. Jackson Boulevard
Chicago, IL 60604

7. OTHER NOTIFICATIONS – The Clerk-Treasurer of the Town of Westville will also provide the Settling Work Parties with written notice not later than sixty (60) days before any future amendment or repeal of this Ordinance; and written notice not later than thirty (30) days after any such amendment or repeal of this Ordinance. The Town of Westville shall also provide the Settling Work Parties with copies of Groundwater Sample Results taken at Existing Water Wells on an annual basis. Written notices under this section or written requests under Section 3 of the Ordinance shall be mailed or delivered to the following address by a method that provides delivery confirmation, or any revised address provided in writing by the Settling Work Parties or their successors:

Taft Service Solutions Corp.
c/o Cam-Or Superfund Site Extended Group
One Indiana Square, Suite 3500
Indianapolis, Indiana 46204

8. UPDATES TO EXHIBIT C – **Exhibit C** to this Ordinance identifies the Site Specific Groundwater Cleanup Levels the Settling Work Parties are required to achieve under the Consent Decree. In consultation with the Council of the Town of Westville and the Settling Work Parties, U.S. EPA and IDEM may submit written update(s) to the Table of Hazardous Substances, Pollutants or Contaminants which add(s) or remove(s) any Chemical of Concern or increase(s) or decrease(s) a corresponding Cleanup Level or Basis description. Any U.S. EPA and IDEM written update to **Exhibit C** shall be incorporated into and made fully enforceable

under this Ordinance only if such update is completed in accordance with paragraph 13 of the Consent Decree. If any U.S. EPA and IDEM written update to **Exhibit C** is not incorporated into and made fully enforceable under this Ordinance, this Ordinance shall no longer be protective of human health and the environment and no longer be considered part of an approved risk-based remediation proposal conducted under IC 13-22; IC 13-23; IC 13-24; IC 13-25-4; or IC 13-25-5.

9. **AMENDMENTS** – This Ordinance, including modifications to the Subject Area described in **Exhibit A** and **Exhibit B**, may be amended by the Council of the Town of Westville subject to the notification requirements contained in Section 6 and Section 7. Amendments to the Subject Area may also be requested annually by the U.S. EPA and IDEM. All amendments to the Ordinance are subject to prior written approval by the U.S. EPA and IDEM, in consultation with the Settling Work Parties and the Town of Westville. If amended without the prior written approval of IDEM and U.S. EPA, this Ordinance shall no longer be protective of human health and the environment and no longer be considered part of an approved risk-based remediation proposal conducted under IC 13-22; IC 13-23; IC 13-24; IC 13-25-4; or IC 13-25-5.

10. **EFFECT** – This Ordinance supersedes the provisions of any and all written or unwritten ordinances and policies of the Town of Westville that are in conflict with the restrictions described herein. This Ordinance shall be in full force and effect from and after its passage by the Council of the Town of Westville, and its publication, to the extent required by law.

11. **SEVERABILITY** – If any provision of this Ordinance or its application to any person or entity under any circumstances is invalid as determined by a court of competent jurisdiction, such determination shall not affect the validity of the Ordinance as a whole or any portion not deemed invalid.

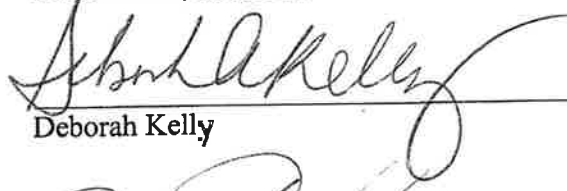
INTRODUCED, FILED AND APPROVED on the first reading by a vote of 4 in favor and 0 opposed on the 10th day of OCT, 2023.

DULY PASSED, ORDAINED, AND ADOPTED this 10th day of OCT, 2023 by the Council of the Town of Westville, Indiana, by a vote of 4 in favor and 0 opposed.

