

AGENDA OF THE COMMON COUNCIL
City of Angola, Indiana
210 N. Public Square

Monday, July 7, 2025 – 7:00 p.m.

CALL TO ORDER BY MAYOR MARTIN

1. Council Member roll call by Clerk-Treasurer Herbert.

Coffey _____ Olson _____ Sharkey _____ Dowe _____ McDermid _____

2. Remarks by Mayor Martin
3. Request approval of the June 16 minutes. (attachment)

UNFINISHED BUSINESS

1. Ordinance No. 1780-2025. AN ORDINANCE AMENDING THE ANGOLA MUNICIPAL CODE CHAPTER 8.05 SOLID WASTE (\$18.35) (second reading) (attachment)
2. Other unfinished business.

NEW BUSINESS

1. Ordinance No. 1781-2025. AN ORDINANCE FIXING COMPENSATION OF APPOINTED OFFICERS, DEPUTIES, AND OTHER EMPLOYEES AND OF POLICE AND FIREFIGHTERS OF THE CITY OF ANGOLA, INDIANA FOR THE YEAR 2026 (first reading) (attachment)
2. Ordinance No. 1782-2025. AN ORDINANCE AMENDING THE CITY OF ANGOLA CODE OF ORDINANCES TITLE 9 PUBLIC PEACE, MORALS AND WELFARE, CHAPTER 9.05 GENERAL OFFENSES. (Open Burning) (first reading) (attachment)
3. Public hearing regarding the proposed award of public-private agreement. Resolution No. 2025-891. RESOLUTION OF THE CITY OF ANGOLA APPROVING AWARD OF BUILD-OPERATE-TRANSFER CONTRACT WITH KOKOSING INDUSTRIAL, INC. (attachment)
4. Request approval of the Build Operate Transfer Agreement for Pokagon Utility Project Divisions 1 & 2 Construction with Kokosing Industrial Inc. for a Guaranteed Maximum amount of \$17,274,800. (attachment)

5. Request approval of the Agreement for Pokagon Utility Project Divisions 1 & 2 Resident Project Representation Services and Division 2 Construction Administration Services with Wessler Engineering in the amount of \$924,700. (attachment)
6. Request approval of the Pokagon Utility Project Division 1 Construction Administration Services Agreement with Fleis & VandenBrink in the amount of \$225,000. (attachment)
7. Request approval of the Pokagon Utility Project Division 3 Construction Administration Services Agreement with Wessler Engineering in the amount of \$225,000. (attachment)
8. Reports:
 - Clerk-Treasurer
 - Department head
9. Request approval of the Allowance of Accounts Payable Vouchers 74932 through 75... totaling \$...
10. Other new business.

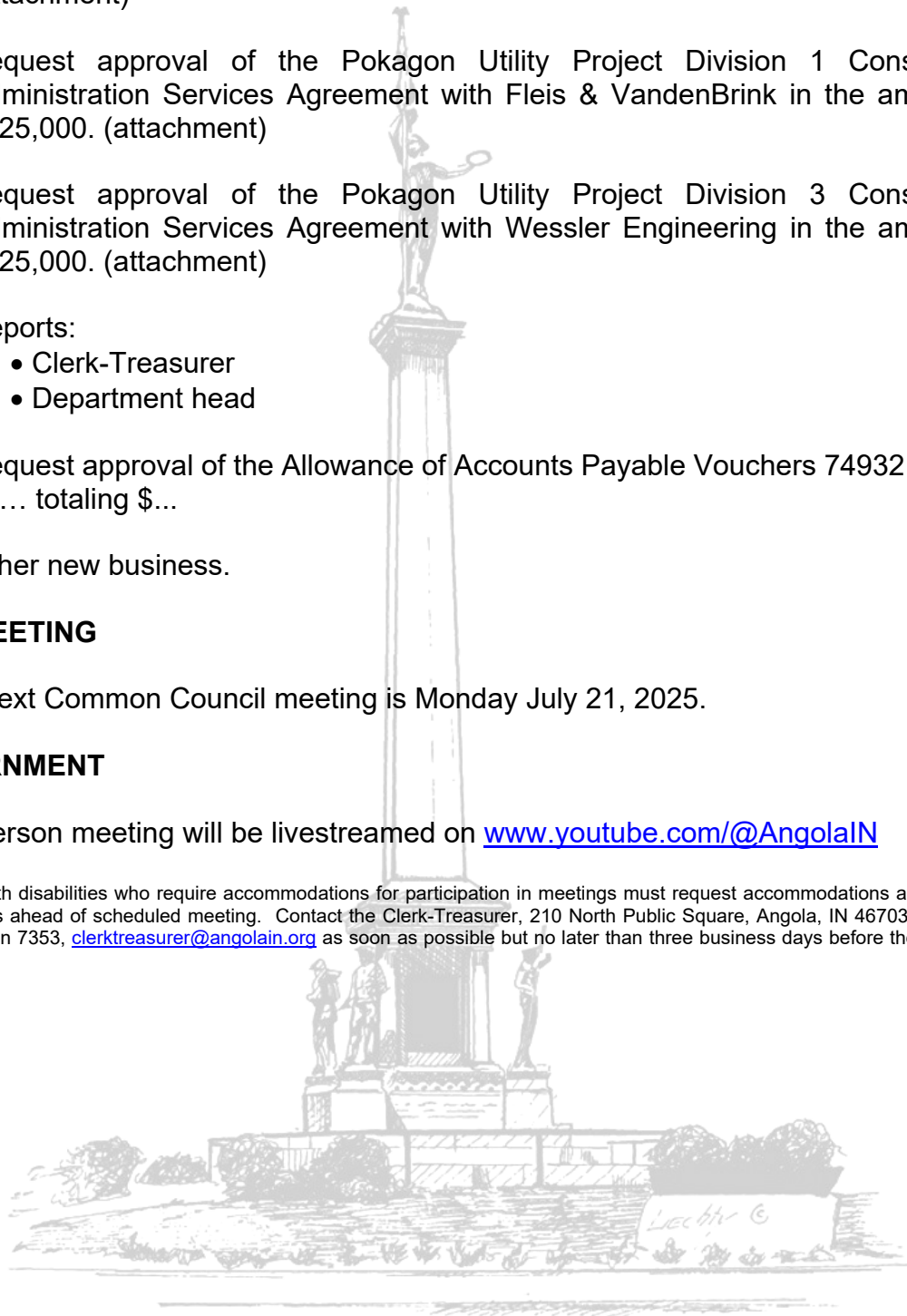
NEXT MEETING

The next Common Council meeting is Monday July 21, 2025.

ADJOURNMENT

This in-person meeting will be livestreamed on www.youtube.com/@AngolaIN

Individuals with disabilities who require accommodations for participation in meetings must request accommodations at least three business days ahead of scheduled meeting. Contact the Clerk-Treasurer, 210 North Public Square, Angola, IN 46703, (260) 665-2514 extension 7353, clerktreasurer@angola.in as soon as possible but no later than three business days before the scheduled event.



June 16, 2025

The regular meeting of the Common Council of the City of Angola, Indiana was called to order at 7:00 p.m. at City Hall, 210 North Public Square with Mayor David B. Martin presiding. Council Members Randy Coffey, Charles P. Dowe, and Jennifer L. Sharkey answered roll. Council Member David A. Olson and Jerold D. McDermid were absent. Clerk-Treasurer Ryan P. Herbert recorded the minutes.

Among those present were City Attorney Kim Shoup, City Engineer Amanda Cope, Economic Development and Planning Director Retha Hicks, Fire Chief Bill Harter, Street Commissioner Chad Ritter, Deputy Clerk Stephanie Dean, and Police Patrol Officer Nicholas Ballentine.

Also among those present were Ken Wilson and Chris Emerick.

APPROVAL OF THE MINUTES

Council Member Dowe moved to approve June 2, 2025 minutes. Council Member Sharkey seconded the motion. The motion carried 3-0.

UNFINISHED BUSINESS

Ordinance No. 1779-2025, AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF ANGOLA, INDIANA, was read by title and presented to Council on third and final reading. Council Member Sharkey moved to approve. Council Member Coffey seconded the motion. The motion carried 3-0. (715, 717, 721 W Prospect St.)

NEW BUSINESS

Ordinance No. 1780-2025, AN ORDINANCE AMENDING THE ANGOLA MUNICIPAL CODE CHAPTER 8.05 SOLID WASTE (\$18.35), was read by title and presented to Council for first reading. Council Member Coffey moved to approve. Council Member Dowe seconded the motion. The motion carried 3-0.

Council Member Dowe moved to approve the Web Services Sales Agreement with Revize LLC in the amount of \$15,900. Council Member Sharkey seconded the motion. The motion carried 3-0.

Clerk-Treasurer's Depository Statement and Cash Reconciliation for the month ending May 2025 was presented for Council information.

DEPARTMENT HEAD REPORTS

Economic Development and Planning Director Hicks reported that work had begun on the crosswalk murals around the city.

Fire Chief Harter reported that fireworks permits have started coming in for the Fourth of July displays.

APPROVAL OF ACCOUNTS PAYABLE VOUCHERS

Council Member Coffey moved to approve the Allowance of Accounts Payable Vouchers 74650 through 74931 totaling \$987,498.74 which includes interfund transfers of \$35,139.56. Council Member Sharkey seconded the motion. The motion carried 3-0.

ADJOURNMENT

There being no further business, the meeting was considered adjourned at 7:13 p.m.

David B. Martin, Mayor
Presiding Officer

Attest:

Ryan P. Herbert, Clerk-Treasurer

ORDINANCE NO. 1780-2025

**AN ORDINANCE AMENDING THE ANGOLA MUNICIPAL CODE
CHAPTER 8.05 SOLID WASTE**

WHEREAS, the City of Angola provides by contract curbside solid waste collection services to residential users;

WHEREAS, said contract cost per unit for residential users is \$18.28;

WHEREAS, the City provides administrative services for the billing and collection of said cost per unit;

THEREFORE, BE IT HEREBY ORDAINED by the Common Council of the City of Angola, Indiana that:

Section 1. Section 8.05.070 Charges and billing – Refusal to pay is amended to read as follows:

(A) Charge Establishment and Collection Power. The city is authorized and empowered to determine and fix a fair and reasonable charge to be made against every owner, occupant or lessee of property, and to establish a method of assessment and collection of these charges.

(B) Charge – Billing. Each owner, tenant or occupant of such residence shall pay to the city \$18.35 per month for such collection service, and such charge shall be added to and paid along with each utility bill. If there is no meter at any residence, the solid waste charge shall be billed to the owner, tenant, or occupant.

(C) Refusal to Pay Charges. In the event that the tenant, owner, or occupant refuses or neglects to pay the monthly charges for solid waste collection, the charges shall become an obligation of the property owner and may be filed as a lien against the property by the Clerk-Treasurer.

PASSED AND ADOPTED by the Common Council of the City of Angola, Indiana, on the _____ day of July 2025 by the vote of _____ ayes and _____ nays.

David B. Martin, Mayor
Presiding Officer

Attest:

Ryan P. Herbert, Clerk-Treasurer

ORDINANCE NO. 1780-2025

This ordinance presented by me, the Clerk-Treasurer of the City of Angola, Indiana to the Mayor at the hour of _____ a.m./p.m. this _____ day of July 2025.

Ryan P. Herbert, Clerk-Treasurer

This ordinance signed and approved by me, the Mayor of the City of Angola, Indiana this _____ day of July 2025.

David B. Martin, Mayor

ORDINANCE NO. 1781-2025

**AN ORDINANCE FIXING COMPENSATION OF APPOINTED OFFICERS,
DEPUTIES, AND OTHER EMPLOYEES AND OF POLICE AND
FIREFIGHTERS OF THE CITY OF ANGOLA, INDIANA FOR THE YEAR 2026**

WHEREAS, IC 36-4-7-3 and IC 36-4-7-4 governs the fixing of compensation of City appointed officers, deputies, and other employees;

WHEREAS, IC 36-8-3-3 governs the fixing of compensation of police and firefighters;

WHEREAS, funding is available, and the Common Council wishes to increase compensation of said appointed officers, deputies, other employees, police and firefighters for the year 2025;

NOW THEREFORE, be it hereby ORDAINED by the Common Council of the City of Angola, Steuben County, Indiana:

Section 1. From and after December 21, 2025 and continuing through December 19, 2026 the minimum and maximum compensation and pay schedule for appointed officers, deputies, and other employees and police and firefighters of the City of Angola shall be fixed as follows:

Office of the Clerk-Treasurer

Deputy Clerk	26.72 -	35.62 hourly
Deputy Payroll Clerk	24.91-	33.21 hourly
Deputy Utility Clerk	24.00-	30.80 hourly

Office of the Mayor

Board of Public Works & Safety Member		820.00 quarterly
Human Resource Director	2,377.03 -	3,169.38 biweekly
Administrative Assistant	23.10 -	30.80 hourly

Economic Development & Planning Department

Economic Development & Planning Director	2,285.61 -	3,169.38 biweekly
Planner	25.69 -	34.45 hourly
Community Coordinator	22.21 -	30.80 hourly

Information Technology Department

Systems Administrator	2,549.46-	3,399.27 biweekly
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Law Department

City Attorney	1,784.81 -	2,379.75biweekly
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ORDINANCE NO. 1781-2025*Engineering Department*

City Engineer	3,570.75 -	4,761.00 biweekly
Engineering Assistant	32.49-	43.33 hourly
MS4/Engineering Assistant	27.33-	36.45 hourly
Project Coordinator	27.33-	36.45 hourly

Building & Safety Department

Building Commissioner	2,377.03 -	3,169.38 biweekly
PT Code Enforcement	15.00 -	22.00 hourly

Fire Department

Fire Chief	2,549.33-	3,399.10 biweekly
Division Training Chief	2,303.03-	3,076.93 biweekly
Battalion Chief	2,157.79-	2,882.88 biweekly
Captain	2,041.72-	2,722.30 biweekly
First Class Firefighter	1,914.68-	2,552.91 biweekly
Firefighter	1,727.92-	2,303.89 biweekly
PT Firefighter	15.00 -	24.00 hourly

Police Department

Chief of Police	2,549.33-	3,399.10 biweekly
Assistant Chief of Police	2,410.96 -	3,246.75 biweekly
Sergeant	2,208.78 -	3,003.95 biweekly
Detective	2,166.39 -	2,946.31 biweekly
First Class Patrol Officer	2,041.72 -	2,776.74 biweekly
Patrol Officer	1,735.97. -	2,554.86biweekly
Dispatcher	22.10-	29.46hourly
PT Patrol Officer		26.00 hourly
PT Dispatcher	18.00-	24.00 hourly
PT School Crossing Guard		22.00 shift (am/pm)

Street Department

Street Commissioner	2,377.03-	3,169.38 biweekly
Assistant Street Commissioner	25.45 -	33.93 hourly
Maintenance	23.43 -	31.52 hourly
Clerk/Maintenance	21.62-	28.82 hourly

Parks & Recreation Department

Park Superintendent	2,377.03-	3,169.38 biweekly
Assistant Park Superintendent	25.45-	33.93 hourly
Maintenance	23.43 -	31.52 hourly
Events and Marketing Coordinator	23.10-	30.80 hourly
PT Recreation Staff	15.00 -	22.00 hourly

ORDINANCE NO. 1781-2025

Water Department

Water Superintendent	2,545.46-	3,393.94 biweekly
Assistant Water Superintendent	27.76-	37.01 hourly
Certified Operator	24.95-	33.26 hourly
Operator	22.38 -	29.83 hourly

Wastewater Department

Wastewater Superintendent	2,545.46-	3,393.94 biweekly
Assistant Wastewater Superintendent	27.76-	37.01 hourly
Lab Technician/Pretreatment Coordinator	25.94 -	34.58 hourly
Certified Operator	24.95 -	33.26 hourly
Operator	22.38-	29.83 hourly

Any Department

PT Assistant	15.00 -	22.00 hourly
PT Clerk	15.00 -	22.00 hourly
PT Operator	15.00 -	22.00 hourly
PT Maintenance	15.00 -	22.00 hourly
PT Seasonal Maintenance	15.00 -	22.00 hourly
Intern	0.00 -	22.00 hourly

Section 2. New and incumbent employees.

- (A) Except for employees of the Clerk-Treasurer, the Office of the Mayor will evaluate and approve appointed officers, deputies, and other employees and police and firefighters (employee) compensation. When establishing compensation, due consideration shall be given to the following:
- (1) the skills, qualifications, and training of the employee;
 - (2) the review and recommendation of the department head as documented on the Employee Performance Review; and
 - (3) any other factors as the Office of the Mayor deems important in establishing compensation.
- (B) The Clerk-Treasurer is hereby authorized to grant the above compensation to employees of the Office of Clerk-Treasurer. When establishing compensation, due consideration shall be given to the following:
- (1) the skills, qualifications, and training of the employee;
 - (2) the review and recommendation of the Clerk-Treasurer as documented on the Employee Performance Review.

Section 3. Compensation adjustments.

The Office of the Clerk-Treasurer shall be notified in writing by the Office of the Mayor of all employee compensation adjustments and the effective date.

ORDINANCE NO. 1781-2025

Section 4. Fire department.

- (A) Firefighters shall receive longevity pay over and above base salary, commencing January 1 following the completion of one full year of service. Years of service are determined on 12/31 of the prior year for the current year's longevity. Longevity compensation shall be computed by a percentage of the First Class Firefighter top rate fixed in the effective salary ordinance. The percentage is determined in accordance with the following schedule:

<u>Upon the completion of continuous service of:</u>	<u>Percentage</u>
One (1) full year to four (4) years-----	1%
Five (5) to nine (9) years-----	3%
Ten (10) to fourteen (14) years-----	5%
Fifteen (15) to nineteen (19) years-----	7%
Twenty (20) or more years-----	9%

- (B) The hourly rate of firefighters who are not exempt from the provisions of the Fair Labor Standards Act (FLSA) and who are working the 28-day work period shall
- (1) receive hourly rate based on 2,756 hours per salary ordinance year (13 28-day work periods times 212 hours); and
 - (2) receive overtime for all hours worked over 212 hours in a 28-day work period.
- (B) Compensation for full-time fire department firefighters will be as follows:
- (1) Firefighter (without minimum certifications*) - beginning with the hire date and continuing through the second year of continuous service with the Angola Fire Department. Start rate will be established by Human Resources and the Fire Chief, based on prior experience.
 - (2) First Class Firefighter (with minimum certifications *) - beginning with the hire date. Start rate will be established by Human Resources and the Fire Chief, based on prior experience.
* Minimum Certifications: Firefighter I and II and EMR, NIMS 100,200,700&800, HazMat Operations.

Section 5. Police department.

- (A) Police department officers shall receive longevity pay over and above base salary, commencing January 1 following the completion of one full year of service. Years of service are determined on 12/31 of the prior year for the current year's longevity. Longevity compensation shall be computed by a percentage of the First Class Patrol Officer top rate fixed in the effective salary ordinance. The percentage is determined in accordance with the following schedule:

ORDINANCE NO. 1781-2025

<u>Upon the completion of continuous service of:</u>	<u>Percentage</u>
One (1) full year to four (4) years-----	1%
Five (5) to nine (9) years-----	3%
Ten (10) to fourteen (14) years-----	5%
Fifteen (15) to nineteen (19) years-----	7%
Twenty (20) or more years-----	9%

- (B) Full-time, non-exempt officers shall receive shift differential pay whose regular shift assignment is B or C shift of \$2,000 per year. Bi-weekly salary will be adjusted to reflect the shift differential. In the case of a mid-year shift reassignment, bi-weekly salary will be adjusted accordingly, beginning the first Sunday following reassignment. Shift differential will not apply in case of sporadic or temporary shift changes.
- (C) The hourly rate of police officers who are not exempt from the provisions of the Fair Labor Standards Act (FLSA) and who are working the 28-day work period shall
- (1) receive hourly rate for all hours over and above scheduled hours. Hourly rate is based on 2,223 hours per salary ordinance year (13 28-day work periods times 171 hours); and
 - (2) receive overtime for all hours worked over 171 hours in a 28-day work period.
- (D) Compensation for full-time police department officers will be as follows:
- (1) Patrol Officer – beginning with the hire date and continuing through the second year of continuous service with the Angola Police Department.
 - (3) First Class Patrol Officer – beginning with the third year of continuous service with the Angola Police Department.
 - (4) After completion of one year of continuous service as Patrol Officer, the Chief of Police may recommend First Class Patrol Officer status for an officer who has had previous full-time police experience of at least two years, has successfully completed the Indiana Law Enforcement Academy, and has displayed a level of performance with the department, which would warrant consideration. Such recommendation shall be carefully considered and must receive approval from the Office of the Mayor.
- (E) Upon the award of a federal or state grant for additional policing activities, police department officers who are voluntarily working additional policing activities during off-duty hours shall receive the hourly rate specified by the grant. If no hourly rate is specified by the grant, the officer shall be paid their hourly rate.
- (1) The term “Traffic Safety Education and Enforcement” includes activities with a primary purpose of educating the motoring

ORDINANCE NO. 1781-2025

public, bicyclists, and pedestrians, and enforcement of State Traffic Laws pertaining to them and their safety on all applicable thoroughfares

Traffic Safety Education and Enforcement Overtime is a volunteer work assignment that has been approved by Traffic Safety Education and Enforcement assignment and is in excess of the officers normally scheduled hours of work. Traffic Safety Education and Enforcement Overtime shall be paid at a rate two times that of the officer's regular hourly duty rate of pay regardless of the funding source.

- (F) Part-time School Crossing Guards will receive shift pay on regularly scheduled school days that are cancelled.

Section 6. Effective date.

This ordinance shall become and remain in full force and effect upon passage and adoption by the Common Council and approval by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Angola, Indiana, on the _____ day of August 2025 by the vote of ___ ayes and ___ nays.

David B. Martin, Mayor
Presiding Officer

Attest:

Ryan P. Herbert, Clerk-Treasurer

This ordinance presented by me, the Clerk-Treasurer of the City of Angola, Indiana to the Mayor at the hour of _____ a.m./p.m. this _____ day of August 2025.

Ryan P. Herbert, Clerk-Treasurer

ORDINANCE NO. 1781-2025

This ordinance signed and approved by me, the Mayor of the City of Angola, Indiana this _____ day of August 2025.

David B. Martin, Mayor

ORDINANCE NO. 1782-2025

**AN ORDINANCE AMENDING THE CITY OF ANGOLA CODE OF
ORDINANCES TITLE 9 PUBLIC PEACE, MORALS AND WELFARE,
CHAPTER 9.05 GENERAL OFFENSES**

BE IT ORDAINED by the Common Council of the City of Angola, Indiana, that Angola Municipal Code of Ordinances Title 9 Public Peace, Morals and Welfare, Chapter 9.05 General Offences is hereby amended as follows:

Section 9.05.070 is repealed in its entirety and is hereby replaced with the following:

Section 9.05.070 Open Burning of Materials

(A) No person shall start, maintain, or permit the burning of any of the following: trash, garbage, rubbish, yard waste, tree limbs, brush, grass, construction materials, debris.

(B) Recreational bonfires and campfires or similar things are allowed but shall follow these rules: Said fires shall be at least 10 feet from any structure. Said fires must be contained in a metal or stone container that does not exceed 3 feet in diameter. Said fires must be attended at all times. Only “clean” wood or charcoal may be burned. Treated or painted wood is not “clean” wood. The fire shall be extinguished before it is left unattended. No fires shall be created during high winds or during a dry spell. The Fire Chief shall determine whether the winds are too high or the conditions are too dry.

Section 9.05.080 is repealed in its entirety and is hereby replaced with the following:

Section 9.05.080 Penalty

Any person violating the provisions of this chapter for which no specific penalty is otherwise stated shall be subject to a civil fine of up to \$2,500 for the first violation and a fine of up to \$7,500 for subsequent violations as per Angola Code of Ordinances 1.15.010.

This Ordinance shall be in full force and effect from and after its adoption by the Common Council, approval by the Mayor, and publication according to law.

PASSED AND ADOPTED by the Common Council of the City of Angola, Indiana, on the _____ day of August 2025 by the vote of _____ ayes and _____ nays.

David B. Martin, Mayor
Presiding Officer

ORDINANCE NO. 1782-2025

Attest:

Ryan P. Herbert, Clerk-Treasurer

This ordinance presented by me, the Clerk-Treasurer of the City of Angola, Indiana to the Mayor at the hour of _____ a.m./p.m. this _____ day of August 2025.

Ryan P. Herbert, Clerk-Treasurer

This ordinance signed and approved by me, the Mayor of the City of Angola, Indiana this _____ day of August 2025.

David B. Martin, Mayor

**RESOLUTION OF THE CITY OF ANGOLA APPROVING AWARD OF BUILD-
OPERATE-TRANSFER CONTRACT WITH KOKOSING INDUSTRIAL, INC.**

WHEREAS, the City of Angola (the “City”) has identified a series of projects (the “Projects”) which would, among other benefits, have a positive economic impact on the City and its residents, enhance the quality of life for its residents, and is in the best interest of the citizens of the City;

WHEREAS, the City issued a Request for Proposals (“RFP”) for development of the Projects through a public-private partnership in a manner consistent with Indiana law, including I.C. 5-23, *et seq.* (the “Act”);

WHEREAS, the administration has received and evaluated proposals received pursuant to said RFP, and has recommended that the City select Kokosing Industrial, Inc. (“Kokosing”) to develop and/or finance the Projects under a Build-Operate-Transfer Agreement or Agreements pursuant to the Act;

WHEREAS, the Council, as the fiscal body for the City, has considered the selection recommendation from the administration and has duly noticed and held a public hearing regarding the same for purposes of receiving public comment and remonstrance, as required by the Act.

WHEREAS, the Council, being duly advised in the premises, has determined that it is in the City’s best interest to accept the recommendation of the Administration and select Kokosing to deliver the Projects.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF ANGOLA AS
FOLLOWS:

1. Kokosing is hereby selected to deliver the Projects through a public-private partnership consistent with the Act.
2. The Mayor is hereby authorized to take all such actions and to execute all such instruments as are necessary and desirable to carry out the transactions contemplated by this Resolution, in such forms as the Mayor shall deem proper, to be evidenced by the execution thereof.
3. This resolution shall be deemed to take effect immediately upon adoption by the Council.

PASSED AND ADOPTED by the Common Council of the City of Angola, Steuben County, Indiana this ____ day of July 2025.

RESOLUTION NO. 2025-891

David B. Martin, Mayor
Presiding Officer

Attest:

Ryan P. Herbert, Clerk-Treasurer

This resolution presented by me, the Clerk-Treasurer of the City of Angola, Indiana to the Mayor at the hour of _____ a.m./p.m. this _____ day of July 2025.

Ryan P. Herbert, Clerk-Treasurer

This resolution signed and approved by me, Mayor of the City of Angola on this _____ day of July 2025.

David B. Martin, Mayor

BUILD-OPERATE-TRANSFER AGREEMENT

This Build-Operate-Transfer Agreement (the "Agreement") is executed as of this ____ day of _____, 2025, by and Kokosing Industrial, Inc. (the "Developer") and The City of Angola, IN (the "City").

1. Defined Terms.

Agency shall mean any applicable: (a) governmental agency, board, commission, or department; or (b) other judicial, administrative body.

Books and Records shall mean all of the books and records pertaining to the acquisition of materials to construct, and the construction of, the Project in accordance with this Agreement and any Construction Contract entered into by the Developer.

Casualty Insurance shall mean a policy of fire and extended coverage insurance with the minimum coverage amount being an amount equal to the full replacement cost of the completed Project, as certified at the commencement of the Term.

Change Order shall mean a change order executed by both the Developer and City finalizing the inclusion of scope into the Final Plans of a change proposed in a Change Order Request.

Change Order Request shall mean a written request for a change to the Final Plans submitted by the City.

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

Code shall mean the Internal Revenue Code of 1986, as amended, and the Regulations.

Completion Addendum shall mean an addendum in the form attached hereto as Exhibit C, which addendum shall be executed within 15 days after the Substantial Completion Date.

Construction Contract shall mean the contract executed by and between the Developer and City for construction of the Project in accordance with the Final Plans and any revisions thereto and exclusions therefrom, and the terms and conditions of this Agreement.

Construction Schedule shall mean a reasonably detailed schedule for construction of the Project.

Contractor: shall also mean the Developer (Kokosing Industrial, Inc.).

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

Design Development Services shall mean design assistance, pricing, value engineering, and other pre-construction services necessary in connection with: (a) finalizing the Project Plans and the Project Budget; (b) determining a Guaranteed Maximum Price; and (c) finalizing a Construction Contract.

Development Transfer shall mean, prior to delivering possession of the completed project to the City: (a) any sale, transfer, conveyance, assignment, pledge, or other disposition of, or any encumbrance upon, the Project or the materials to construct the Project, or any interest in the foregoing; or (b) any granting of a security interest in the

Project or the materials to construct the Project. Notwithstanding the foregoing, encumbrances required by this Agreement shall not constitute a Developer Transfer.

Event of Default shall have the meaning set forth in Section 14 of this Agreement.

Final Inspection shall mean an inspection of the Project by City and in partnership with the Indiana Department of Natural Resources after the Substantial Completion Date has occurred.

Final Plans shall mean the plans and specifications for the Project prepared by Curry and Associates dated March 27, 2025, for Division 1: Water Improvements and Wesser Engineering, Inc. dated January 2025 for Division 2: Wastewater Improvements. Final conformed documents representing the scope of improvements specified in the Exhibit E Construction Agreement will be provided by the Owner's Engineer's prior to construction.

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

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

Insurance Proceeds shall mean, in the case of damage to, or total or partial destruction of, the Project by fire or other casualty, the proceeds of the Casualty Insurance.

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

Laws shall mean all applicable: (a) laws, statutes, and/or ordinances; (b) governmental rules, regulations, and/or guidelines of or from: (i) governmental agencies, boards, commissions, or departments; and (ii) judicial, administrative, or regulatory bodies; and (c) judicial orders, consents, and/or decrees.

Liability Insurance shall mean a policy of bodily injury (including accidental death) and property damage insurance with the minimum coverage amount being not less than that customarily maintained by the City with respect to real property that it owns or leases, which policy may be a blanket insurance policy and which shall be obtained by the Developer during the construction of the Project.

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

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

Operating Period shall mean the period: (a) commencing on the Substantial Completion Date; and (b) ending on the date that is one (1) day after the Substantial Completion Date; provided that the City at any time may deliver notice to Developer setting forth an earlier date on which the Operating Period shall end.

Permitted Inspection shall mean any inspection by the City of any item or component of the Project when deemed to be necessary or appropriate by the City.

Project shall mean improvements to the City and Pokagon State Parks water and sanitary systems and utility.

Project Costs shall include (a) wages of construction workers employed by the Developer to perform the work for the Project as the Project Site; (b) costs paid or incurred by Developer for insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions provided such costs are based on wages and salaries included in the Cost of the Project by this section, (c) payments made by the City to any architects, engineers, consultants, contractors, subcontractors, and suppliers in accordance with the

requirements of their contracts; (d) costs of materials and equipment incorporated into the completed construction, plus the transportation and storage fees of the same; (e) costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Developer at the Project Site and fully consumed in the performance of the Project, costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the items at the time it is first used on the Project Site less the value of the item when it is no longer used at the Project Site; (f) rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers (rental rates may not exceed the purchase price of such items); (g) cost of cleanup of the Project Site, including removal of debris; (h) premiums for the portion of insurance required by this Agreement that can be directly attributed to this Agreement; (i) fees for laboratory tests, permits, licenses required by the Final Plans except those required for Defective Work; (j) royalties and license fees paid for the use of design, process or product required by the Final Plans; (k) with the City's prior approval, legal mediation and arbitration costs, including attorney's fees, other than those arising from disputes between the City and the Developer; reasonably incurred by Developer after the execution of the Agreement and in the performance of the Project; and (l) other costs incurred in the performance of the Project if, and to the extent, approved in advance in writing by the City.

Project Costs shall not include (a) salaries and other compensation of the Developer's personnel stationed at the Developer's principal office or offices other than the office at the Project Site; (b) expenses of Developer's principal office and offices other than the office at the Project Site; (c) overhead and general expense, except as may be expressly included in the Agreement; (d) Developer's capital expenses, including interest on the Developer's capital employed for the Project; (e) except as provided in this Agreement, costs due to the negligence or failure of the Developer, other Contractors, suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Agreement; (f) any cost not specifically and expressly described in this Agreement; and (g) costs, other than costs included in Change Orders approved by the City, that would cause the Guaranteed Maximum Price to be exceeded.

Project Operating Agreement shall mean the agreement governing the operation of the Project during the Operating Period in the form attached hereto as Exhibit D.

Project Site shall mean the certain real estate described and shown generally on Exhibit A.

Regulations shall mean the United States Treasury Regulations in effect with respect to the Internal Revenue Code of 1986, as amended.

Retainage shall mean for each payment made prior to the Substantial Completion Date, an amount equal to 10% of the amount otherwise due until the Project is 50% complete, at which time no further Retainage shall be required.

Required Permits shall mean all permits, licenses, approvals, and consents required by the Laws for the construction of the Project. Developer shall be required to secure all Required Permits at its sole cost and expense.

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

Substantial Completion Date shall mean the date on which the Developer delivers to the City a Project that has been completed substantially in accordance with Final Plans, subject to "punch-list" items to be identified in connection with the Final Inspection, which "punch-list" items do not materially impact the use of the Project for its intended use, it being agreed and understood that the City shall have the final decision as to whether the Substantial Completion Date has occurred hereunder.

Term shall mean the period commencing on the Execution Date and expiring on the expiration or earlier termination of this Agreement.

Utility Service shall mean gas, electricity, telephone, water, storm and sanitary sewers, and other utility services.

2. General Obligations.

(a) **Project.** Subject to the terms and conditions of this Agreement, Developer shall: (i) provide the Design Development Services; and (ii) construct the Project on the Project Site; provided that, in no event shall Developer be obligated to incur Project Costs in excess of \$0 in connection with its performance of the Design Development Services. Developer agrees that, if this Agreement is terminated due to the failure of any condition set forth in Section 5, then Developer shall not be entitled to reimbursement for the Project Costs incurred by it in connection with the provision of the Design Development Services.

Subject to the terms and conditions of this agreement: (i) the City shall have fee simple title or otherwise have a property right to operate upon the Project Site for at least the duration of the Agreement; (ii) Developer shall construct, operate and maintain the Project as a public facility on the Project Site in accordance with the Final Plans and transfer the public facility back to the City as provided herein (iii) Developer shall operate the Project for the duration of the Operating Period, as specified in the Project Operating Agreement and (iv) the City shall pay an amount not to exceed the Guaranteed Maximum Costs as set forth in the Construction Contract. The City shall be permitted to assist the Developer in negotiating agreements with subcontractors, vendors, and other service organizations, it being agreed and understood that the City shall have no responsibility or liability with respect to any such negotiated contracts entered into with the Developer.

(b) **Utility Availability.** Except to the extent that any of the following fall within the definition of Project Costs, the City, at its cost and expense, shall ensure that there are gas, electricity, telephone, internet, water, storm and sanitary sewer, and other necessary or reasonably appropriate utility services in adjoining public rights-of-way or properly granted and recorded utility easements, all of which serve the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement. In connection with the satisfaction of the foregoing obligation, City, at its cost and expense, shall make any improvements outside the Project Site that are necessary or reasonably appropriate.

(c) It is understood that the Developer has made a careful examination of the Final Plans prior to the execution of this Agreement, has become fully informed as to the quality and quantity and character of the Project to be constructed, and has made a careful examination of the location and condition of the Project. No oral agreement or conversation with any City official, agent, or personnel of the City either before or after the execution of this Agreement shall affect or modify any of the terms or obligations it contains.