Town of Westville, Indiana



Mike Albert, President



Deborah Kelly



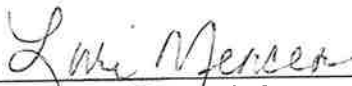
James Bechinske, Vice President

Olga Pecanac

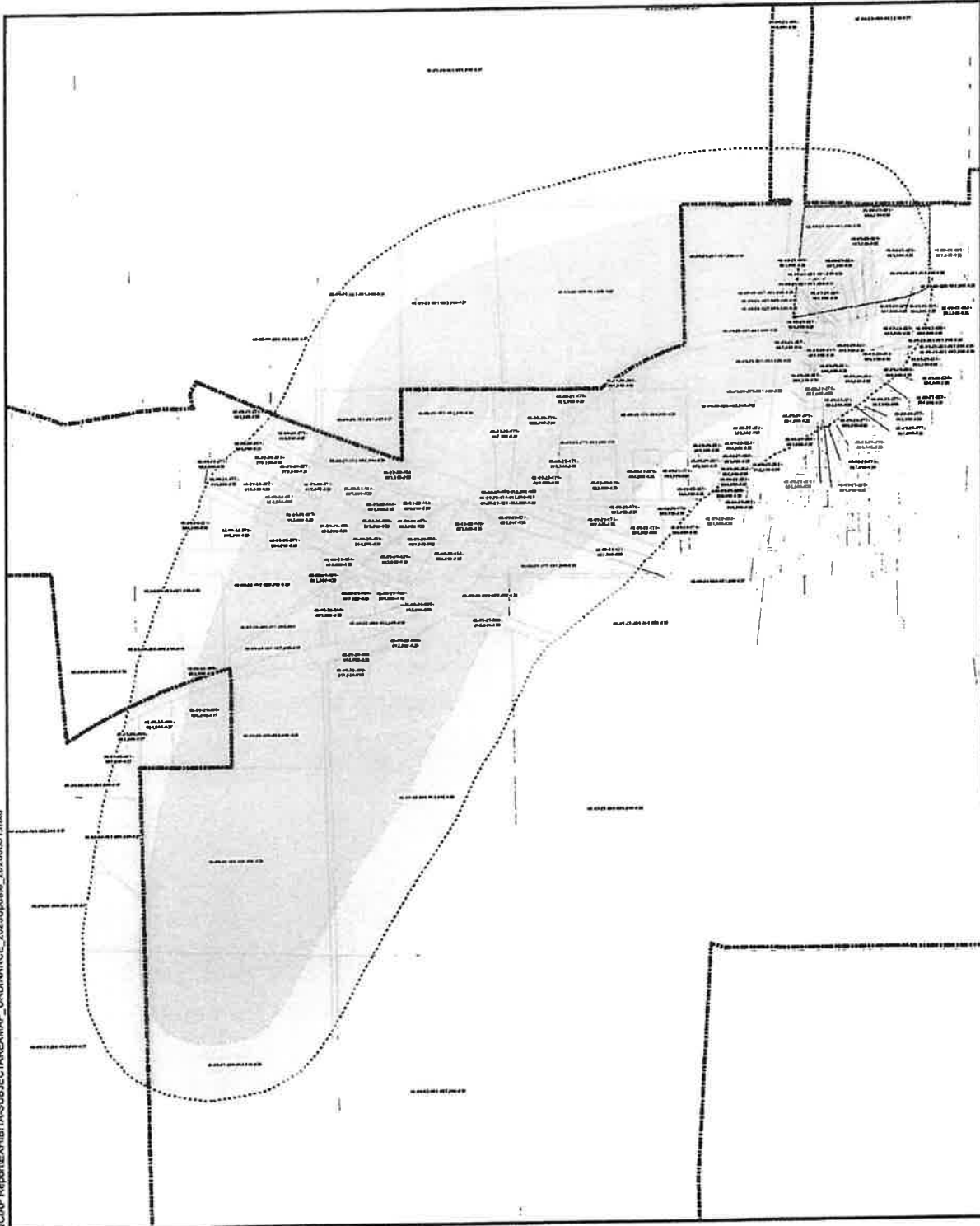


Nate Burnett

ATTEST:



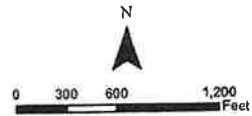
Lori Mercer, Town Clerk



Legend

- Parcel Boundary
- Westville Town Limit
- Site Boundary
- Subject Area - Approximate Extent of Interpretive Plume Corresponding to 4.8 ug/L 1,4-Dioxane
- Subject Area - Inclusive of 400-foot Buffer

Notes:
The Subject Area is subject to change and amendment by the Town of Westville, including from environmental conditions or groundwater sampling results.



Path: I:\CUST\REG\SS\10\bas\US\Projects\A\CAM-OR\MXD\CIPAP Report\EXHIBIT A-SUBJECT AREA MAP_2023\update_20230831.mxd

Drawn By	SRV
CADD Review	TMB
Date Drawn-Revised	8/31/2023



CAM-OR SITE
Subject Area
WESTVILLE
INDIANA

Environmental Resources Management

CHK'D	TMB
	0258036
EXHIBIT A	

Exhibit B
Subject Area Parcel Identification Numbers

Subject Area Parcels Located Within Town of Westville:

46-09-20-400-004.000-028	46-09-29-227-003.000-028	46-09-29-277-004.000-028
46-09-29-151-002.000-028	46-09-29-228-001.000-028	46-09-29-227-006.000-028
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46-09-29-226-001.000-028	46-09-29-276-006.000-028	46-09-30-400-021.000-028
46-09-29-226-002.000-028	46-09-29-276-007.000-028	46-09-30-400-023.000-028
46-09-29-226-003.000-028	46-09-29-276-008.000-028	46-09-30-400-040.000-028
46-09-29-226-004.000-028	46-09-29-277-001.000-028	46-09-30-506-001.000-027
46-09-29-226-005.000-028	46-09-29-277-002.000-028	46-09-31-200-004.000-028
46-09-29-226-007.000-028	46-09-29-277-003.000-028	46-09-32-100-003.000-028

Subject Area Parcels Located Outside Town of Westville Boundary⁽¹⁾:

46-09-20-300-005.000-027	46-09-29-151-001.000-027	46-09-30-400-035.000-027
46-09-20-300-006.000-027	46-09-30-226-005.000-027	46-09-30-400-036.000-027
46-09-20-400-002.000-027	46-09-30-400-004.000-027	46-09-30-400-037.000-027
46-09-29-101-001.000-027	46-09-30-400-005.000-027	46-09-30-400-038.000-027
46-09-29-101-002.000-027	46-09-30-400-020.000-027	46-09-31-200-002.000-027
46-09-29-126-001.000-027	46-09-30-400-034.000-027	

Note:

(1) The Town of Westville's authority to enforce the Environmental Restrictive Ordinance can be found in Ind. Code § 36-1-3-1 to -9; Ind. Code § 36-7-4-205(e); and Ind. Code § 36-8-2-4.

Exhibit C
Site-Specific Groundwater Cleanup Levels

Constituent of Concern	Cleanup Level (µg/L)	Basis
Groundwater - Residential Scenario		
Benzene	5	MCL
cis-1,2-Dichloroethene	70	MCL
Dichloromethane	5	MCL
Tetrahydrofuran	6.9	Risk
1,1,1-Trichloroethane	200	MCL
Trichloroethene	5	MCL
Vinyl Chloride	2	MCL
1,4-Dioxane	4.8	Risk
bis(2-Chloroethyl)ether	5	Reporting Limit
bis(2-Ethylhexyl)phthalate	6	MCL
Pentachlorophenol	1	MCL
Arsenic	10	MCL
Iron	3,118	HQ = 1
<p><u>Notes and Abbreviations</u></p> <p>MCL - Maximum Contaminant Level</p> <p>HQ - Hazard Quotient</p> <p>µg/L - micrograms per liter</p> <p>Risk - based on Cam-Or Site risk assessments included in the May 4, 2007, <i>Remedial Investigation Report: a) Human Health Risk Assessment (Appendix R)</i>; Indiana Department of Environmental Management (IDEM) Virtual file Cabinet (VFC) document #34051527, pages 1,092 to 1,713 of 2,381, and b) <i>Ecological Risk Assessment (Appendix S)</i>, VFC document #34051527, pages 1,714 to 2,069 of 2,381).</p> <p>Cleanup levels from Record of Decision, as modified by an evaluation of background concentrations, as approved by USEPA on October 12, 2021.</p>		

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

Prepared by



Issued and Published Jointly by



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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of October 10, 2023 ("Effective Date") between
the TOWN of WESTVILLE ("Owner") and
McMAHON ASSOCIATES, INC. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

2023 TOWN of WESTVILLE SANITARY SEWER EXTENSION and WCC LIFT STATION IMPROVEMENTS PROJECT
("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:

SRF PER Amendment, Preliminary / Final Design, Guaranteed Savings Contract Development, Construction Basic Services, Resident Project Representative Services, Operation and Maintenance Manual Preparation, Start-up Services, and Record Drawing Preparation for the extension of approximately 3,700 lineal feet of new 18-inch diameter gravity sanitary sewer from the existing WCC Lift Station to facilitate an end-of-pipe connection point for the new WCC facility. In addition, provide the same services to implement back-up pumping and power supply capability at the existing WCC Lift Station to prepare for future power decommissioning of this lift station by the WCC Facility.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this

Agreement, subject to any express limitations or reservations applicable to the furnished items.

- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer's services;
 2. the presence at the Site of any Constituent of Concern; or
 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 60 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 60 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said sixtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

~~5.02 *Designing to Construction Cost Limit*~~

- ~~A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.~~

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;

- c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 ~~Design Without Construction Phase Services~~

- ~~A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.~~

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of

receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

A. This Agreement is to be governed by the Laws and Regulations of the State of Indiana.

6.08 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any

assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.

- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the

other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
 8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance,

resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included:

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- ~~E. Exhibit E, Notice of Acceptability of Work.~~
- ~~F. Exhibit F, Construction Cost Limit.~~
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- ~~J. Exhibit J, Special Provisions.~~
- K. Exhibit K, Amendment to Owner-Engineer Agreement. *(Included as to form only)*

8.02 Total Agreement

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 Designated Representatives

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: **TOWN of WESTVILLE**

Engineer: **McMAHON ASSOCIATES, INC.**

By: _____
Print name: Michael Albert
Title: President, Westville Town Council
Date Signed: October 10, 2023

By: John M. Sturgill
Print name: John M. Sturgill
Title: Vice President
Date Signed: October 9, 2023

Engineer License or Firm's Certificate No. (if required):
Chelsea Bullen
State of: Indiana

Address for Owner's receipt of notices:
100 Setser Drive
Westville, IN 46391

Address for Engineer's receipt of notices:
952 South State Road 2
Valparaiso, IN 46385

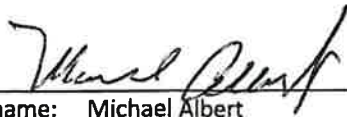
Designated Representative (Paragraph 8.03.A):
Lori Mercer
Title: Clerk-Treasurer
Phone Number: 219.785.2123
E-Mail Address: lori.mercer@westville.us

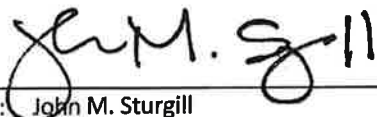
Designated Representative (Paragraph 8.03.A):
John M. Sturgill
Title: Vice President
Phone Number: 219.462.7743
E-Mail Address: jmsturgill@mcmgrp-in.com

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: TOWN of WESTVILLE

Engineer: McMAHON ASSOCIATES, INC.

By: 
Print name: Michael Albert
Title: President, Westville Town Council
Date Signed: October 10, 2023

By: 
Print name: John M. Sturgill
Title: Vice President
Date Signed: October 9, 2023

Engineer License or Firm's Certificate No. (if required):

Chelsea Bullen

State of: Indiana

Address for Owner's receipt of notices:

100 Setser Drive
Westville, IN 46391

Address for Engineer's receipt of notices:

952 South State Road 2
Valparaiso, IN 46385

Designated Representative (Paragraph 8.03.A):

Lori Mercer

Title: Clerk-Treasurer

Phone Number: 219.785.2123

E-Mail Address: lori.mercer@westville.us

Designated Representative (Paragraph 8.03.A):

John M. Sturgill

Title: Vice President

Phone Number: 219.462.7743

E-Mail Address: jmsturgill@mcmgrp-in.com

This is **EXHIBIT A**, consisting of 16 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 10/10/2023.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Engineer shall:

1. ~~Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.~~
 - a. ~~If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions:~~
 - b. ~~If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.~~
 - c. ~~If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify _____ alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~
2. ~~Identify potential solution(s) to meet Owner's Project requirements, as needed.~~
3. ~~Study and evaluate the potential solution(s) to meet Owner's Project requirements.~~
4. ~~Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.~~
5. ~~Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.~~

- ~~6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.~~
- ~~7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.~~
- ~~8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.~~
- ~~9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.~~
- ~~10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."~~
- ~~11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.~~
- ~~12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.~~
- ~~13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.~~
- ~~14. Perform or provide the following other Study and Report Phase tasks or deliverables:~~
- ~~15. Furnish _____ review copies of the Report and any other Study and Report Phase deliverables to Owner within _____ days of the Effective Date and review it with Owner. Within _____ days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.~~
- ~~16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish _____ copies of the revised Report and~~

Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

~~any other Study and Report Phase deliverables to the Owner within _____ days of receipt of Owner's comments.~~

~~B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.~~

A1.02 Preliminary Design Phase

A. Upon written authorization from Owner, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the

Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
(none)
 10. Furnish three (3) review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within thirty (30) days of authorization to proceed with this phase, and review them with Owner. Within ten (10) days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner three (3) copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within ten (10) days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format,

either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.

6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which ~~bidders or other prospective contractors~~ **the Provider** may rely.
 7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
 9. Perform or provide the following other Final Design Phase tasks or deliverables:
(none)
 10. Furnish for review by Owner, its legal counsel, and other advisors, five (5) copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within thirty (30) days of authorization to proceed with the Final Design Phase, and review them with Owner. Within ten (10) days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit five (5) final copies of such documents to Owner within ten (10) days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This

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schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one (1). If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
 - 1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 - 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 - 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 - 4. Consult with Owner as to the qualifications of prospective contractors.
 - 5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 - 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
 - 7. ~~Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and~~ assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 - 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.