(d) Developer shall commence construction of the Project upon receipt of a Notice to Proceed from the City. The Substantial Completion Date and Final Inspection Date shall be as identified in the Construction Contract.

Prior to submitting its first application for payment, the Developer must submit for the Owner's review and approval, a Construction Schedule that shows the dates on which Developer plans to begin and complete various parts of the Project, including dates on which information and approvals are required from the City.

(e) Within ten (10) days from the Notice to Proceed, the Developer must prepare and submit to the City, and if so directed, the City's consultants, a Schedule of Values, without "front end loading" apportioned to the various division or phases of the Project. Each line item contained in the Schedule of Values must be assigned a monetary price. The total of all items must equal the Guaranteed Maximum Price. Developer must submit to the City, and if so directed, the City's consultants, a monthly application for payment on AIA Document G-702 of G-703 with reference to the Project no later than the last day of the calendar month for the preceding thirty (30) days. Developer's application for payment must be itemized and supported by Developer's Schedule of Values and any other substantiating data as required by this Agreement. The City will pay the

amount otherwise due on the any pay application, less Retainage as set forth and otherwise provided in this Agreement, no later than thirty (30) days after Developer submits a complete and accurate payment application. All application for payment must include a waiver of lien rights and an indemnity (both of which shall be contingent upon payment by the City of all amounts then due and owing) from the Developer covering payments made to the Developer for previous calendar months using the form provided or approved by the City, as well as all other information reasonably requested by the City. Provided the City has paid all amounts then due and owing, the Developer shall provide the City with a Project that is free from liens arising from the Project construction by having paid all obligations arising from the Project or posting a bond sufficient to cover those obligations. Developer further agrees to defend the City at Developer's sole cost and expense against any actions, lawsuits, or proceedings brought against the City by any Contractors claiming by or through Developer as a result of liens filed against the Project, the Project Site, and any improvements or payments due the Developer, provided the Developer is paid all undisputed amounts due. Developer agrees to indemnify and hold the City harmless against any such liens or claims of liens and agrees to pay any judgment or lien resulting from any such actions.

(f) The City may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as reasonably may be necessary to protect the City from any loss, damage, or non-performance for which Developer is responsible under this Agreement, including but not limited to: Developers failure to perform construction of the Project as required by the Final Plans, Loss or damage arising out of or relating to this Agreement and caused by Developer or any Contractors or to others retained by the Developer to whom the Developer may be liable, Developer's failure to promptly and properly pay any Contractors for labor, materials, or equipment furnished in connection with the Project following receipt of such payment from the City; Defective Work not corrected in a timely basis; reasonable evidence of delay in performance of the Project such that the Project will not be completed by the contemplated Substantial Completion Date; reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Project; or third party claims or liens caused by the Developer or reasonable evidence demonstrating that third party claims or liens are likely to be field unless and until the Developer furnished the City with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment that are sufficient to discharge such claims if established.

(g) Within 10 days of submission, the City will give written notice to Developer disapproving or nullifying an application for payment or any portion of it, specifying the reasons for the disapproval or nullification. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be made for the amount previously withheld. If for any reason not the fault of the Developer, the Developer does not receive an undisputed progress payment from the City within 7 days after the time such payment is due, Developer, upon giving 7 days of written notice to the City, may stop work on the Project until payment of the full amount owed to the Developer has been received. The Contract Price and time to achieve Substantial Completion Date will be equitably adjusted by Change Order for reasonable cost and delay resulting from shutdown, delay, and start-up.

(h) When Final Completion has been achieved, Developer will prepare for City's review and acceptance a final application for payment stating that based on the City's Final Inspection and Developer's information and belief, the Project has reached Final Completion in accordance with the Final Plans. Final payment of the balance of the Contract Price will be made to Developer within 30 days after the Developer submits to the City a complete and accurate application for final payment that includes: an affidavit declaring that any indebtedness connected to the Project have been paid, satisfied or will be paid with the proceeds of final payment so as not to encumber the Project or Project Site; as-built drawings, manuals, copies of warranties, and all other closeout documents required by the Final Plans or this Agreement have been delivered to the City; and release of any liens, conditioned on final payment received.

(i) Developer agrees that in the event this Agreement shall be terminated by the City, Developer shall assign any Construction Contract to the City at the City's request.

(j) The parties agree that any amounts that otherwise would be subject to Retainage hereunder shall be deposited into an account (the "Retainage Account") controlled by the City. At such time as Retainage is required to be released hereunder, such amounts shall be paid from the Retainage Account to the Developer. Any interest accruing on the Retainage Account shall be payable to the Developer together with the final payment due to the Developer hereunder.

3. Project Ownership and Operation

(a) Possession

(i) Upon Substantial Completion the City shall be entitled to take possession of the Project, or any portion thereof, as of the Substantial Completion Date, subject to the terms and conditions of this Agreement and Project Operating Agreement.

(ii) Upon Termination of this Agreement by the City, the Developer shall deliver possession of the Project to the City

(b) Operating Period

(i) Developer shall develop, operate and maintain the Project during the Operating Period pursuant to the terms of the Project Operating Agreement.

4. Execution Documents. On the Execution Date, the documents and instruments set forth in this Section shall be executed and/or delivered.

(a) The Project Operating Agreement;

(b) Copies of such resolutions, consents, authorizations, and other evidence as either party reasonably may request to establish that: (i) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action of Developer or City, as the case may be; and (ii) the execution and delivery of such documents, and the performance by Developer or City of its obligations hereunder and under the foregoing documents, have been authorized by Developer or City, as the case may be;

(c) Such other customary documents and instruments as either party may reasonably request in connection with the Execution Date.

5. Representations; Warranties

(a) Mutual. Each of Developer and City represents and warrants to the other that:

(i) It shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement;

(ii) It has the power to enter into this Agreement and to perform its obligations hereunder;

(iii) It has received all authorizations necessary to authorize the execution and delivery of, and its performance under, this Agreement, including that it properly has authorized the execution of this Agreement by the person whose signature appears in its signature block;

(iv) Neither the execution and delivery of this Agreement by it, nor the performance by it of its obligations hereunder: (A) violates any Law or the terms

and conditions of any indenture, material agreement, or other instrument to which it is a party, or by which it or any of its properties or assets is bound; (B) conflicts with, results in breach of, or constitutes a default under any such indenture, agreement, or other instrument; or (C) results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature upon any of its properties or assets; and

(v) This Agreement, once executed, is its legal, valid, and binding obligation.

(b) Entity Type. In addition to the representations and warranties made by it in Subsection 5(a): (i) Developer represents and warrants to City that it is a corporation organized and existing under the laws of the State of Ohio and authorized to transact business in Indiana; and (ii) City represents and warrants to Developer that it is a public body organized and existing under the laws of the State of Indiana.

6. **Sales Tax.** The City shall deliver the Sales Tax Exemption Form to the Developer at the notice address set forth in this Agreement and Developer shall deliver the Sales Tax Exemption Form to the Contractors.

(a) Upon any assessment, or threatened assessment, of Indiana sales and/or use tax in connection with the purchase of any materials to construct, install, and/or complete the Project, Developer (or the Contractors, pursuant to terms and conditions of the Construction Contract) promptly shall notify City in writing. From and after receipt of the foregoing notice, City shall provide such cooperation, information, and assistance as Developer and/or Contractors shall reasonably request.

(b) City shall indemnify and hold harmless Developer, the Contractors, and the members, directors, officers, and employees of Developer and the Contractors, from and against any and all Claims arising from, or connected with: (i) the charging of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials to construct, install, and/or complete the Project; and/or (ii) any interest and penalties assessed by the Indiana Department of Revenue with respect to the non-payment or late payment of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials to construct, install, and/or complete the Project; including, without limitation, reasonable attorneys' fees and court costs. The obligations of the City under this clause shall survive the termination of this Agreement.

7. **Change Orders.**

(a) Developer Changes. If Developer desires to make any changes to the Final Plans, then Developer shall submit a Change Order Request to the City for review and approval, together with an estimate of any increases to the Project Costs that would result from the change proposed in the Change Order Request. Within ten (10) days after the City receives the Change Order Request, the City shall deliver to the Developer written notice that it approves or rejects the Change Order Request. If the City approves a Change Order Request for a change that would result in an increase in the Project Budget, then the amount of such increase shall be paid by City as such costs are incurred; provided that, in no event shall Developer have any obligations with respect to the payment of the amount of such increase. If the City rejects all or any part of the Change Order Request, then such notice shall: (i) specify the part or parts that the City is rejecting; and (ii) include the specific basis for such rejection.

(b) City Changes. If the City desires to make any changes to the Final Plans, then the City shall submit a Change Order Request to the Developer for review. Within ten (10) business days after the Developer receives the Change Order Request, the Developer shall deliver to the City written notice stating whether the change proposed in the Change Order Request would result in an increase or decrease to the Project Costs; provided that, if the proposed change would result in an

increase or decrease, then such notice also shall include an estimate of the amount of the increase or decrease.

(c) If the City and Developer approve a Change Order Request, whether that request originates with a Developer Change or City Change, then the Developer and City shall execute a Change Order and the Guaranteed Maximum Price and time to complete the project shall be equitably adjusted.

(d) Any savings resulting from the adjustment in Projects Costs shall be allocated to the Project Contingency line item. There shall be no changes in the Project Contingency line item without the prior written consent of the City and Developer. Changes to the Project Contingency line item will be memorialized through a Scope Modification executed by the Developer and City.

8. Construction

(a) Permits. Prior to commencing construction of the Project, Developer, at its costs and expense, shall obtain and submit to City for its review the Required Permits.

(b) Construction. Developer shall construct the Project in compliance with the Laws and Required Permits, including payment of all Contractors and subcontractors in compliance with IC 36-1-12.

(c) The Project consists of the design, construction, and services required to fulfil the Developer's obligations as provided in the Final Plans and other Contract Documents and includes all design, labor, materials, equipment, construction administration, and management services provided by the Developer. The Developer will provide all labor, equipment, and services necessary to complete the Project, as described in the Final Plans, all of which must be provided in full accord with and reasonably inferable from the Final Plans and all other Contract Documents.

(d) The date of commencement of the Project shall begin upon receipt of a Notice to Proceed by the Developer from the City. The Developer agrees and acknowledges that no work on the Project shall commence without prior written consent of the City.

(e) Developer Work. The Developer shall be responsible for all on-site surveying and layout and the production of weekly site photographs depicting general conditions of the Project Site and completed work for the Project.

9. Inspection.

(a) Permitted Inspection. Upon reasonable written notice delivered to Developer, which notice shall specify the portion of the construction to be inspected, the City may perform a Permitted Inspection. If applicable after a Permitted Inspection, the City shall deliver a Non-Compliance Notice to Developer.

(b) Final Inspection. Developer shall deliver to City a written request for the Final Inspection of the Project at least five (5) business days prior to issuance of a certificate of Substantial Completion. The City will conduct a Final Inspection and, if applicable, may issue a Non-Compliance Notice. Within five (5) business days of the Final Inspection, the City and Developer shall identify the "punch-list" items. Developer shall complete all "punch-list" items within sixty (60) days after the "punch-list" items have been identified. The City shall be entitled to withhold One-Hundred Fifty Percent (150%) of the costs to complete the "punch-list" items and no final payment shall be made until such "punch-list" items have been satisfied.

(c) Non-Compliance. If the City delivers to Developer a Non-Compliance Notice following a Permitted Inspection or Final Inspection in accordance with this Section, then the Developer shall correct, as soon as practicable, all Material Defects identified in the Non-Compliance Notice, except

and to the extent that any such Material Defects previously have been accepted, or have been deemed to have been accepted, by the City. All items or components of the Project with respect to which: (i) an Inspection is conducted; and (ii) no Material Defects are identified in a timely Non-Compliance Notice; shall be deemed to be accepted by the City.

(d) Latent Defects. Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by the City pursuant to this Section shall be applicable with respect to any Latent Defects.

(e) General

(i) In connection with any Inspection pursuant to this Section, the City shall: (A) comply with all health and safety rules of which are enacted by Developer and which City has been informed that have been established for personnel present on the construction site; and (B) coordinate the inspections so that the inspections do not interfere with the performance of construction. Developer shall have the right to accompany, and/or have its construction manager accompany, the City during any Inspection.

(ii) An acceptance, or deemed acceptance, by City pursuant to this Section shall not mean that the City has accepted, or Developer has been relieved of, responsibility for: (A) compliance with the Laws; (B) the proper application of construction means or methods; or (C) correcting any portion of the Project if it is later determined that such portion is inconsistent with the proper completion of a subsequent portion of the Project.

(iii) The Developer shall rely on its own professional interpretations of the Final Plans in constructing the Project and does hereby release and hold harmless City's employees, and representatives from any liability related to the assistance provided to Developer by such employees, and representatives. However, Developer is entitled to rely upon the accuracy and completeness of the Final Plans and any design professional (including but not limited to the Engineer) which is hired by the City.

10. Insurance

(a) Developer. During construction of the Project, Developer shall maintain the policies of insurance reflected on the certificate attached hereto as Exhibit B.

(b) City. During the Term, City shall maintain in full force and effect the Casualty Insurance and the Liability Insurance in such forms as required by the City.

(c) Policy Requirements. Each policy of insurance required to be maintained by a party pursuant to this Section shall: (i) be maintained with a reputable insurance company reasonably approved by the other party; and (ii) name the other party as an additional insured. Each of the Developer and City shall deposit with the other certificates of each policy of insurance required by this Section to be maintained by it.

(d) Failure to maintain. If, at any time, either party is in default with respect to maintaining any policy of insurance required by this Section to be maintained by it, then the non-defaulting party may (but still be obligate to): (i) obtain such insurance for and on behalf of the defaulting party; and (ii) recover from the defaulting party the costs incurred in connection therewith.

11. **Casualty/Payment Abatement.** If, during the Term, there is damage to, or total or partial destruction of, the Project by fire or other casualty such that the Project is rendered unfit, in whole or in part, for use by the City, then

the City either shall (a) apply the Insurance Proceeds to restore and/or replace the Project as promptly as is reasonable; or (b) terminate the Agreement and use the Insurance Proceeds to pay any Project Costs certified by Developer as of the date of the casualty event, subject to the Guaranteed Maximum Price.

12. City Covenants.

(a) Compliance. City: (i) shall pay the undisputed Project Costs and any amounts due hereunder punctually and in strict conformity with the terms of this Agreement; and (ii) faithfully shall observe and perform all of its obligations under this Agreement.

(b) Other Compliance. City shall: (i) not take, or omit to take, any action under the contract, if the effect of such act or failure to act would in any manner impair or adversely affect the ability of the City to pay Project Costs; and (ii) observe and perform all of its obligations under all other contracts affecting or involving the Project to which City is a party.

(c) Use. Developer shall until the expiration of the Operating Period: (i) provide the maintenance and repairs necessary to keep the Project in a good, safe, clean, and slightly order and condition that complies with all Laws; and (ii) construct and operate the Project in compliance with the Laws. After the expiration of the Operating Period, the City may, without the consent of the Developer, make any alterations, modifications, and/or additions to or of the Project. Equipment or other personal property used in connection with the Project that becomes worn out or obsolete may be discarded or sold by the City. The City is not obligated to replace such equipment or personal property; provided that any such equipment or personal property replaced by the City at its expense shall be and remain the property of the City.

(d) Assurances. City shall adopt such resolutions, execute and deliver such instruments, and make any and all further assurances as reasonably may be necessary or proper: (i) to carry out the intention of this Agreement; (ii) to facilitate the performance of this Agreement; and/or (iii) in connection with assuring and confirming the rights and benefits provided to the Developer.

13. Developer Covenants

(a) Filings. Developer shall keep in full force and effect, without any violations by Developer, any and all filings or registrations with any Agency necessary in connection with the acquisition of the materials to construct, and/or the construction of, the Project in accordance with this Agreement and the Construction Contracts.

(b) No Liens. At all times prior to delivering possession of the Project to the City, and expressly contingent upon Developer receiving all payments then due and owing by City, Developer shall: (i) keep the Project, and the materials to construct the Project, free from any all liens, claims, security interests, encumbrances, and restrictions, except for: (A) the lien of current real estate taxes not delinquent; and (B) any of the foregoing existing due to compliance with this Agreement; and (ii) defend the Project, and the materials to construct the Project, against the claims and demands of others. If any mechanic's, supplier's, or similar lien is filed against the Project Site, the Project, or the materials to construct the Project, and contingent upon Developer having received all payments then due and owing by City, for work claimed to have been done for, or materials claimed to have been furnished to, the Developer, then the Developer shall cause such liens to be discharged off record within 45 days after notice of the filing by bonding or providing other adequate security thereafter, or as provided or required by the Laws.

(c) Laws. Developer shall comply with all applicable Laws in the performance of its obligations under this Agreement and/or the Construction Contracts.

(d) No Transfer. There shall be no Developer Transfer by Developer and Developer shall not cause or permit any Developer Transfer.

(e) **Developer Interest.** Developer: (i) shall not: (A) change its name; (B) merge into, or consolidate with, any other entity, or otherwise reorganize; (C) sell, convey, or transfer to any person any interest in Developer; and/or (D) otherwise permit any change in the members of Developer or the percentage of ownership in Developer; if the effect of the foregoing is that the Developer no longer is controlled by, or under common control with, that at the time of the execution of this Agreement; (ii) shall notify City promptly of any change of the nature specified in the foregoing clause; and (iii) shall not grant any security interest in any interest in Developer.

(f) **No Termination.** Developer shall not be dissolved, wound up, or converted to another type of entity, or have its existence as a limited liability company terminated.

(g) **Business.** Developer shall not make or permit to be made any material change in the character of its business as currently conducted.

(h) **Records.** During construction of the Project, Developer shall keep and maintain true, correct, accurate, and completed Books and Records. All Books and Records shall be kept and maintained in accordance with generally accepted accounting principles consistently applied. City and its attorneys, accountants, representatives, architects, engineers, and consultants at all reasonable times shall have: (i) fee access to, and rights of inspection of, the Books and Records; and (ii) the right to audit, make extracts from, and received from Developer originals or accurate copies of, the Books and Records.

14. Events of Default. Each of the following shall be deemed to be an “Event of Default” by City or Developer, as applicable:

(a) The failure by the applicable party to pay any amount due hereunder on the date due, and the continuance of such failure for a period of ten (10) days after written notice thereof, provided that it shall not be an Event of Default for City to withhold payment of any disputed Project Costs;

(b) The failure by the applicable party to materially observe or perform any term or condition of this Agreement to be observed or performed by it (other than the payment of any amount due hereunder), and the continuance of such failure beyond the Cure Period;

(c) The filing of a petition or answer seeking arrangement or reorganization of the applicable party under the Laws;

(d) The approval by a court of competent jurisdiction of a petition, filed with or without the consent of the applicable party, seeking arrangement or reorganization under the Laws; or

(e) The assumption by a court of competent jurisdiction of custody or control of the applicable party, or all or a substantial portion of the property of such party, pursuant to the provisions of any Law for the relief or aid of debtors.

15. Remedies.

(a) **Remedies.** If there is an Event of Default, then the non-defaulting party, without further notice or demand, shall have the following rights and remedies:

(i) If the defaulting party has failed to perform any of its obligations under this Agreement, the right to: (A) enjoin the failure or specifically enforce the performance of such obligation; or (B) perform the obligation that the defaulting party has failed to perform; provided that the performance by the non-defaulting party of such obligation shall not be construed to be a waiver of the Even of

Default; or (C) the right to exercise any other remedy available at law or in equity, including, without limitation, the right to terminate this Agreement.

(b) No Waiver. Neither: (i) a waiver by either party of an Event of Default; nor (ii) a delay in the exercise by either party of any right or remedy with respect to an Event of Default; shall be deemed either to: (i) constitute a waiver of any subsequent Event of Default; (ii) release or relieve the other party from performing any of its obligations under this Agreement; or (iii) constitute an amendment or modification of this Agreement. If any portion of the Purchase Price that is less than the entire Purchase Price is accepted during the continuance of an Event of Default, then such acceptance shall not be construed as a waiver of: (i) such Event of Default; or (ii) any right or remedy of Developer with respect to such Event of Default. The rights and remedies hereunder are cumulative, and, except as specifically limited in this Agreement, no right or remedy shall be deemed to be, or construed as, exclusive of any other right or remedy hereunder, at law, or in equity; or (iii) failure to exercise any right or remedy shall operate to prevent the subsequent exercise of such right or remedy.

(c) Damages. The non-defaulting party may recover from the defaulting party all damages that the non-defaulting party incurs: (i) by reason of any Event of Default by the defaulting party; and/or (ii) in connection with exercising its rights and remedies with respect to any Event of Default; together with interest thereon at the rate of 12% per annum. All such amounts shall be due and payable by the defaulting party immediately upon receipt of written demand from the other party, and the obligation of the defaulting party to pay such amounts shall survive the acquisition by the City of the completed Project.

16. **Indemnification.** Developer shall indemnify and hold harmless the City from and against any and all Claims arising from or connected with; (i) mechanics' liens filed against the Project or the Project Site for work performed by the Developer or any party acting by, under, through, or on behalf of the Developer, but only if Developer has been paid all amounts then due and owing by City; (ii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by the Developer or any party acting by, under, through, or on behalf of the Developer, but only to the extent caused by the negligent acts or omissions of Developer; or (iii) the willful misconduct of the Developer or any party acting by, under, through, or on behalf of the Developer.

Notwithstanding anything to the contrary set forth herein, the obligations of the parties under this Section shall survive the expiration or termination of this Agreement for a period of two years.

17. **Assignment.** The Developer shall not assign this Agreement without the prior written consent of the City. The City shall have the absolute right to assign its rights under this Agreement to any governmental entity in order to provide for financing of the Project Costs without the requirement of any consent by the Developer hereunder. Any transfer of this Agreement by operation of law (including, without limitation, a transfer as a result of merger, consolidation, or liquidation of Developer) shall constitute an assignment for purposes of this Agreement.

18. **Notice.** Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given when (a) delivered in person to the other party; or (b) delivered to the following contacts:

Amanda Cope, P.E. (City)
City Engineer
City of Angola
210 N. Public Sq
Angola, IN 46703

Todd Lemen (Developer)
Regional Vice President
Kokosing Industrial

3862 N. Commercial Parkway
Greenfield, IN 46140

19. **Force Majeure.** Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of Force Majeure, then (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for an equitable period related to such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, or satisfaction, as applicable, shall be extended for the same period; provided that the foregoing shall not apply with respect to the obligation to make any payment of money.

20. **BOT Statute.** This Agreement is intended to be a “public-private agreement” authorized by Indiana Code §5-23, and more specifically a BOT Agreement as set forth in Indiana Code §5-23-3 . If and to the extent this Agreement is not such a “public-private agreement”, then this Agreement shall be deemed to: (a) include such terms not otherwise included; and (b) exclude such terms not otherwise excluded; as is necessary to cause this Agreement to be a “public-private agreement”.

21. **Miscellaneous.** Subject to Section 18, this Agreement shall inure to the benefit of, and be binding upon, Developer and City, and their respective successors and assigns. This Agreement constitutes the entire agreement between Developer and City with respect to the subject matter hereof, and may be modified only by a written agreement executed by both Developer and the City. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. Whenever in this Agreement a singular word is used, it also shall include the plural wherever required by the context and vice versa. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana All Exhibits to this Agreement are attached hereto and incorporated herein by reference.

(signatures on the following pages)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth in the introductory paragraph hereof.

City of Angola, IN

By: _____

Printed: _____

Title: _____

Kokosing Industrial, Inc.

By: Todd A. Lemen

Printed: Todd A. Lemen

Title: Regional Vice President

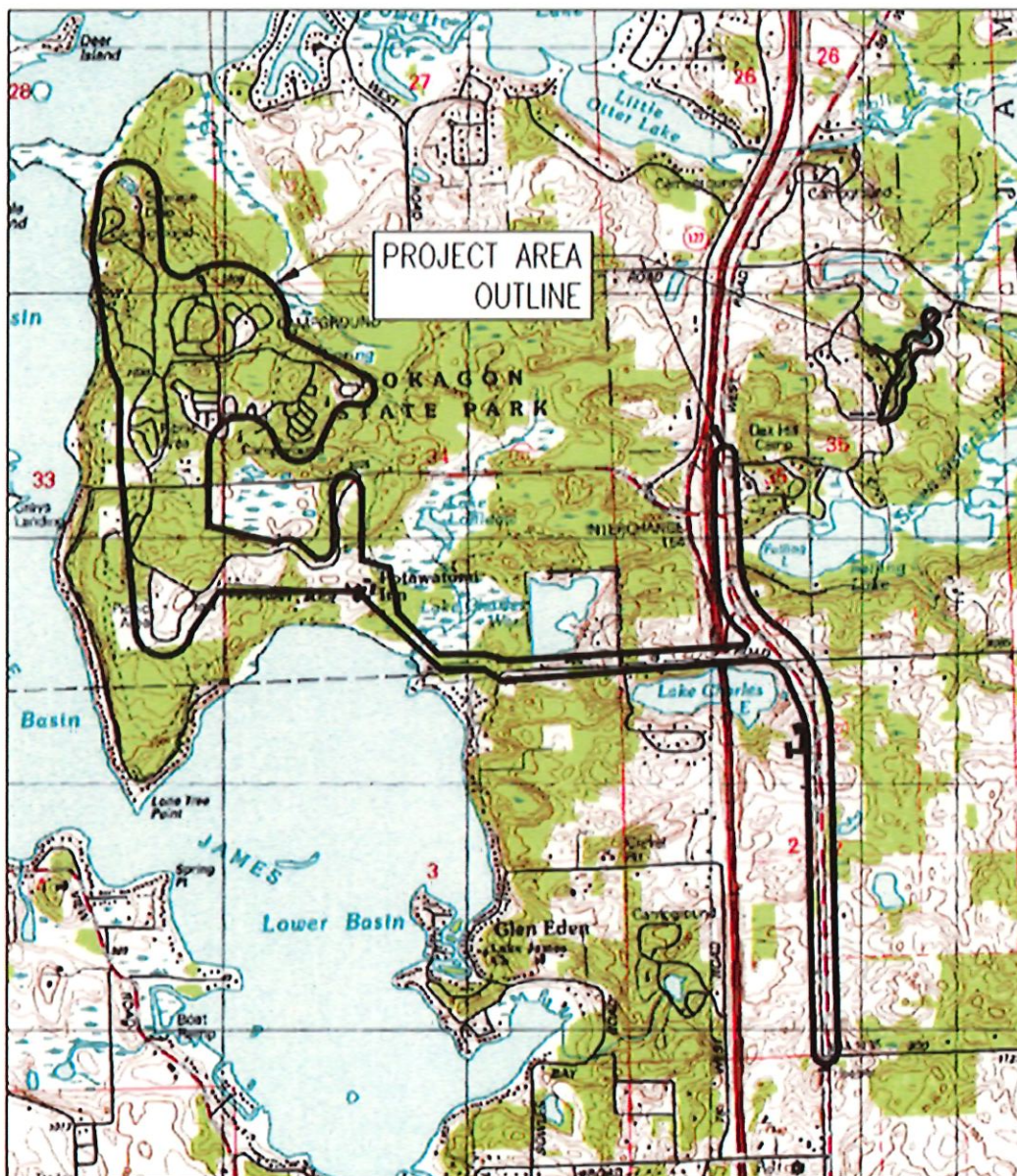
INDEX TO EXHIBITS

Exhibit A	Depiction/Description of Project Site
Exhibit B	Required Insurance Policies
Exhibit C	Form Completion Addendum
Exhibit D	Project Operating Agreement
Exhibit E	BOT Construction Contract

EXHIBIT A
Project Site Depiction

Division 1: Water Improvements

The project site is represented by the areas specified and shown in the map below and as designated on the Contract Documents provided by Curry and Associates. Reference Exhibit E BOT Construction Agreement for the scope of improvements included in this agreement. No work is to be performed at the Trine Recreation Area.



VICINITY MAP
NO SCALE

Division 1: Wastewater Improvements

The project site is represented by the areas specified and shown in the map below and as designated on the Contract Documents provided by Wessler Engineering. Reference Exhibit E BOT Construction Agreement for the scope of improvements included in this agreement. No work is to be performed at the Trine Recreation Area.

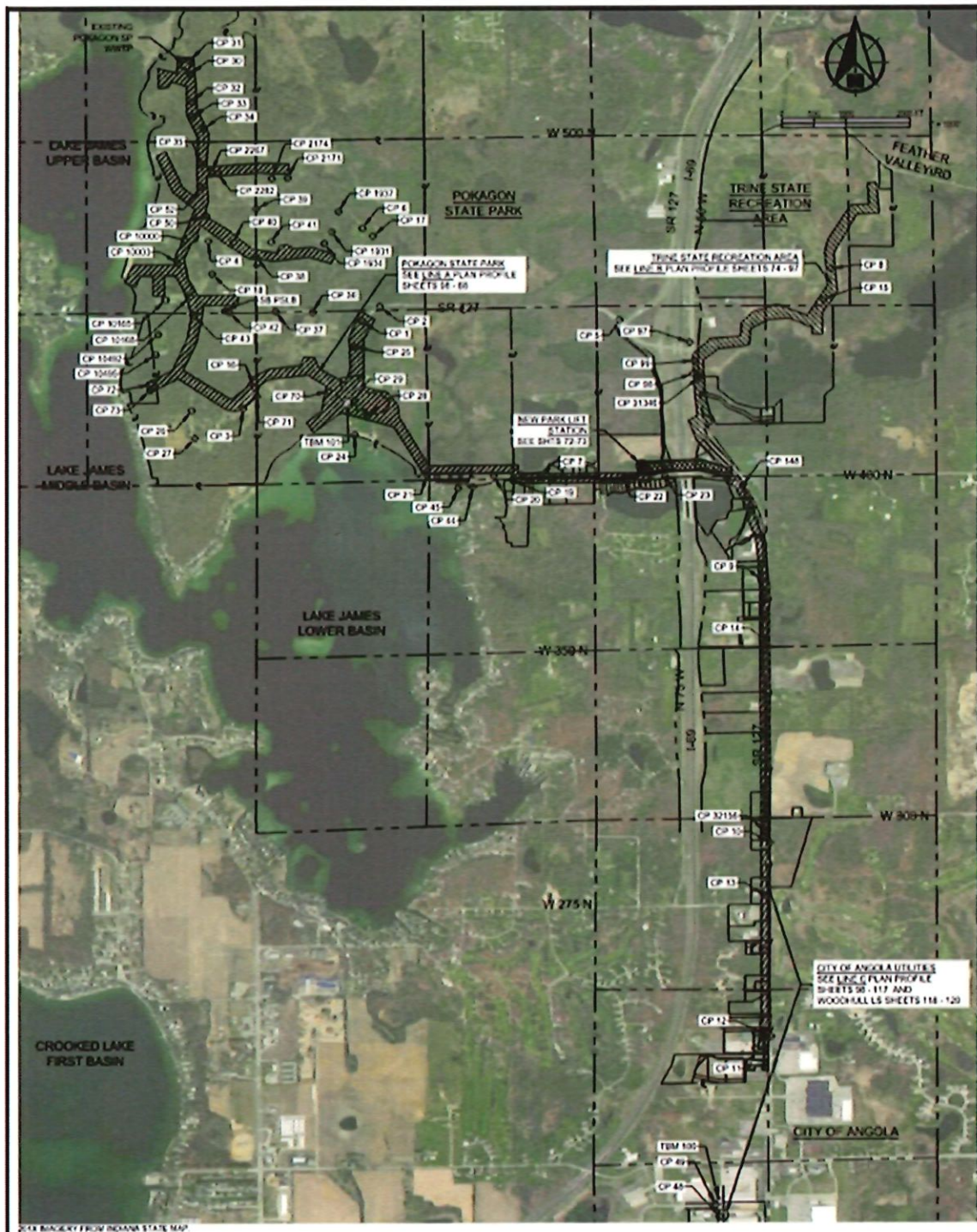


EXHIBIT B
Required Insurance Policies

1. See Exhibit E and the EJCDC C-700 (2013 Rev. 1) General and Supplemental Conditions for insurance policy requirements.

EXHIBIT C
Completion Addendum

This Completion Addendum for (_____) (the "Addendum") is entered into this ____ day of _____, by and between _____ (the "Developer") and the _____, Indiana (the "City")

Recitals

WHEREAS, Developer and City have executed that certain Build-Operate-Transfer Agreement (_____) dated _____ (the "Agreement");

WHEREAS, all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement;

WHEREAS, the Agreement provides for the execution of this Addendum following the Substantial Completion Date; and

WHEREAS, the Substantial Completion Date has occurred.

Agreement

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, each of Developer and City certifies and agrees that the Substantial Completion Date occurred on this _____ day of _____, 20____

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date set forth above.

By: _____
Printed: _____
Title: _____

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
DISTRICT OF _____)

Before me, a Notary Public in and for the State of Indiana, personally appeared _____, the _____ of CONTRACTOR Corporation, who acknowledged the execution of the foregoing Completion Certificate (_____ Water Treatment) on behalf of such entity.

WITNESS my hand and Notarial Seal this _____ day of _____.

By: _____
Notary Public
Printed Name: _____

I am a resident of _____ District, Indiana.

My commission expires _____.

By: _____
Printed: _____
Title: _____

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
DISTRICT OF _____)

Before me, a Notary Public in and for the State of Indiana, personally appeared _____, the _____ of the _____ of _____, who acknowledged the execution of the foregoing Completion Certificate (_____ Water Treatment) on behalf of such entity.

WITNESS my hand and Notarial Seal this ____ day of _____.

By: _____
Notary Public
Printed Name: _____

I am a resident of _____ District, Indiana.

My commission expires _____.

EXHIBIT D
Project Operating Agreement

(Reference the Project Operating Agreement following this page.)

PROJECT OPERATING AGREEMENT

THIS PROJECT OPERATING AGREEMENT ("Agreement") is executed this _____ day of _____, 2025 ("Effective Date"), is by and between Kokosing Industrial, Inc. ("Operator") and the City of Angola, IN. ("City").

WITNESSETH:

WHEREAS, the City is the owner of that real property more particularly depicted in Exhibit A of the BOT Agreement between City and Operator; (the "Property"); and

WHEREAS, the City and Operator executed that certain Build-Operate-Transfer Agreement (_____) dated as of the date hereof ("BOT Agreement");

WHEREAS, pursuant to the BOT Agreement, Operator is required to develop, construct, and operate the Project (as defined in the BOT Agreement) on the Property;

WHEREAS, Indiana Code Chapter 5-23-3 (the "Statute") requires Operator to operate the project; and

WHEREAS, Operator and City wish to enter into this Agreement to recognize the applicability of the Statute and transactions described in the BOT Agreement and establish the Operator's rights and obligations as to the Project.