9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: *(none)*
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
 3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
 4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
 5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
 6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction

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Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

7. *Schedules*: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks*: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction*: In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any

Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means,

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methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

18. *Substitutes and "Or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

19. *Inspections and Tests*:

a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.

b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.

c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.

20. *Change Proposals and Claims*: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.

21. *Applications for Payment*: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to

such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
 23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
 24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables: *None*
 25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final

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payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E (“Notice of Acceptability of Work”) that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer’s knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.

26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:

1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
2. Together with Owner, visit the Project within one month before the end of the Construction Contract’s correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
None

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract’s correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner’s Written Authorization*

Exhibit A – Engineer’s Services

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- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
 7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and

Exhibit A – Engineer's Services

- f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.

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19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the

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acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.

3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 10/10/2023.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.

Exhibit B – Owner's Responsibilities

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

Exhibit B – Owner's Responsibilities

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- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- ~~T. Perform or provide the following:~~

This is **EXHIBIT C**, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated 10/10/2023.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. A Lump Sum amount of \$385,000.00 based on the following estimated distribution of compensation:

a. Study and Report Phase	<i>Not applicable</i>
b. Preliminary & Final Design Phase	\$ 250,000.00
c. Bidding and Negotiating Phase	\$ 15,000.00
d. Construction Phase	\$ 100,000.00
e. Post-Construction Phase	\$ 20,000.00
 2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
 3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.
 4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges): *None*.
 5. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding nine (9) months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

C2.02 NOT USED

C2.03 NOTUSED

**COMPENSATION PACKET RPR-2:
Resident Project Representative – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment

A. *Owner shall pay Engineer for Resident Project Representative Basic Services as follows:*

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$15,000.00 based upon part-time RPR services on an eight-hour workday, Monday through Friday, over a 90 day construction schedule.

B. *Compensation for Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of 1.10.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1 of each calendar year) to reflect equitable changes in the compensation payable to Engineer.

C. *Other Provisions Concerning Payment Under this Paragraph C2.04:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.

**Exhibit C – Compensation Packet RPR-2: Resident Project Representative Services—
Standard Hourly Rates Method of Payment.**

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2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

**COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.10.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1 of each calendar year) to reflect equitable changes in the compensation payable to Engineer.

C. *Other Provisions Concerning Payment for Additional Services:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 10/10/2023.

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:



REIMBURSABLE EXPENSES SCHEDULE | 2023

McMahon Associates, Inc.

Effective: 01/01/2023

DESCRIPTION	RATE
REIMBURSABLE EXPENSES:	
Commercial Travel	1.1 of Cost
Delivery & Shipping	1.1 of Cost
Meals & Lodging	1.1 of Cost
Review & Submittal Fees	1.1 of Cost
Outside Consultants	1.12 of Cost
Photographs & Models	1.1 of Cost
Misc. Reimbursable Expenses & Project Supplies	1.1 of Cost
Terrestrial Laser Scanner	\$1,500.00
REIMBURSABLE UNITS:	
Photocopy Charges - Black & White	\$0.08/Image
Photocopy Charges - Color / 8½" x 11"	\$0.45/Image
Photocopy Charges - Color / 8½" x 14" and 11" x 17"	\$0.75/Image
Mileage	\$0.75/Mile
Mileage - Truck/Van	\$1.05/Mile
All-Terrain Vehicle	\$60.00/Day
Global Positioning System (GPS)	\$21.00/Hour
Hand-Held Global Positioning System (GPS)	\$15.00/Hour
Robotic Total Station	\$20.00/Hour
Survey Hubs	\$0.45/Each
Survey Lath	\$0.80/Each
Survey Paint	\$6.00/Can
Survey Ribbon	\$3.00/Roll
Survey Rebars - 1¼"	\$10.00/Each
Survey Rebars - ¾"	\$3.25/Each
Survey Rebars - 5/8"	\$2.75/Each
Survey Iron Pipe - 1"	\$3.50/Each
Survey Steel Fence Post - 1"	\$5.00/Each
Control Spikes	\$1.75/Each

NEENAH, WISCONSIN
CORPORATE HEADQUARTERS
Street Address:
1445 McMAHON DRIVE
NEENAH, WI 54956
Mailing Address:
P.O. BOX 1025
NEENAH, WI 54957-1025
Ph 920.751.4200 | Fax 920.751.4284
Email: MCM@MCMGRP.COM
Web: WWW.MCMGRP.COM

1700 HUTCHINS ROAD
MACHESNEY PARK, IL 61115
Ph 815.636.9590 | Fax 815.636.9591
Email: MCM@MCMGRP.NET
Web: WWW.MCMGRP.COM

952 SOUTH STATE ROAD 2
VALPARAISO, IN 46385
Ph 219.462.7743 | Fax 219.464.8248
Email: MCM@MCMGRP-IN.COM
Web: WWW.MCMGRP.COM

Exhibit C – Appendix 1: Reimbursable Expenses Schedule.