NOW, THEREFORE, in consideration of the covenants contained herein, the sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. Operation. During the Term (as herein defined) of this Agreement, the Operator shall develop, construct, and operate the Project as set forth in the BOT Agreement, and as permitted by Statute, or as may be designated from time to time by the mutual written agreement of the parties. The City hereby authorizes Operator to exercise such powers with respect to the Project as may be necessary for the performance of Operator's obligations under the terms of this Agreement.
2. Expenses. City agrees to reimburse the Operator for the cost of out-of-pocket expenses ordinarily and reasonably incurred by the Operator for the purpose of operating the Project pursuant to this Agreement, such reimbursements to be made upon presentation to and approval by the City of receipts or other evidence satisfactory to the City in itemizing such expense in reasonable detail. The City shall be required to make such reimbursement of undisputed amounts within thirty (30) days of receipt of a reimbursement request from the Operator.
3. Term. The term of this Agreement will commence as of the date of Substantial Completion of the construction as defined in the BOT Construction Agreement between the parties and continue for a period of one (1) day ("Term"); provided, however, the City may at any time limit the area within the Property pursuant to which the Operator shall provide such services by providing at least thirty (30) days prior written notice to the Operator of such request for a reduction of services by the Operator hereunder. The City further reserves the right to terminate this Agreement, with or without cause, by providing thirty (30) days prior written notice to Operator of such proposed termination.
4. Independent Contractor Status. Operator acknowledges that Operator will at all times act and perform as an independent contractor hereunder. Operator will have no authority to act for, or on behalf of, or to bind the City in any manner whatsoever, except as expressly set forth in this Agreement. The City will have no right to control or direct the details, manner or means by which the Operator performs its obligations hereunder. The City will have no right to exercise any control or influence over the professional judgment of the Operator.

5. Indemnification

- a. By Operator. Operator shall indemnify, defend, and hold harmless City from and against any and all claims, demand, and liabilities (including, without limitation, judgments, damages, and settlements) and expenses (including, without limitation, litigation costs and attorneys' fees) resulting bodily injury, property damage or death, but only to the extent caused by the negligent acts or omissions, or willful misconduct of Operator.
- b. By City. To the extent permitted by law, the City shall indemnify, defend, and hold harmless Operator from and against all claims, demand, and liabilities (including, without limitation, judgments, damages, and settlements) and expenses (including, without limitation, litigation costs and attorneys' fees) arising out of or related to the Project and/or Property, including, without limitation, (i) the management of the Project and/or Property, and (ii) from liability for injuries suffered by any person while on, in, or about the Project and/or Property, other than those resulting from the willful misconduct or gross negligence of the Operator.

6. Miscellaneous

- a. Operation; Assignment. Operator may, not (i) enter into any contracts or agreements with any persons for the operation of all or a portion of the project and/or any of the services related to operating of the Project without the prior written consent of the City. The Operator shall have no right to assign all or part of its rights or obligations under this Agreement. The City shall have the absolute right to assign all of its rights and obligations under this Agreement.
- b. Waiver. The failure of either party to enforce any right under this Agreement will not constitute a waiver of that right, or of damages caused thereby, or of any other rights under this Agreement.
- c. Entire Agreement. Except for the BOT Agreement and any agreements described therein, this Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and may only be amended or modified by an agreement in writing executed by both of the parties hereto.
- d. Governing Law. This Agreement will be governed by the laws of the State of Indiana.
- e. Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.
- f. Severability. If any provision of this Agreement is construed to be invalid, illegal, or unenforceable, then the remaining provisions hereof shall not be affected thereby and shall be enforceable without regard hereto.
- g. Execution. The parties agree this Agreement may be executed in multiple originals, each of which shall be considered an original for all purposes and, collectively, shall be considered to constitute the Agreement. The parties further agree signatures transmitted by facsimile or in Portable Document Format (PDF) may be considered an original for all purposes, including, without limitation, the execution of this Agreement and enforcement of this Agreement.

(signatures on the following page)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

City of Angola, IN

By: _____
Printed: _____
Title: _____

Kokosing Industrial, Inc.


By: 
Printed: Todd A. Lemmer
Title: Regional Vice President

EXHIBIT E
BOT Construction Contract

(Reference the BOT Construction Contract following this page)

BOT CONSTRUCTION CONTRACT

THIS CONTRACT (herein sometimes "Agreement" and sometimes "Contract"), made this _____ day of _____, 2025, by and between the City of Angola, Indiana, a municipal Corporation (hereinafter called the "Owner") and Kokosing Industrial, Inc., an Ohio corporation, acting as contractor and qualified provider (hereinafter called "Contractor").

WITNESSETH:

WHEREAS, Contractor has submitted to Owner a proposal (the "Proposal") for the installation of _water and sanitary system improvements at facilities owned by Owner and located in the Pokagan State Park and City of Angola, Indiana (herein the "Facilities"), the specific details of such Proposal are outlined in the Exhibits attached to this Agreement; and

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

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

1. Integration; Conflict; Agreement Conditional.

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

- 2013 Rev. 1 Version of EJCDC C-700 Standard General Conditions of the Construction Contract and the Owner's Supplementary Conditions, both of which are incorporated herein and attached hereto (collectively the "General Conditions");
- Specifications, Drawings and Project Manual (the foregoing, collectively, the "Specifications and Drawings");
- Exhibit A Scope of Work;
- Exhibit B Proposal & Open Book Structure;
- Exhibit B-1 Contractor's Open Book Pricing Model & Proposal
- Exhibit C Project Completion Schedule

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

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

2. General Obligations and Rights of Contractor.

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

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

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

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

2.1. Contractor's Representations.

A. Correction of Work. Consistent with Article 13.07 of the General Conditions, if within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Project, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly and without cost

to Owner, correct such defective work. Contractor's warranty, correction of work and guarantee hereunder excludes defects or damage caused by:

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

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

C. E-Verify. Pursuant to I.C. § 22-5-1.7 et seq., as the same may be amended from time to time, and as is incorporated herein by this reference (the "Indiana E-Verify Law"), Contractor is required to enroll in and verify the work eligibility status of its newly-hired employees using the E-Verify program affirming that it is enrolled and participating in the E-verify program and does not knowingly employ unauthorized aliens. In support of the Affidavit, Contractor shall provide the City with documentation indicating that it has enrolled and is participating in the E-Verify program. Should Contractor subcontract for the performance of any work under and pursuant to this Agreement, it shall fully comply with the Indiana E-Verify Law as regards each such subcontractor. Should the Contractor or any subcontractor violate the Indiana E-Verify law, the City may require a cure of such violation and thereafter, if no timely cure is performed, terminate this Agreement in accordance with either the provisions hereof or those set forth in the Indiana E-Verify Law. The requirements of this paragraph shall not apply should the E-Verify program cease to exist.

D. Debarment and Suspension.

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

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

2.2. Indemnification.

Contractor shall indemnify and hold harmless the Owner, its agents, employees and representatives, and their respective successors and assigns, and any assignee of the Contractor (all of the foregoing, collectively, the "Owner Indemnified Parties") against all liability and loss to the extent caused by the negligence or misconduct of Contractor, or Contractor's permitted subcontractors, or the agents, employees, or representatives of Contractor or its permitted subcontractor(s), including any injury or death sustained by or any damage to the property of any person; provided however, that Contractor shall not be responsible for any injury or death, damage, or loss, including reasonable attorneys' fees and costs or other disbursements, to the extent caused by the negligence of any Owner Indemnified Parties, nor shall Contractor be held responsible to the extent of any concurrent or contributory negligence of any Owner Indemnified Parties or non-party.

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

2.3. Bonds.

If required by the Owner and before commencing the performance of this Agreement, the Contractor shall execute for the benefit of Owner, a good and sufficient Performance Bond and Payment Bond, in form acceptable to Owner and consistent with Article 5 of the General Conditions. Each bond shall be in an amount equal to the total GMP (as defined below in Section 5 of this Agreement).

2.4. Limitation of Liability.

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

2.5. Insurance.

2.5.1. Obtaining Proper Insurance.

Contractor shall not commence performance hereunder until (i) it has obtained and Owner has approved that Contractor meets all insurance coverage required by this Section 2.5 and consistent with Article 5 of the General Conditions; and (ii) Owner has been furnished with a certificate of insurance properly evidencing and confirming that (a) Owner is an additional insured on commercial general liability, auto liability, umbrella/excess liability, and builders risk, and (b) such insurance coverage is in effect and will not be canceled or materially altered without thirty (30) calendar days prior written notice to Owner. If any insurance policy required herein and maintained by Kokosing does not provide advance notice to third parties then, prior to any cancellation of such insurance, Kokosing shall have new insurance policies in place that meet the requirements of this Agreement. Where not prohibited by law, all insurance provided by Contractor hereunder shall provide for a waiver of subrogation against Owner. In the event that permitted subcontractors are not covered by the Contractor's policies of insurance, each permitted subcontractor shall secure policies of insurance, which meet the requirements of this Section 2.5.

2.5.2. Amount of Insurance.

Contractor shall take out and maintain, at its sole cost and expense, the following insurance coverage during the term of this Agreement and all other times during which Contractor, its employees, or agents shall be present at the Facilities, whether performing or correcting any portion of the Project. Contractor insurance affording additional insured status shall be written on a "primary and non-contributory" basis.

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

Statutorily required worker's compensation insurance and occupational disease coverage, to the extent provided by the Worker's Compensation Act and the Occupational Disease Act of the State of Indiana, including employer's liability \$1,000,000 each accident/by disease each employee/by disease policy limits on all of Contractor's employees engaged in the Project and where not prohibited by law, shall include a Waiver of Subrogation endorsement in favor of the Owner;

b. General Liability.

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

c. Automobile Liability.

Automobile liability insurance against damage because of bodily injury, including death, or damage to property of others as the result of the operation of any Contractor's automobile, with such insurance to afford protection to the limit of One Million Dollars (\$1,000,000.00) in respect to any one accident, combined single limit for bodily injury and property damage.

d. Umbrella/Excess Liability

Excess or umbrella liability insurance with limits of Five Million Dollars (\$5,000,000.00) per project or location aggregate for the scheduled underlying policies of commercial general, auto, and employer's liability.

3.6.3 Builder's Risk Insurance.

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

3. Building Insurance.

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

3.1. Title.

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

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

4. Cost and Payments.

4.1. Cost.

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

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

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

Contractor shall include in each permitted subcontract a limitation on the markup that Subcontractors can include in approved Change Orders. The cumulative total for all subcontractor markups plus all lower-tier subcontractor markups shall not exceed fifteen percent (15%) of the cost of any approved Change Order. As Contractor's markup is accounted for in the fixed fee, there will be no additional Contractor's markup for changes in scope associated with Owner approved work that expends project savings.

5. Independent Contractor.

It is understood and agreed by the parties hereto that Contractor shall perform the Project according to its own means and methods and shall for all purposes be an independent contractor. All persons employed by Contractor in connection with the Project shall be subject only to its orders and supervision, and shall be paid directly by Contractor. Neither Owner nor its agents, servants, or employees shall have the right to direct, supervise, or control the manner or method in which Contractor or its subcontractors perform the Project, except as otherwise expressly provided

herein; provided, however, Owner shall have the right to inspect the Project at any time for the purpose of determining whether the Project is being carried out in conformity with the Contract Documents.

6. Document Retention.

Contractor shall retain in its records copies of all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings or things which document the Project, its design, and its construction. Contractor shall maintain substantiating records for five (5) years after the date of final payment or for any longer period of time as may be required by law or good construction practice. Contractor shall promptly make such construction records available for inspection by Owner upon request during such retention period. Cost of Work information will be provided to the Owner upon request provided that documents related to fee and rates are not subject to audit or review by the Owner. If Contractor receives a notification of dispute or the commencement of litigation regarding the Project within this five (5) year period, Contractor shall continue to maintain all Project records until final resolution of the dispute or litigation.

7. Termination for Failure to Perform; Rights Thereunder.

8. Article 15 of the General Conditions shall be applicable to any termination rights under this Agreement. Extension of Time for Completion of Project.

Should the Contractor be obstructed or delayed in the prosecution or completion of the Project by the act, negligence, delay, or default of the Owner or by any other damage or act beyond the reasonable control of Contractor or any subcontractor, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all of the causes aforesaid, but no such allowance shall be made unless a claim therefore is presented in writing to the Owner within fifteen (15) business days of the occurrence of such delay. Contractor's nonperformance of its obligations under this Contract will be excused (or, if practicable, the time period within which Contractor may perform an obligation shall be extended) if and solely to the extent: (i) Contractor provides Owner with prompt and reasonable notice of Owner's nonperformance, and (ii) Contractor uses commercially reasonable efforts to perform its duties notwithstanding Owner's failure to perform.

9. No Acceptance of Defective Work.

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

10. Contractor to Furnish Required Statements.

The Contractor shall, at no additional cost, provide all statements, affidavits, waivers, and other instruments required by state or federal law or regulation (including, without limitation, the Act) or by local ordinances or rules, at such times and in the form required by said laws,

regulations, ordinances, or rules, and the Contractor hereby acknowledges receipt of notice from the Owner to furnish same.

11. Nondiscrimination in Hiring Employees.

The Contractor shall comply with the following:

A. The Contractor, any subcontractor, any supplier or any sub-supplier of a party to this Contract shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract with respect to his or her hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of his race, color, religion, sex, disability, national origin, or ancestry. Breach of this provision may be regarded as a material breach of this Contract.

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

(1) That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not, by reason of race, religion, color, sex, national origin, or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates;

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

C. The Contractor or any subcontractor of the Contractor shall be required to pay for each class of work on such project a scale of wages which shall be consistent with Davis-Bacon wage as described in Exhibit G. That as part of this Contract, there is incorporated by reference herein the prevailing scale of wages pursuant to I.C. 5-16-7-1 et seq. See additional provisions of Attachment B, Attachment C and Attachment E as described in Exhibit D.

12. Miscellaneous Provisions.

12.1. Governing Law.

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

12.2. Notices.

Unless otherwise specifically provided herein, any notice, consent, request, demand, report or statement (herein "Notice"), which is required or permitted to be given to or served upon either party hereto by the other party hereto under any of the provisions of this Agreement shall be in writing and deemed to be duly delivered when (i) personally delivered to the addressee, in the case of a Notice to be given to Contractor, or personally delivered to the addressee in the case of a

Notice to be given to Owner, or (ii) upon the earlier of actual receipt or refusal of delivery when sent via traceable overnight courier (e.g., FedEx) or when sent in the United States mail, registered or certified, postage prepaid, and properly addressed as follows:

If to Owner: Amanda Cope, P. E, City Engineer
City of Angola, IN
210 N. Public Sq
Angola, IN 46703

If to Contractor: Todd Lemen, Regional Vice President
Kokosing Industrial, Inc.
3862 N. Commercial Parkway
Greenfield, IN 46140

With Copy to: General Counsel

12.3. Assignment.

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

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

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

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

12.4. Nonwaivers and Defaults.

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

12.5. Remedies Cumulative.

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

Upon the occurrence of a default, either party, or its assignee, may, at its option, exercise any right, remedy, or privilege which may be available to it under applicable law, including the right to (i) proceed by appropriate court action to enforce the terms of this Agreement, (ii) recover damages for breach of this Agreement.

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

12.6. Amendments.

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

12.7. Headings.

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

12.8. Entire Agreement.

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

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

Authority to Execute Contract. This Contract is executed for the _____ pursuant to the approval of the Town Council at its regular meeting, duly called and held _____, 2025.

OWNER: _____

By: _____

Printed: _____

Its: _____

CONTRACTOR: KOKOSING INDUSTRIAL, INC.

By: Todd A. Lemen

Printed: Todd A. Lemen

Its: Regional Vice President

ATTEST: KOKOSING INDUSTRIAL, Inc.

By: [Signature]

Printed: Daniel M. Cordial

Its: Sr. Business Dev. Manager.

EXHIBIT A

SCOPE OF WORK

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

Project: Pokagon Infrastructure Improvements

- **Division 1: Pokagon Water Improvements for the City of Angola and Indiana Department of Natural Resources.**
- **Division 2: Pokagon Wastewater Improvements for the City of Angola and Indiana Department of Natural Resources**

Division 1 – Water Improvements.

1. Kokosing includes all labor, equipment, materials, supervision, and incidentals to provide the water infrastructure improvements for the City of Angola and Pokagon State Park as defined in the contract documents to provide the 12" water main from the City of Angola's C.R. 300 North Water Storage Tank to the Potawatomi INN Well House and 4" water main to the existing campground well house. This scope of work further includes the improvements at the Inn Well House and connection to the existing infrastructure and water supply line as shown on sheet 54 of the documents. The proposed scope of improvements excludes all work associated with the distribution supply mains beyond the Inn well house and campground well house for the remainder of the park and the Trine Recreation Area unless specified otherwise in this proposal letter. A list of exclusions, exceptions, and assumptions accompanying this scope are provided below.
2. The scope of improvements includes all work shown on the contract documents by Curry & Associates, Inc. dated March 27, 2025 (Confirmed Set):

Drawings:	Pokagon Infrastructure Improvements Projects Division 1: Pokagon Water Improvements for the City of Angola and Indiana Department of Natural Resources Confirmed Set dated March 27, 2025
Specifications:	Project Manual for Pokagon Infrastructure Improvements Division 2: Pokagon Water Improvements Confirmed Set dated March 31, 2025

Please note the following clarifications, assumptions, and exclusions associated with the water infrastructure improvements in this proposal:

1. We have excluded all work associated with the Trine Recreation Area from the connection point shown on sheet 11, through the infrastructure shown on sheet 17 through 21, 23, and 24.
2. We have included the 12" water main from the Angola water tower connection point shown on sheet 6 to the Inn Well House as designated on sheet 27. We have further included the modifications to the Inn Well House as shown on sheet 51 through 53. Our proposal assumes the yard piping connections shown on sheet 52 can occur external of the existing building by stubbing the lines through the external walls and utilizing insulation and heat trace, instead of cutting the patching the interior floor slabs.
3. We have included 320 LF of 2" water service line along Lane 150 Lake James as shown on sheet 13 of the documents.
4. We have included approximately 1,000 LF of 2" service line for the replacement of the existing lines near Campground 5.
5. Pricing includes a 4" waterline from the Inn Well House to the Campground Wellhouse. The 4" line will tie into the waterline just north of the campground wellhouse, that heads towards the Comfort Station. The waterline will not extend beyond this point.
6. We have excluded all work associated with the demolition of the campground well house. The 4" service line running to the campground well house will be terminated and connected into the existing distribution piping adjacent to the well house. All internal well house tanks, pumps, equipment, piping, etc. is to be demolished and removed by others.
7. We have included the decommissioning of 5 wells. These include wells 2, 4, 5, 7 and 8. All other existing wells will remain in service or be decommissioned by others.
8. We have 22 standard fire hydrants included. All fire hydrants along the 4" watermain up to the Campground Wellhouse will be flush hydrants as indicated by the Engineer.
9. This proposal includes a horizontal directionally drilled HDPE casing below I-69 in lieu of a 24" steel casing pipe as detailed on sheet 22 of the documents. The proposed casing is to be a 20" HDPE casing. The 12" HDPE watermain will be installed through the proposed casing pipe. We have not included any spacers within the carrier pipe. No boring pits are to be provided.
10. We have excluded all other water mains, service lines, laterals, valving, and/or connection points shown on the documents unless specified otherwise in this proposal letter.
11. As discussed with the engineer, we have excluded valves for future connections. Caps will be provided where necessary for future connection points.
12. We have included a 6" hydrant distribution line for one (1) fire hydrant to be located along the north circle drive of the Potawatomi Inn. This hydrant will

be fed from the proposed 12" DR18 PVC Water Main supplying water to the Inn as detailed on sheet 54.