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This is **Appendix 2 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 10/10/2023.

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*



FEE SCHEDULE | 2023

McMahon Associates, Inc.

Effective: 01/01/2023

This Fee Schedule is subject to revisions due to labor rate adjustments and interim staff or corporate changes.

NEENAH, WISCONSIN
CORPORATE HEADQUARTERS

Street Address:
1445 McMAHON DRIVE
NEENAH, WI 54956

Mailing Address:
P.O. BOX 1025
NEENAH, WI 54957-1025
Ph 920.751.4200 | Fax 920.751.4284
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Ph 219.462.7743 | Fax 219.464.8248
Email: MCM@MCMGRP-IN.COM
Web: WWW.MCMGRP.COM

LABOR CLASSIFICATION	HOURLY RATE
Principal	\$196.00
Senior Project Manager	\$196.00
Project Manager	\$139.00 - \$182.00
Senior Engineer	\$173.00 - \$186.00
Engineer	\$93.00 - \$164.00
Senior Engineering Technician	\$127.00 - \$140.00
Engineering Technician	\$80.00 - \$116.00
Senior Architect	\$166.00 - \$186.00
Architect	\$130.00 - \$155.00
Senior Land Surveyor	\$124.00 - \$163.00
Senior Public Management Specialist	\$155.00
Public Management Specialist	\$127.00
Senior Public Safety Specialist	\$155.00
Public Safety Specialist	\$127.00
Building Inspector Specialist	\$125.00
Land Surveyor	\$116.00
K-12 Administrative Specialist	\$118.00
Land Surveyor Technician	\$80.00 - \$103.00
Surveyor Apprentice	\$66.00
Erosion Control Technician	\$88.00
Senior Hydrogeologist	\$196.00
Senior Ecologist	\$187.00
Environmental Scientist	\$95.00 - \$107.00
Senior G.I.S. Analyst	\$159.00
G.I.S. Analyst	\$88.00 - \$108.00
Wetland Delineator	\$108.00
Senior Designer	\$136.00
Designer	\$87.00 - \$117.00
Senior On-Site Project Representative	\$117.00
On-Site Project Representative	\$53.00 - \$98.00
State Plan Reviewer	\$139.00
Certified Grant Specialist	\$141.00
Graphic Designer	\$104.00
Senior Administrative Assistant	\$90.00 - \$101.00
Administrative Assistant	\$80.00
Intern	\$42.00 - \$65.00
Professional Witness Services	\$357.00

Exhibit C – Appendix 2: Standard Hourly Rates Schedule.

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This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 10/10/2023.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

Exhibit D - Resident Project Representative.

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Page 1

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
 - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.

- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile

numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).
- D. Resident Project Representative shall not:
1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
 8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 10/10/2023.

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
 - 1) Bodily injury, each accident: \$500,000
 - 2) Bodily injury by disease, each employee: \$500,000
 - 3) Bodily injury/disease, aggregate: \$500,000
- c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - 2) General Aggregate: \$2,000,000
- d. Excess or Umbrella Liability --
 - 1) Per Occurrence: \$5,000,000
 - 2) General Aggregate: \$5,000,000
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
\$1,000,000
- f. Professional Liability --
 - 1) Each Claim Made \$3,000,000
 - 2) Annual Aggregate \$5,000,000

2. By Owner:

- a. Workers' Compensation: Statutory

Exhibit G – Insurance.

b. Employer's Liability --

- 1) Bodily injury, Each Accident \$500,000
- 2) Bodily injury by Disease, Each Employee \$500,000
- 3) Bodily injury/Disease, Aggregate \$500,000

c. General Liability --

- 1) General Aggregate: \$1,000,000
- 2) Each Occurrence (Bodily Injury and Property Damage): \$2,000,000

d. Excess Umbrella Liability

- 1) Per Occurrence: \$5,000,000
- 2) General Aggregate: \$5,000,000

e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

\$1,000,000

B. Additional Insureds:

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

a. McMahon Associates, Inc.
Engineer

b. _____
Engineer's Consultant

c. _____
Engineer's Consultant

d. _____
[other]

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.

3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

Exhibit G – Insurance.

This is **EXHIBIT H**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 10/10/2023.

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 10/10/2023.

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by Laws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement. If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$500,000.