Division 2 – Wastewater Improvements

1. Kokosing includes all labor, equipment, materials, supervision, and incidentals to provide the sanitary improvements for the City of Angola and Pokagon State Park as defined in the contract documents with exception to any and all work associated with the Trine Recreation Area and any exclusions, exceptions, and assumptions noted herein.
2. The scope of improvements includes all work shown on the contract documents by Wessler Engineering dated January 2025 as designated as:
Drawings: Pokagon Infrastructure Improvements
Division 2: Pokagon Wastewater Improvements for the City of Angola and Indiana Department of Natural Resources
Specifications: Project Manual for Pokagon Infrastructure Improvements
Division 2: Pokagon Wastewater Improvements

Please note the following clarifications, assumptions, and exclusions associated with the wastewater infrastructure improvements in this proposal:

1. We have excluded all work associated with the rehabilitation of the existing structures and piping, including CIPP lining, as identified on the documents including but not limited to sheets 37, 46, 47, 51, 62, 64, 65, and 118.
2. We have excluded all work associated with the gravity sewer line improvements at the Potawatomi Inn and Cabins as detailed on sheets 62, 63, 64, 65, 67, and 68 of the documents. Clarification regarding the excluded items by sheet number are described below.
 - a. Sheet 62 – Eliminate the gravity sewer work associated with line A11 and A11.1, including applicable manholes and structures. GR-A11 is to be relocated to the existing lift station structure for the Inn shown on sheet 65.
 - b. Sheet 63 – Eliminate Low Pressure Sewer Line A11, GR-A11.1, and A11-02 in their entirety.
 - c. Sheet 64 – Eliminate Line A11.1 and the associated low-pressure line shown to structure A11-01. Grinder station GR-A11 is to be relocated to the existing Inn lift station located on the southwest side of the cabins. The existing force main at the Inn Well House is to remain in service.
 - d. Sheet 65 – Eliminate all gravity sewer work and associated structures for line A12. Grinder station GR-A12 and the associated electrical are to be relocated to the existing lift station on the southwest side of the cabins. Low pressure line A12 is to be extended to the relocated grinder stations at the existing lift station location and increased to a 4" line. Grinder Stations

GR-A11, GR-A12, and GR-A13 are all to be relocated to the existing lift station location. The existing lift station will be decommissioned as shown on the documents and the existing wet well will be converted to split flow to each grinder station. One generator will be installed to service all three grinder stations. We have assumed that one power feed from the Inn will be necessary to service all three grinder stations.

- e. Sheet 66 – Low pressure line A12 is to be upsized to a 4" line.
 - f. Sheet 67 – All gravity sewer work associated with line A13 is to be eliminated, including all applicable structures. GR-A13 is to be relocated to the existing Inn lift station on the southwest side of the cabins.
 - g. Sheet 68 – All gravity sewer work associated with line A13 is to be eliminated, including all applicable structures.
3. We have excluded all work related to the Trine Recreation Area as shown on sheet 4, 77 through 97. The 2" LPS line for Trine Recreation Area will be installed below I-69 and capped for future use. As a point of clarification, the force main line C shown on sheet 77 is to remain in scope.
 4. All areas noted as a Jack and Bore on the documents have been changed to horizontal directional drill. The crossing beneath I-69 as detailed on sheet 75 will be changed to a 12" HDPE casing pipe in lieu of a 16" DI Casing pipe as detailed. The specified 2" LPS (Line B) and 6" Force Main (Line C) will remain as specified. No spacers are to be provided in the carrier piping. The 2" LPS Line B will be terminated on the East side of I-69 for future use. Based on this proposed scope modification, the specified boring pits have been eliminated from the scope of the project.
 5. We have excluded the low-pressure service line A10, Air Release Structure A10-02, grinder station GR-A10, and all associated electrical and ancillary work specified for the gate house as detailed on sheets 59-61 of the documents.
 6. We exclude generators at the Group Camp (Gen-A3), Campground 3 (Gen-A4.2), and the Beach House as shown on sheets 42, 47, and 51. The ATS specified for these three locations is still included in the project scope.
 7. We have included the demolition of the existing wastewater treatment plant, which generally includes draining of tanks, breaking apart the existing tank slabs for drainage, demolition of existing tanks walls to 2-feet below grade, and filling the lagoon and existing tanks with onsite spoils. We have not included any separation, screening, or testing of the onsite spoil materials prior to placement. All required permitting documentation, associated paperwork, and/or environmental testing prior to the decommissioning of the plant is to be by others.

General Proposal Clarifications, Assumptions, and Exceptions:

1. The Guaranteed Maximum Price proposal provided is not a line item or unit price GMP. The cost of the work shall be reimbursed in accordance with the proposed construction agreements provided. Any scope additions and deductions to the proposed scope of

improvements shall be evaluated and priced by Kokosing on a case-by-case basis. Any unit prices are provided as a point of reference for the overall scope of improvements and shall not be used as a basis for payment, scope additions, or subtractions to the proposal price.

2. We have not included any patching or paving of public or private roadways as a result of construction traffic or activity except where specified on the contract documents or specified otherwise in this proposal letter. It should be understood that construction activities do impose wear and tear on existing infrastructure and roadways. Any damages as a result of negligence shall be repaired by the responsible party.
3. We have excluded sales tax in our proposal. The Owner shall provide a tax exemption certificate to Kokosing for reference and use.
4. We have not included any job office trailers, supplies, or provisions for Engineering Contract Administration during construction.
5. Rock Excavation and removal is excluded from this proposal.
6. KII has not included any investigation and/or remediation of hazardous materials such as contaminated soils, PCB's, lead paint, asbestos, etc.
7. Our proposal includes general liability and builders risk insurance for our scope of work.
8. This proposal is based on a standard 40-hour work week schedule, Monday through Friday. This proposal excludes work on Saturdays, Sundays, second shift, and/or third shift unless necessary to complete critical work activities.
9. Requirements associated with Build American-Buy America (BABA), or similar sourcing restrictions are not included. We do include provisions for American Iron and Steel (AIS) as required for this project.
10. All 15KW gensets shall be by Generac. The specified generators by Taylor Power Systems cannot be quoted for this project.
11. We have included the cost of a performance and payment bond.
12. We include a standard 1-year workmanship warranty for the project. We have excluded any maintenance bonds for this project.
13. Quality control testing for construction materials is included. We have not included any environmental testing for the decommissioning of the existing wastewater systems.
14. We have excluded any environmental surveys, permitting, or regulatory paperwork associated with decommissioning the existing wastewater treatment plant at Pokagon State Park. The Owner will be responsible for submitting the decommissioning plan and permitting documents to remove this plant from service.
15. We include permits for construction-related activities such as maintenance of traffic and electrical improvements. Any permits related to IDEM, IDNR wetlands mitigation, or other environmental related permits are excluded.
16. We have excluded any onsite or offsite wetlands mitigation permitting or requirements associated with the scope of work specified. It is assumed all mitigation efforts have been permitted and/or confirmed with authorities having jurisdiction.

EXHIBIT B

PROPOSAL & OPEN BOOK STRUCTURE

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

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

~~than on a monthly basis during the term of this Agreement) provide the Town with an accounting of all charges against the Owner's Contingency~~

- B-5. Allowances: The Contractor GMP may contain allowances to cover costs that are properly reimbursable as a Cost of the Project. To the extent the actual Costs of the Work incurred by the Contractor to complete an Allowance Item is more or less than the applicable Allowance Amount, that Allowance Amount shall be adjusted (either increased or decreased) to correspond to the actual Cost of the Work incurred for that Allowance Amount and the GMP shall be increased or decreased (as appropriate) by the same amount.
- B-6. Final Report, Project Savings: At the time of Final Completion, the Contractor shall provide a Final Contract Price Report with an invoice to the Owner that includes the cost of Project to date. If at such time the Final Contract Price is less than the Guaranteed Maximum Price referenced in Exhibit B-1, then the Owner shall keep 100% of the savings. Reports, referred to as buy sheets, will be given to the Owner by the Contractor monthly or bimonthly during construction documenting savings or losses.

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

Project: **Pokagon Infrastructure Improvements**
 Division 1: Pokagon Water Improvements
 Division 2: Pokagon Wastewater Improvements
 City of Angola, IN

Division 1: Water Improvements Construction Cost	\$6,135,562
Division 2: Wastewater Improvements Construction Cost	\$8,750,708
Project Contingency:	\$550,000
Fixed Provider/Contractor Fee	\$1,838,530
Guaranteed Maximum Price	\$17,274,800

EXHIBIT C

PROJECT COMPLETION SCHEDULE

SWIF Forgivable Ban Loan Expenditure	June 2026
Substantial Completion	April 30, 2027
Define Punch List Items	Upon Substantial Completion
Final Project Completion	July 31, 2027

*****The dates provided are based on receiving a Notice to Proceed no later than July 31, 2025. Dates are subject to change if a Notice to Proceed is not received by this date.***

SUPPLEMENTARY CONDITIONS

Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2013 Edition). All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

SC-1.01 Defined Terms

SC 1.01.A.8 Add the following language at the end of the last sentence of Paragraph 1.01.A.8:

The Change Order form to be used on this Project is EJCDC C-941. Agency approval is required before Change Orders are effective.

SC 1.01.A.48 Add the following language at the end of the last sentence of Paragraph 1.01.A.48:

A Work Change Directive cannot change Contract Price or Contract Times without a subsequent Change Order.

SC 1.01.A.50 Add the following new Paragraph after Paragraph 1.01.A.49:

Agency – The Project is financed in whole or in part by Indiana Finance Authority State Revolving Fund Loan Program.

SC 1.01.A.51 Add the following new Paragraph after Paragraph 1.01.A.50:

Manufacturer's Certification letter is documentation provided by the manufacturer, supplier, distributor, vendor, fabricator, etc., to various entities stating that the American Iron and Steel products to be used in the project are produced in the United States in accordance with American Iron and Steel requirements. Refer to Manufacturer's Certification Letter provided in these Contract Documents.

SC 1.01.A.52 Add the following new Paragraph after Paragraph 1.01.A.51:

AIS refers to requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference. The term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

ARTICLE 2 – PRELIMINARY MATTERS

SC-2.02 Copies of Documents

SC-2.02.A. Amend the first sentence of Paragraph 2.02.A. to read as follows:

Owner shall furnish to Contractor TWO copies of conformed Contract Documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies of the conformed Contract Documents will be furnished upon request at the cost of reproduction.

SC-2.03 Before Starting Construction

ADD the following new paragraph after 2.03.A:

B. E-Verify Reporting: Contractor shall be solely responsible for complying with the E-Verify Reporting requirements in IC 5-16-13-11 throughout the contract time. Before starting construction. Contractor shall collect and submit the E-Verify case verification numbers for each individual who will be working on the project and who is required to be verified under IC 22-5-1.7 (effective July 1, 2011), from all contractors of any tier (as defined in IC 5-16-13-4).

ARTICLE 4 - COMMENCEMENT AND PROGRESS OF THE WORK

SC-4.01.A Amend the last sentence of Paragraph 4.01.A by striking out the following words:

In No Event will the Contract Times commence to run later than the 90th day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

SC-4.05 Delays in the Contractor's Progress

REPLACE subparagraph 4.05.C.2 in its entirety with the following:

2. Abnormal weather conditions: abnormal weather conditions shall be defined as inclement weather which prevents Contractor from making progress on the critical path Work for more days each month than listed in the table below. It is the Contractor's responsibility to document the weather conditions from an approved weather service and to document the impacts to the critical path. If the number of days in which inclement weather delays Contractor's critical path progress exceeds the days in table 4.05.C.2. in any given month, then Contractor shall be given a no cost time extension to the contract duration equal to the number of documented inclement weather days that exceed the amount in table 4.05.C.2.

Table 4.05.C.2	
Contractor shall plan for the following number of inclement weather days:	
January	7
February	6
March	6
April	8
May	5
June	3
July	3
August	3
September	3
October	4
November	5
December	6

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

SC-5.03 *Subsurface and Physical Conditions*

SC 5.03 DELETE PARAGRAPHS 5.03.A AND 5.03.B IN THEIR ENTIRETY AND INSERT THE FOLLOWING:

- A. A Geotechnical Report is provided in Appendix A of the Project Manual. The reports of explorations are only representative of the exact locations of the soil boring locations. No other reports of explorations or tests of subsurface conditions beyond what is provided in the Geotechnical Report of physical conditions relating to existing surface or subsurface structures at the Site, are known to Owner.

SC-5.06 *Hazardous Environmental Conditions*

SC 5.06 Delete Paragraphs 5.06.A and 5.06.B in their entirety and insert the following:

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.
- B. Not Used.

ARTICLE 6 – BONDS AND INSURANCE

SC-6.02 *Insurance—General Provisions*

SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:

1. Contractor may obtain worker's compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the project is located, (b) is certified or authorized as a worker's compensation insurance provider by the appropriate

state agency, and (c) has been accepted to provide worker's compensation insurance for similar projects by the state within the last 12 months.

SC-6.03 Contractor's Insurance

SC 6.03 Add the following new paragraph immediately after Paragraph 6.03.J:

K. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

- 1. Workers' Compensation, and related coverages under Paragraphs 6.03.A.1 and A.2 of the General Conditions:**

State:	<u>Statutory</u>
Federal, if applicable (e.g., Longshoreman's):	<u>Statutory</u>

Employer's Liability:

Bodily injury, each accident	<u>\$ 1,000,000.00</u>
Bodily injury by disease, each employee	<u>\$ 1,000,000.00</u>
Bodily injury/disease aggregate	<u>\$ 1,000,000.00</u>

- 2. Contractor's Commercial General Liability** under Paragraphs 6.03.B and 6.03.C of the General Conditions:

General Aggregate	<u>\$ 2,000,000.00</u>
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Products - Completed Operations Aggregate	<u>\$ 1,000,000.00</u>
---	------------------------

Personal and Advertising Injury	<u>\$ 1,000,000.00</u>
---------------------------------	------------------------

Each Occurrence (Bodily Injury and Property Damage)	<u>\$ 1,000,000.00</u>
---	------------------------

- 3. Automobile Liability under Paragraph 6.03.D. of the General Conditions:**

Bodily Injury:

Each person	<u>\$ 1,000,000.00</u>
Each accident	<u>\$ 1,000,000.00</u>

Property Damage:

Each accident	<u>\$ 1,000,000.00</u>
---------------	------------------------

4. Excess or Umbrella Liability:

Per Occurrence	\$ <u>2,000,000.00</u>
General Aggregate	\$ <u>5,000,000.00</u>

5. Contractor's Pollution Liability:

Each Occurrence	\$ <u>1,000,000.00</u>
General Aggregate	\$ <u>1,000,000.00</u>

- 6. Additional Insureds:** In addition to Owner and Engineer, include as additional insureds the following: Indiana Department of Natural Resources.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

SC-7.09 Taxes

SC 7.09 Add a new paragraph immediately after Paragraph 7.09.A:

- B.** Owner is exempt from payment of sales and compensating use taxes of the State of Indiana and of cities and counties thereof on all materials to be incorporated into the Work.
- 1.** Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
 - 2.** Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

8 – OTHER WORK AT THE SITE

SC-8.02 Delete Paragraph 8.02.A in its entirety and replace with the following:

- A.** Owner intends to contract with others for the performance of other work at or adjacent to the Site.
- 1.** The Owner and Engineer shall have authority and responsibility for coordination of the various contractors and work forces at the Site;
 - 2.** The following specific matters are to be covered by such authority and responsibility: Scheduling and coordination of work in adjacent areas
 - 3.** The extent of such authority and responsibilities is: to coordinate scheduling between contractors in order to prevent negative impacts to all projects.

10 – ENGINEER’S STATUS DURING CONSTRUCTION

SC-10.03 *Project Representative*

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.A:

- B. The Resident Project Representative (RPR) will be 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.
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, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
 3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.
 4. 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 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.
 5. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
 6. Shop Drawings and Samples:
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples which 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 for which RPR believes that the submittal has not been approved by Engineer.
 7. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions,

together with RPR's recommendations, if any, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.

8. Review of Work and Rejection of Defective Work:

- a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
- b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. Inspections, Tests, and System Start-ups:

- a. 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.
- b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

10. Records:

- a. 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.
- b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- c. Maintain records for use in preparing Project documentation.

11. 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. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.
- 12. 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.
- 13. 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.
- 14. Completion:
 - a. Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.
 - b. Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.
 - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.
- C. The RPR shall not:
 - 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
 - 2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
 - 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
 - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
 - 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.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.

SC-17.02 Arbitration

- A. All matters subject to final resolution under this Article will be decided by arbitration in accordance with the rules of a mutually agreed upon agency, subject to the conditions and limitations of this paragraph. This agreement to arbitrate and any other agreement or consent to arbitrate entered into will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitrator or arbitration provider, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in this Article, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations. The demand for arbitration should include specific reference to Paragraph SC-17.02.D below.
- C. No arbitration arising out of or relating to the Contract shall include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
 1. the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and
 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings.
- D. The award rendered by the arbitrator(s) shall be consistent with the agreement of the parties, in writing, and include a concise breakdown of the award, and a written explanation of the award specifically citing the Contract provisions deemed applicable and relied on in making the award.
- E. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.
- F. The fees and expenses of the arbitrators and any arbitration service shall be shared equally by Owner and Contractor.

ARTICLE 18 – MISCELLANEOUS

ADD the following new paragraphs immediately after Paragraph 18.08:

SC-18.09 Occupational Safety and Health Act of 1970

- A. These construction documents and the joint and several phases of construction hereby contemplated are to be governed, at all times, by applicable provisions of the federal laws, including but not limited to, the latest amendments of the following:**

Williams - Steiger Occupational Safety and Health Act of 1980, Public Law 91-596.

Part 1910 - Occupational Safety and Health Standards, Chapter XVII of Title 29, code of Federal Regulations.

Indiana Occupational Safety and Health Administration (IOSHA) OSHA Safety and Health Standards for the Construction Industry (29 CFR Part 1926) with Amendments as of August 1, 1991, including 29 CFR Part 1910 General Industry Safety and health Standards Applicable to Construction.

SC-18.10 Drug Testing Requirements

- A. Contractor shall implement their Drug Testing Plan as submitted with the bid. Contractor of any tier must comply with the INDOA drug testing requirements set forth in IC 4-13-18. The Owner may cancel the contract for noncompliance if the Contractor fails to meet the conditions set forth in IC 4-13-18-7.**

SC-18.11 Public Works Qualification Requirements

- A. For contracts over \$300,000.00, Contractor must be qualified under either IC 4-13.6-4 or IC 8-23-10 (Indiana Department of Administration or Indiana Department of Transportation) before doing any Work on a public works project.**



More than a Project™

**AGREEMENT
BETWEEN
CITY OF ANGOLA, INDIANA
AND
WESSLER ENGINEERING, INC.
FOR
POKAGON INFRASTRUCTURE IMPROVEMENTS
DIVISION 2: POKAGON WASTEWATER IMPROVEMENTS**

THIS AGREEMENT, entered into by and between the City of Angola, 210 N. Public Square, Angola, IN 46703, (hereinafter named OWNER) and Wessler Engineering, Inc., 6219 S. East Street, Indianapolis, IN 46227 (hereinafter named ENGINEER):

WITNESSETH THAT:

WHEREAS, THE Indiana Finance Authority (STATE) has transferred their fiduciary responsibility for the Pokagon Infrastructure improvements, Division 2: Pokagon Wastewater Improvements (PROJECT) to the OWNER; and

WHEREAS, ENGINEER proposes to provide Professional Services to OWNER for construction and Services in the form of Construction Administration and Resident Project Representative Services; and

WHEREAS, the OWNER desires to proceed with construction of the PROJECT that is to be delivered under a Build/Operate/Transfer (BOT) format and constructed by the BOT Developer; and

WHEREAS, the PROJECT shall consist of work related to the Construction Services Phases of the PROJECT, more particularly described as follows:

Construction of Wastewater improvements throughout Pokagon State Park and the City of Angola. The work for this project will include: demolition of the existing Wastewater Treatment Plant at Pokagon State Park, installation of approximately 42,000 feet of new sewer force main and low pressure main of varying sizes by means of direction drilling, installation of 19 grinder pump stations of varying sizes, a new lift station, two new dump stations, reconstruction of Woodhull lift station, asphalt patching, and all necessary bypass pumping, demolition, removal, disposal, erosion control, construction engineering, maintenance of traffic, site restoration, cleanup, and incidental work to complete the work.

WHEREAS, ENGINEER has expressed a willingness to provide the Professional Services and agrees to furnish these services as described in this AGREEMENT for the above-described PROJECT; and

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

ARTICLE I SCOPE OF PROFESSIONAL SERVICES – BASIC SERVICES

Wessler Engineering, Inc. (ENGINEER) shall provide the following Professional Services:

A. Additional Bid Services and BOT Procurement Support

1. ENGINEER shall provide post-bid services and BOT procurement support relating to additional Contractor coordination, cost estimate reviews, re-bidding of project, and related correspondence with funding agency.
2. ENGINEER will develop Request for Qualifications (RFQ) and related Contractor coordination pertaining to BOT solicitation.
3. ENGINEER to conduct pre-submittal meeting with interested Contractors.
4. Review submitted proposal, and provide coordination, documentation and oversight of scoring and selection by selection committee. ENGINEER will NOT score proposals.
5. Develop draft Owner/Contractor Agreement, based on EJCDC Cost-Plus Fee Agreement.
6. Provide up to 40 hours of oversight and support of BOT pre-construction/scoping phase with OWNER and BOT contractor, including the following:
 - a. Scope development and refinement for priority and alternate scope items.
 - b. Updates and revisions to cost estimate, including breakout of priority and alternate scope items.
 - c. Review of Contractor proposed value engineering.
 - d. Development of project schedule and milestones, including coordination with City of Angola and DNR.
 - e. Development of final BOT agreement and Guaranteed Maximum Price (GMP)
7. BOT services will be considered complete upon execution of BOT Agreement or determination of OWNER/Contractor to terminate BOT scoping phase.

B. Construction Administration Phase

1. ENGINEER will provide construction administration phase services as listed below for a period of up to 18 months that matches the Contractor's proposed work schedule.
2. *eComm Communications*. ENGINEER shall utilize an electronic construction communication program, "eComm", administered by ENGINEER through Eastern Engineering for this project. All submittals, RFIs, Field Orders, Change Orders, FTM's, and other communication between Developer and ENGINEER shall be done using the eComm program. Login information and training will be made available to the OWNER and Developer at the start of the PROJECT.
3. General Administration of Construction Contract. Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of ENGINEER as assigned in the General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Developer will be issued through ENGINEER, which shall have authority to act on behalf of OWNER in dealings with Developer to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing.
4. Pre-Construction Conference. Prepare agenda for and participate in a Pre-Construction Conference for each construction contract prior to commencement of Work at the Site. Prepare and distribute meeting minutes to all attendees following the meeting.
5. Construction Progress Meetings. Attend monthly/up to eighteen (18) construction progress meetings with OWNER and Developer. Prepare and distribute meeting minutes to all attendees following the meeting.
6. Schedules. Receive, review, and determine the acceptability of any and all schedules that Developer is required to submit to ENGINEER, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
7. Visits to Site and Observation of Construction. In connection with observations of Developer'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 and quality of Developer's executed Work (assumed 8 visits outside of regular progress meetings). 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 Developer's Work in progress or to involve detailed inspections of Developer's Work in progress beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the 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 Contract Documents, and ENGINEER shall keep OWNER informed of the progress of the Work.

- b. The purpose of ENGINEER's visits to, and representation by the Resident Project Representative 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 Contract Documents and that Developer has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. ENGINEER shall not, during such visits or as a result of such observations of Developer's Work in progress, supervise, direct, or have control over Developer's Work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Developer, for security or safety on the Site, for safety precautions and programs incident to Developer's Work, nor for any failure of Developer to comply with Laws and Regulations applicable to Developer's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Developer nor assumes responsibility for any Developer's failure to furnish and perform the Work in accordance with the Contract Documents.
8. Defective Work. Recommend to OWNER that Developer's Work be rejected while it is in progress if, on the basis of ENGINEER's observations, ENGINEER believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
9. Clarifications and Interpretations; Field Transmittal Memorandums. Issue clarifications and interpretations of the Contract Documents as needed for the completion of the Developer's work (assume 18). Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Transmittal Memo's (FTM's) authorizing minor variations in the Work from the requirements of the Contract Documents.
10. 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. Assume twelve (12) Change Orders.

11. Shop Drawings and Samples. Review and process Shop Drawings and Samples, pre-lining and post-lining CCTV inspection videos, and other data which Developer is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. ENGINEER shall meet any Developer's submittal schedule that ENGINEER has accepted.
12. Substitutes and "or-equal." Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Developer, but subject to the provisions of the Contract Documents.
13. Inspections and Tests. Require such special inspections or tests of Developer's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the 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 Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.
14. Rendering Decisions Related to Developer's Work. Render formal written decisions on all duly submitted issues relating to the acceptability of Developer's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Developer's Work; review each duly submitted Claim by OWNER or Developer, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if ENGINEER in its discretion concludes that to do so would be inappropriate. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Developer and shall not be liable in connection with any decision rendered in good faith in such capacity.
15. 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 Developer be paid. 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, Developer's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the 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 Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Developer's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe Developer's Work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Developer's Work (subject to any subsequent adjustments allowed by the Contract Documents). Assume eighteen (18) pay application reviews.

- b. By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Developer's Work as it is performed and furnished have been exhaustive, extended to every aspect of Developer's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Developer'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 Developer's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Developer's compliance with Laws and Regulations applicable to Developer'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 Developer has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, 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 Developer that might affect the amount that should be paid.
16. Developer's Completion Documents. Receive, review, and transmit to OWNER two (2) hard copies and one (1) electronic copy of maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples, and annotated record documents which are to be assembled by Developer in accordance with the Contract Documents to obtain final payment. The extent of such review by ENGINEER will be limited as referenced above.
 17. Substantial Completion. Promptly after notice from Developer that Developer considers the entire Work ready for its intended use, in company with OWNER and Developer, conduct an inspection to determine if the Work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the Work substantially complete; ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Developer.

18. Record Drawings. Using the change order and the annotated record documents maintained by the Developer, prepare and deliver to OWNER one full-size hard copy set of reproducible record drawings, and one electronic set in Adobe pdf format.
19. Final Notice of Acceptability of the Work. Conduct a final inspection to determine if the completed Work of Developer is acceptable so that ENGINEER may recommend, in writing, final payment to Developer. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice that the Work is acceptable to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.
20. Obtain from the Developer the warranty certification, releases, waiver of liens, and other closing documents as required by the Contract Documents. Review and submit the documents to the OWNER for the OWNER's permanent file and record.
21. 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 Developers. If the Project involves more than one prime contract, Construction Phase services may be rendered at different times in respect to the separate contracts. ENGINEER shall be entitled to an equitable increase in compensation if Construction Phase services are required after the original date for final completion of the Work as set forth in the construction Contract.
22. Limitation of Responsibilities. ENGINEER shall not be responsible for the acts or omissions of any Developer, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. ENGINEER shall not be responsible for the failure of any Developer to perform or furnish the Work in accordance with the Contract Documents.

ENGINEER's services under the Construction Administration Phase will be considered complete upon issuance of ENGINEER's recommendation for final acceptance and payment to Developer and when the record drawings have been delivered to OWNER.

C. Resident Project Representative (RPR) Services

1. ENGINEER will provide the services of a full time up to 40 hours per week for the duration of 18 months for Division I & II of the project. Resident Project Representative (RPR) at the project site to assist ENGINEER and to provide observation of Developer's Work. Duties, responsibilities and authority of the RPR are as set forth in Attachment No. 1 to this Amendment. The furnishing of such RPR services will not limit, extend, or modify ENGINEER's responsibilities or authority except as expressly set forth in Attachment No. 1 to this Amendment.
2. ENGINEER does not have or assume any obligation for safety of any Developer personnel. Any notifications of potential or perceived safety concerns are exclusively

for the benefit of the OWNER and in support of the OWNER's interest in avoiding injuries on its property.

D. Labor Standards Administrative Services

1. ENGINEER will subcontract services for a Labor Standards Administrator for the duration of the PROJECT, in all four divisions. Lump sum fees are based on project durations listed in Attachment No. 5.

ARTICLE II ADDITIONAL PROFESSIONAL SERVICES

If authorized in writing by OWNER, ENGINEER agrees to furnish, or obtain from others, Additional Professional Services in conjunction with the PROJECT, as set forth below:

- A. Providing up to an additional 300 hours as needed for RPR services for Division I & II of the project.
- B. Providing construction surveys and staking to enable Developer to perform its work, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
- C. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER.
- D. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
- E. Providing Construction Phase services beyond the original Contract Final Completion date of the Work.
- F. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by OWNER prior to Substantial Completion.
- G. Evaluating an unreasonable claim or an excessive number of claims submitted by Developer or others in connection with the Work.
- H. Subject to other provisions of this Agreement, additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition, (3) Work damaged by fire, flood or other cause during construction, (4) a significant amount of defective, neglected, or delayed Work by a Developer, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by the Developer.

- I. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
- J. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration, or other dispute resolution process related to the PROJECT.
- K. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER.
- L. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the PROJECT or an excessive number of substitutions.

ARTICLE III SUBCONSULTANTS

ENGINEER intends to subcontract portions of the Professional Services as follows:

- A. Labor Standards Administrator (NV Grant Services) will complete the tasks identified in Paragraph C of Article I above.

ENGINEER reserves the right to add, remove, or replace Subconsultants with prior written approval from OWNER per the terms and conditions contained in Attachment No. 1, Standard Terms and Conditions.

ARTICLE IV COMPENSATION

In accordance with the Standard Terms and Conditions of the AGREEMENT, ENGINEER shall provide the Professional Services for which OWNER shall compensate ENGINEER as follows:

- A. Compensation for Professional Services described in Article I.A shall be on a lump sum fee basis as follows:

Article I.A – Additional Bid Services and BOT	\$64,700.00
Procurement Support	

- B. Compensation for Professional Services described in Articles I.B through I.D shall be on a time and materials basis in the not-to-exceed amount as follows. ENGINEER may allocate dollars between the individual tasks within the not-to-exceed fee; however, the total not-to-exceed fee shall not be exceeded without prior written approval of the OWNER.

Article I.B – Construction Administration	\$239,300.00
Article I.C – RPR Services	\$529,300.00
Article I.D – Labor Standards Administrator	\$48,400.00
Total Estimated Fee	\$817,000.00

- C. Compensation for Additional Professional Services described in Article II.A, upon future written authorization by OWNER, shall be on a time and materials basis in the not-to-exceed amount as follows:

Article II.A – Additional RPR Services	\$43,000.00
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- D. Total Compensation for all services in this AGREEMENT shall not exceed \$924,700.00 without prior written approval of OWNER.
- E. Compensation for other Additional Services, as listed in Article II shall be on a lump sum fee or time and materials basis as mutually agreed to by OWNER and ENGINEER.
- F. Professional Services performed on a lump sum fee basis shall be invoiced by ENGINEER monthly on a percent complete basis. Professional Services performed on a time and materials basis shall be invoiced by ENGINEER monthly based upon the actual hours and reimbursable expenses incurred in performing the services per ENGINEER's Hourly Rate and Reimbursement Expense Schedule in effect at the time the services are performed.

ARTICLE V

STANDARD TERMS AND CONDITIONS

The Standard Terms and Conditions of this AGREEMENT are included as Attachment No. 1.

This AGREEMENT may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same AGREEMENT. An electronic, telecopied, or facsimile signature shall be equivalent to and as binding as an original signature.

IN WITNESS WHEREOF, the parties have made and executed this Professional Services AGREEMENT, this _____ day of _____, 2025.

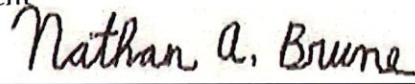
ENGINEER
WESSLER ENGINEERING, INC.

OWNER
CITY OF ANGOLA, INDIANA



Dylan L. Lambermont, P.E.
President

David B. Martin
Mayor

Attest: 

Nathan A. Brune, P.E.
Project Manager

Attest: _____
Ryan P. Herbert
Clerk-Treasurer

Date: July 2, 2025

Date: _____

ADDRESS FOR GIVING NOTICE:

Wessler Engineering, Inc.
6219 South East Street
Indianapolis, IN 46227

ADDRESS FOR GIVING NOTICE:

City of Angola
210 North Public Square
Angola, IN 46073

LOCAL OFFICE:

6606 Constitution Drive
Fort Wayne, IN 46804

NAB/dmk Clients:/Indiana Finance Authority/Proposals/P03546/Angola Pokagon Div 3 CA-RPR Agree

Attachments: No. 1 – Standard Terms and Conditions
No. 2 – 2025 Hourly Rate and Reimbursable Expense Schedule
No. 3 – RPR Duties, Responsibilities, and Limitations
No. 4 – E-Verify Affidavit
No. 5 – NV Grant Services Proposal dated 3.20.25

ATTACHMENT NO. 1

STANDARD TERMS AND CONDITIONS

1. Basic Agreement

A. Engineer shall provide, or cause to be provided, the Basic Services as described in this Agreement, and Owner shall pay Engineer for such Services.

2. Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses, if any.

3. Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, the 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 thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

4. Design without Construction Phase Services

A. If Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, then (1) Engineer's services under this Agreement shall be deemed complete no later than the end of the Bidding or Negotiating Phase; (2) Engineer shall have no design or shop drawing review obligations during construction; (3) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services; and (4) Owner waives any claims against the Engineer that may be connected in any way thereto.

5. Termination

A. This Agreement may be terminated by either party by thirty days written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

B. Owner may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to Engineer. Engineer shall terminate or suspend performance of the Services on a schedule acceptable to Owner, and Owner shall pay Engineer for all the Services performed plus termination or suspension expenses. Upon restart of suspended Services, an equitable adjustment shall be made to Engineer's compensation and the Project schedule.

6. Owner's Responsibilities

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; and specify any design and construction standards that Owner requires be included in the Drawings and Specifications.

B. Designate in writing a person authorized to act as the Owner's representative. The Owner or his representative shall receive and examine documents submitted by the Engineer, interpret and define the Owner's policies and render decisions and authorizations in writing promptly to prevent unreasonable delay in the progress of the Engineer's services.

C. Furnish to the Engineer all available existing information for service and utilities locations, easements, right-of-way, encroachments, and zoning and deed restrictions.

D. Provide for full and free access for the Engineer to enter upon all property required for the performance of the Engineer's services under this Agreement.