2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, including but not limited to:

- B. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers,

architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT K**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 10/10/2023.

(Included as to form only)

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- _____ Additional Services to be performed by Engineer
- _____ Modifications to services of Engineer
- _____ Modifications to responsibilities of Owner
- _____ Modifications of payment to Engineer
- _____ Modifications to time(s) for rendering services
- _____ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

By: _____
Print name: _____

By: _____
Print name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

WAYNE HEATING & AIR CONDITIONING COMPANY, INC.

AIR CONDITIONING and HEATING ENGINEERS
SHEET METAL CONTRACTORS

P.O. Box 626 Phone: 874-4131 Michigan City, IN 46361
LaPorte Phone: 324-3686 New Buffalo Phone: 469-4402

WESTVILLE, townhall @ WESTVILLE
May 24, 2023

PROPOSAL CONTRACT

Date

The undersigned contractor respectfully proposes to furnish and install the following equipment for

Town of Westville 219-785-2123 Westville.utility@westville.us

(Architect - Contractor - Owner)

of 100 Setser Dr Westville In: 46391
(Street Address) (City) (State)

in the Police Department located at 100 Serser Dr
(City) (County) (State) (Street Address)

Westville LaPorte IN, this proposal becoming a contract
(City) (County) (State)

upon written acceptance by the purchaser hereon. 30
This proposal subject to renegotiation after _____ days.

DESCRIPTION OF WORK

We propose to furnish and install with all labor and materials.

Day/Night

Model# N95E1202422 Gas Furnace, AFUE 95.5
Heat exchanger warranted 30 years

PRICE: \$5,020.00

Day/Night

Model N4A4S60 Air Conditioner, SEER 14
5 Ton cased coil

PRICE: \$ 5,214.00

\$ 10,234

Due to shortages of equipment this could be Bryant, Day/Night or Payne. All are same quality and in the Carrier family.

Carrier, Day/Night, Payne and Bryant have one year labor and five year parts warranty.

The existing furnace and a/c according to the serial # is 23 years old.

Police Assistance at PNW Fireworks Celebration

Terrence R Scherer <tscherer@pnw.edu>

Mon 10/2/2023 9:26 AM

To:Westville Townhall <westville.townhall@westville.us>

President Mike Albert,

I wanted to tell you how grateful we are for the assistance of the Westville Police Department at our recent fireworks celebration.

We had scheduled 2 Purdue officers to work the celebration that night. At the last minute one of the officers called off sick.

The Purdue officer told me how Westville Police Department jumped in and helped us out.

We wanted to make you aware of not only how we appreciated this help in our sudden need but what a fine department you have in not hesitating to help our community in our need.

FYI, it not only turned out to be a good event but our guesstimate was there were 850 people who attended that night.

Thank you again.

Terry

Terry Scherer
Lieutenant
Purdue University
Northwest Police
1401 South US Hwy 421
Westville, IN 46391
tscherer@pnw.edu
219-785-5221

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

LEGAL NOTICE

The Westville Town Council will meet in a special meeting at 5:00 PM (local time) on October 23, 2023. The special meeting will be held at Town of Westville Community Room located at 100 Setser Drive, Westville, Indiana 46391.

Westville Town Council

***This notice is not for legal publication
but just for notification purposes.***

WESTVILLE TOWN COUNCIL
OCTOBER 23, 2023
SPECIAL MEETING
100 SETSER DRIVE
5:00 P.M.

AGENDA

WCC WASTEWATER EXPANSION PROJECT

WESTVILLE TOWN COUNCIL

OCTOBER 23, 2023
MINUTES OF MEETING

The special meeting of the Westville Town Council was held at the Town Hall, 100 Setser Drive at 5:00 p.m. Present: Michael Albert, James Bechinske, Deborah Kelly, Olga Pothorski, Lori Mercer, Clerk-Treasurer.

Absent: Nate Burnett, Doug Biege, Town Attorney

Michael Albert opened the meeting at 5:00 pm. Michael Albert stated the Indiana Revolving Loan Fund and part of the bond for the Westville Correctional Facility sewage project will have the cost of the line running from the new facility to the brand-new lift station and the Department of Correction (DOC) will be paying for all of it. They are also paying to upgrade the lift station by putting in generators and back-up pumps so if something happens, they can still pump from the facility to Westville. DOC will be giving the Town the lines. Ordinance 2021-8 needs to be amended to reflect these changes and to put the additional cost on the loan. But the cost will be paid as a monthly assessment on DOC's sewage bill. Michael Albert made a motion to approve Ordinance 2023-10 on first reading. James Bechinske, second. Roll Call: Pothorski, yes; Bechinske, yes; Kelly, yes; Albert, yes. Michael Albert made a motion to suspend the rules and adopt Ordinance 2023-10. James Bechinske, second. Roll Call: Pothorski, yes; Bechinske, yes; Kelly, yes; Albert, yes.

Michael Albert made a motion to adjourn at 5:02 pm. Olga Pothorski, second. Motion carried.

I, Lori Mercer, attest that these minutes are true and accurate.











ORDINANCE NO. 2023- 10

An Ordinance amending Ordinance No. 2020-1, as amended by Ordinance No. 2021-8, of the Town of Westville, Indiana, in connection with the Town's issuance of sewage works revenue bonds to finance additions and improvements to the sewage works of the Town

WHEREAS, the Town Council of the Town of Westville, Indiana (the "Council" and the "Town", respectively) adopted Ordinance No. 2020-1 (the "Bond Ordinance") on February 11, 2020, authorizing the issuance of its sewage works revenue bonds (the "Bonds") to finance the costs of additions and improvements to the sewage works system of the Town (the "Project"), as more particularly described in the Bond Ordinance; and

WHEREAS, on August 3, 2021, the Council adopted Ordinance No. 2021-8 (the "First Amendment") amending the Bond Ordinance to increase the authorized costs of the Project (as defined in the Bond Ordinance) and principal amount of Bonds authorized to be issued thereunder to cover such additional Project costs; and

WHEREAS, on December 15, 2021, the Town issued its Bonds and BANs (as defined in the Bond Ordinance) to the Indiana Finance Authority, through its wastewater revolving loan program (the "SRF Program"), to finance the costs of the Project; and

WHEREAS, the Council has been advised that the SRF Program is willing to purchase an additional series of Bonds from the Town to finance the costs of the planning, designing, construction and financing of a trunk main and related improvements to service the new Westville Correctional Center (herein the "WCC Trunk Main Project"); and

WHEREAS, the estimated costs of the WCC Trunk Main Project is not to exceed \$6,000,000; and

WHEREAS, the WCC Trunk Main Project will provide service to the new Westville Correctional Center and increase the scope and capacity of the Town's sewage works system enabling the system to service future customers that will be located in and around the WCC Trunk Main Project; and

WHEREAS, in connection with the WCC Trunk Main Project, the Indiana Department of Corrections (the "IDOC") will execute an amendment to the existing Wastewater Treatment Agreement with the Town (the "IDOC Sewer Service Agreement") pursuant to which the IDOC will agree to fund all costs of debt service on Bonds to be issued by the Town to fund the WCC Trunk Main Project; and

WHEREAS, the Council has been advised that in order to proceed with the WWC Trunk Main Project, the Bond Ordinance needs to be further amended to authorize the funding of the WCC Trunk Main Project through the issuance of Bonds or BANs and correspondingly increase the authorized amounts of the Project and the Bonds and BANs as set forth in the Bond Ordinance; and

WHEREAS, the Council finds that the Bond Ordinance should be so amended as the WCC Trunk Main Project will be fully funded by the IDOC, will result in substantial

improvements to the Town's sewage works which will be owned by the Town, and will expand the scope and reach of the Town's sewage works allowing for future connections from customers located in and around the WCC Trunk Main Project;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WESTVILLE, INDIANA, THAT:

Section 1. The estimated costs of the Project as set forth in the Bond Ordinance, as amended by the First Amendment, is hereby increased by \$6,000,000, and the description of the Project therein is hereby amended to include the WCC Trunk Main Project.


Section 2. All references in the Bond Ordinance, as amended by the First Amendment, to the authorized not to exceed principal amount of the Bonds and BANs is hereby increased by \$6,000,000.

Section 3. The Town Council President, with the advice of counsel, is hereby authorized to negotiate an amendment to the IDOC Sewer Service Agreement with the IDOC to provide that the IDOC will agree to fund all costs of debt service on Bonds to be issued by the Town to fund the WCC Trunk Main Project and any other necessary amendments in connection therewith. The Town Council President is hereby authorized to execute and the Clerk-Treasurer is hereby authorized to attest such amendment, provide the terms thereof are not inconsistent with the provisions of this ordinance.


Section 4. This ordinance shall be in full force and effect from and after its adoption.

Adopted this 23rd day of October, 2023, by a vote of 4 ayes and 0 nays.

TOWN OF WESTVILLE, INDIANA
TOWN COUNCIL



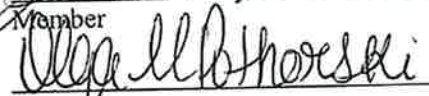
President



Member



Member



Member

Member

ATTEST:



Clerk-Treasurer