E. Provide legal, accounting and insurance counseling services as necessary for the Project.

F. Pay for placement and payment for advertisement for Bids in appropriate publications, and all permit fees for agency approval of the Project.

G. Furnish above services at the Owner's expense and in such manner that the Engineer may rely upon them in the performance of his services under this Agreement.

H. Give prompt notice to the Engineer whenever the Owner observes or otherwise becomes aware of any defect in the Project or other event, which may substantially affect the Engineer's performance of services under this Agreement.

7. 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 Mediation or exercising their rights under law.

B. If Mediation is invoked, the 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 by a mutually agreed upon party. If such mediation is unsuccessful in resolving the Dispute, then (a) the parties may mutually agree to a dispute resolution of their choice, or (b) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

8. Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 8.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, 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, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted 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.

9. General Considerations

A. 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 Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. This Agreement is to be governed by the laws of the State of Indiana.

C. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

D. Not Used.

E. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, 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 the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$500,000.00.

F. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or by the other's employees and agents.

G. The Engineer agrees to provide and maintain insurance coverage for Professional, Comprehensive General, Automobile, Worker's Compensation and Employer's Liability in amounts in accordance with Engineer's business requirements. Certificates evidencing such coverage will be provided to Owner upon request. For projects involving construction, Owner agrees to require its construction contractor(s), if any, to include Engineer as an additional insured on its policies relating to the Project.

H. The Engineer agrees to maintain records of payroll costs, including fringe benefit costs, and actual out-of-pocket costs on a generally recognized accounting basis and shall be available to the Owner during the life of this Agreement at mutually convenient times.

I. In the event any provisions of this Agreement shall be held to be invalid and non-enforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

10. Subconsultants

A. Subconsultants to the Engineer are listed in the Agreement. Engineer may add, remove, or replace Subconsultants for reasonable cause with prior written approval of the Owner. In the event Owner does not approve the addition or the replacement of a Subconsultant listed in the Agreement, and Engineer cannot reasonably perform the Services intended for said Subconsultant, Owner agrees to contract directly with an entity qualified and capable of performing said Services. Owner further releases Engineer from all liability associated with the performance of said entity's Services.



More than a Project™

ATTACHMENT NO. 2

2025 HOURLY RATE and REIMBURSABLE EXPENSE SCHEDULE

<u>Position</u>	<u>Hourly Rate*</u>
Principal Engineer I/II	\$250/\$265
Senior Project Manager I/II	\$220/\$250
Senior Project Engineer I/II	\$220/\$250
Project Manager I/II	\$170/\$185
Assistant Construction Project Manager	\$155
Project Engineer I/II/III/IV	\$140/\$155/\$170/\$185
Engineer	\$125
Electrical/Control System Senior Project Manager I/II	\$220/\$265
Electrical/Control System Senior Project Engineer I/II	\$220/\$240
Electrical/Control System Project Manager I/II	\$170/\$185
Electrical/I&C Project Engineer I/II/III/IV	\$140/\$155/\$170/\$185
Electrical/I&C Engineer	\$125
Control System Engineer I/II/III/IV	\$140/\$155/\$170/\$195
Control System Technician I/II	\$95/\$105
Environmental Services Senior Project Manager I/II	\$175/\$190
Environmental Services Project Manager I/II	\$150/\$160
Environmental Services Assistant Project Manager	\$115
Environmental Scientist I/II/III	\$90/\$100/\$120
Senior CAD Manager I	\$190
CAD Manager I/II	\$145/\$160
GIS Manager I/II	\$130/\$155
Senior Designer I/II	\$135/\$150
Designer	\$120
GIS Technician I/II/III	\$100/\$115/\$125
Technician I/II/III/IV	\$75/\$95/\$105/\$115
Senior Resident Project Representative I/II	\$130/\$140
Resident Project Representative I/II/III/IV	\$80/\$100/\$110/\$120
Senior Field Services Manager	\$160
Field Services Manager I/II	\$120/\$135
Registered/Professional Land Surveyor	\$220
Senior Survey Technician	\$165
Survey Manager I/II	\$135/\$145
Survey Crew Chief I/II/III/IV	\$90/\$110/\$120/\$135
Utility Coordinator	\$135
Senior Project Analyst	\$145
Project Analyst I/II	\$110/\$125
Project Coordinator	\$90
Project Administrator	\$70



More than a Project™

Reimbursable Expenses shall be charged as follows:

<u>Item and Unit</u>		<u>Unit Cost</u>
Mileage (per mile)		At current IRS published rate
Copies:(each) Black & White	8.5"x11" / 11"x17"	\$0.20
	24"x36"	\$1.00
Color	8.5"x11" / 11"x17"	\$0.25/\$0.50
Plots-Bond: (each)	12"x18" / 24"x36"	\$0.50/\$1.00
GPS Survey Equipment/Robotic Total Station/ GPS Map Kit		\$30.00 per hour
Drone Equipment		\$30.00 per hour
Sewer CCTV Camera		\$50.00 per hour
Postage/shipping/freight, Lodging and Per Diems		At Cost
Subcontractor/Subconsultant fees		Cost + 10%
eCommunication Construction Software License through Eastern Engineering (per project)		At Cost

This Schedule is subject to change.

January 1, 2025

ATTACHMENT NO. 3

DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF RESIDENT PROJECT REPRESENTATIVE

Prepared by

ENGINEERS' JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE

A practice division of the

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

and by

AMERICAN CONSULTING ENGINEERS COUNCIL

and by

AMERICAN SOCIETY OF CIVIL ENGINEERS

A LISTING OF THE DUTIES, RESPONSIBILITIES AND
LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT
REPRESENTATIVE**

**unless otherwise noted

ENGINEER shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist ENGINEER in observing performance of the Work of the CONTRACTOR.

Through more extensive on-site observations of the Work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR will be ENGINEER's employee or agent at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the Work in general shall be with ENGINEER and CONTRACTOR. RPR's dealings with Subcontractors shall be through or with the full knowledge and approval of CONTRACTOR.

B. Duties and Responsibilities of RPR

1. *Schedules* – Review the Progress Schedule, Schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.
2. *Conferences and Meetings* – Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project related meetings and prepare and circulate copies of minutes thereof.

3. *Liaison –*
 - a. Serve as ENGINEER's liaison with CONTRACTOR; working principally through CONTRACTOR's authorized representative and assist in providing information regarding the intent of the 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.
4. *Interpretation of Contract Documents –*

Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.
5. *Shop Drawings and Samples –*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive samples, which are furnished at the Site by CONTRACTOR, and notify ENGINEER of availability of Samples for examination.
6. *Modifications –*

Consider and evaluate CONTRACTOR'S suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to ENGINEER. Transmit to CONTRACTOR in writing decisions as issued by ENGINEER.
7. *Review of Work, Rejection of Defective Work –*
 - a. Conduct on-site observations of CONTRACTOR's Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever RPR believes that any part of CONTRACTOR's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
8. *Inspections, Tests, and System Startups-*
 - a. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate OWNER's personnel, and that CONTRACTOR maintains adequate records thereof.

- b. Observe, record and report to ENGINEER appropriate details relative to the test procedures and systems startups.
- 9. *Records –*
 - a. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all CONTRACTORS, Subcontractors and major Suppliers of materials and equipment.
 - b. Maintain records for use in preparing Project documentation.
- 10. *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 Drawings and Sample submittals.
 - b. Draft and recommend to ENGINEER proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from CONTRACTOR.
 - c. Immediately notify ENGINEER of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Hazardous Environmental Condition.
- 11. *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.
- 12. *Certificates, Maintenance and Operation Manuals –*

During the course of the Work, verify that certificates, maintenance and operation manuals and other data required by the Specifications to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with Contract Documents, and have these documents delivered to ENGINEER for review and forwarding to OWNER prior to payment for that part of the Work.
- 13. *Completion –*
 - a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
 - b. Participate in a final inspection in the company of ENGINEER, OWNER, and CONTRACTOR and prepare a final list of items to be completed and deficiencies to be remedied.

- c. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

C. Limitations of Authority

Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of ENGINEER's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of CONTRACTOR, Subcontractors, Suppliers, or CONTRACTOR's superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of CONTRACTOR's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over 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.

ATTACHMENT NO. 4
E-Verify Affidavit

Pursuant to Indiana Code 22-5-1.7-11, the Engineer entering into a contract with the Owner is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program. The Engineer is not required to verify the work eligibility status of all its newly hired employees through the E-Verify program if the E-Verify program no longer exists.

The undersigned, on behalf of the Engineer, being first duly sworn, deposes and states that the Engineer does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with the Owner, the undersigned Engineer will enroll in and agrees to verify the work eligibility status of all its new hired employees through the E-Verify program.

(Engineer): Wessler Engineering, Inc.

By (Written Signature): 

(Printed Name) Dylan L. Lambermont

(Title): President

Important – Notary Signature and Seal Required in the Space Below

STATE OF INDIANA

SS:

COUNTY OF MARION

Subscribed and sworn to before me this 2nd day of January, 2025.



(Signed) 

Dawn M. Keyler

My commission expires August 14, 2032

Residing in Marion County, State of Indiana



Nannette L. Van De Voorde, Owner
NV Grant Services, LLC
7694 Willsey Lane ♦ Plainfield, IN ♦ 46168-9115
NVanDeVoorde@me.com ♦ p:317-531-6359

Monitoring and Compliance of Federal Labor Standards Provisions for SRF-funded project

Pokagon Infrastructure Improvements

PRELIMINARY PROPOSAL

****to be confirmed once number subs are verified****

Scope of Work

Labor Standards Administration, compliance, and reporting services for federally-funded construction projects through the Illinois State Revolving Fund Loan Program / SRF as necessary and required to assure compliance with the Davis-Bacon and other Related Acts (“DBRA”) in accordance with SRF’s contractual obligations, including:

- Provide and/or verify correct Wage Decision;
- Consult with SRF on conformance rates, if needed (i.e. trades and wage rates not included in Applicable Wage Decision);
- Obtain all applicable federal documentation and information from the contractor and subcontractor(s) necessary to monitor, investigate, and report compliance with the DBRA in accordance with SRF’s requirements on the Project, including certified payroll reports, Wage/Fringe Benefit Certification forms, interviews, apprentice certifications, and IL Works apprenticeship initiative;
- Obtain and review all certified payroll reports of prime contractor and subcontractor(s) for compliance with DBRA;
- Conduct employee interviews with prime contractor and/or subcontractor(s) for compliance with DBRA;
- Obtain and review written evidence of the bona fide registration of apprentice certifications, the JM-Apprentice ratios outlined in the individual Apprenticeship Agreements in accordance with SRF’s guidelines for complying with the DBRA and IL Works Apprenticeship Program and submission of these reports to Infrastructure Financial Assistance Section, Bureau of Water, Illinois Environmental Protection Agency according to DECO guidelines.
- Provide consulting services in the resolution of any issues/findings concerning potential DB violations of the DBRA and validate restitution due to employee(s). Submit DB Wage Incident Reports to Community and Engineer;
- Provide Monthly Labor Standards (LS) progress reports overviews DBRA documentation collected and summarizing my Labor Standards Administrator’s activities and findings. These monthly excel spreadsheets overview DB documentation required and received;
- DBRA documentation required for the State to close out the project;
- Final Compliance Report is submitted with my Final Monthly LS report indicating Contractor and sub(s) are compliant with DBRA.

Borrower’s Responsibility

In accordance with contractual requirements, Community is responsible for maintaining copies of DBRA documentation. In the event of an EPA OIG audit, inspectors will visit the borrower’s main office to begin their inspection. They will expect to find up-to-date documentation indicating compliance with Davis-Bacon. These files are to be maintained by Community for three (3) years following the end of construction. The documents in this file are subject to unannounced EPA OIG audits. Failure to maintain these documents will be a violation and could cause the EPA Office of Inspector General (OIG) to issue findings against Community.

Record Keeping

In addition to the community's files, NV Grant Services will maintain a complete set of all DBRA documentation received and created pursuant to the Labor Standards services performed and these will be maintained for up to three (3) years following the end of construction. In the event of an audit, NV GS's files can be made available to the Community. If copies are needed, these can be provided at Community's expense. In the event of termination, files shall become the sole property of Community.

My Priority

This is my full-time career and passion. I focus solely on Labor Standards Compliance. All of my projects are a priority and receive my prompt attention.

Experience / Working Relationships

Contractor: Kokosing

- Peru Water System (2019)
- EWSU West WWTP Storage Basin (2018)
- EWSU East WWTP Capacity Expansion Phase 2 (2020-2022)
- Warsaw WWTP (2019 - current)

Contractor: Bowen Engineering Corporation

- EWSU East & West Plant Digester Rehabilitation Project (2015 - 2016)
- Brownsburg WWTP (2017 - 2018)
- Frankfort WWTP (2020 - 2022)
- Montpelier WW (2019 - 2020)
- EWSU Wansford Yard Lift Station (current)

Contractor: Mac Construction

Jeffersonville Phase 3 CSO (current)
Jeffersonville Phase 2 CSO (2020)
EWSU Cass to Adams CSO (2017)
EWSU Wansford (current)
Jeffersonville Downtown WWTP (2014)
Jeffersonville North WWTP FM (2014) Jeffersonville WWTP Peak Capacity Expansion (2013)
Jeffersonville Mill Creek Pump Station (2011)
New Albany Lift Station (2011)



State of Indiana: SRF and CDBG 14 years experience

- 0 Grievances / Complaints
- 2009-2015 :: SRF's Indiana Southwest Regional Labor Standards Administrator
SRF's Regional LSA on all loans/projects that closed in the Southwest region of the state from program inception in 2009 - 2015.
- 2010-2024 :: Certified Grant Administrator

OCRA/CDBG requires Labor Standards Administrators working on CDBG-funded projects be certified Grant Administrators. Although this is not a requirement for Indiana's SRF-funded projects, I meet this requirement as well. I am required to maintain my certification through annual continuing ed credits. My continuing ed classes include USDOL, Department of WHD virtual webinars specific to DBRA Laws.

References

Amy Henninger, Compliance Officer
Indiana State Revolving Fund Loan Program
AHenning@ifa.IN.gov
317.232.6566
♦ working relationship since 2009

Steve Capin, IOCP Construction Manager
Evansville Sewer & Water Utility
scapin@ewsu.com
812.436-4039
♦ working relationship since 2009



Current Projects

- Ben Davis Conservancy District Sewer Improvements Project
- Brownsburg Potable Water System Improvements / 3 Divisions
- Charlestown WRF
- EWSU Wansford Lift Station / Division A
- EWSU West WWTP Gas Conditioning System and CHP Engine Project
- Greenfield Southside Water Improvements / 3 Divisions
- Hamilton County US 31 Corridor & Sewer Infrastructure
- Hanover
- Jeffersonville North WRF Expansion Project
- Mecca Water Main & Booster Station
- Montpelier Sewer Separation
- St. Joseph, Illinois

NV Grant Services carries the following Professional Insurance:

- Comprehensive General Liability :: \$1,000,000 per occurrence and \$2,000,000 aggregate
- Automobile Liability :: \$1,000,000 each accident
- Professional Liability :: \$1,000,000 each claim
- Umbrella Liability :: \$1,000,000 per occurrence and \$2,000,000 aggregate
- Workers Compensation :: n/a (sole proprietor/no employees)

9.0 MGD peak flow Wastewater Treatment Plant City of Jeffersonville



PRELIMINARY PROPOSAL

****to be confirmed once number subs are verified****

Pokagon Infrastructure Improvements

Division 1: Pokagon Water Improvements / Angola/IDNR Pokagon/Trine water main projects

Construction Period :: 14 months

LS Project Fee :: \$7,000 (\$500 / month x 14 months)

*Proposal based on 1 division / 1 contractor and 4 subs

Division 2: Pokagon Wastewater Improvements

Construction Period :: 12 months

LS Project Fee :: \$18,000 (\$1,500 / month x 12 months)

*Proposal based on 1 division / 1 contractor and 15 subs

Division 3: City of Angola Wastewater & SCADA Improvements

Construction Period :: 20 months

LS Project Fee :: \$8,000 (\$400 / month x 20 months)

*Proposal based on 1 division / 1 contractor and XX subs

Division 4: City of Angola Water Tower Rehabilitation

Construction Period :: 9 months

LS Project Fee :: \$3,600 (\$400 / month x 9 months)

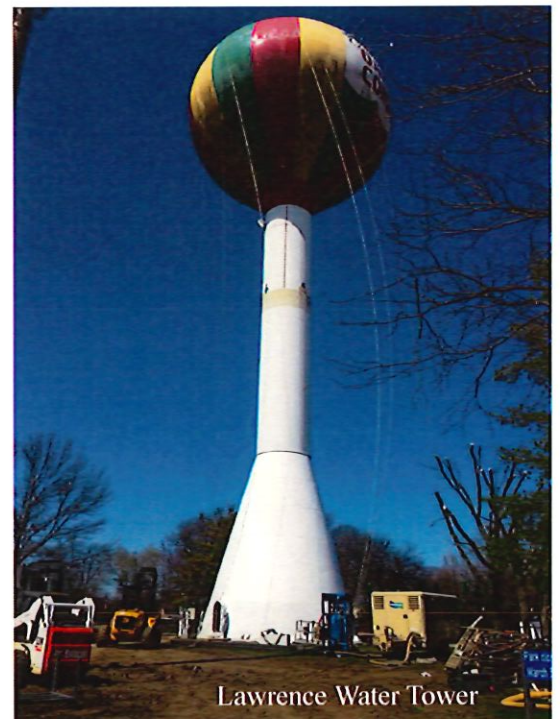
*Proposal based on 1 division / 1 contractor and 4 subs

***Amendments**

LS agreement may be supplemented to accommodate changes in initial Scope of Work, including: extension of original project timeline, change orders, and/or additional projects/divisions, additional primary contractor, additional subcontractors and/or additional fees/contracts that alter Labor Standards services.

Payments due within 30 days of invoice.

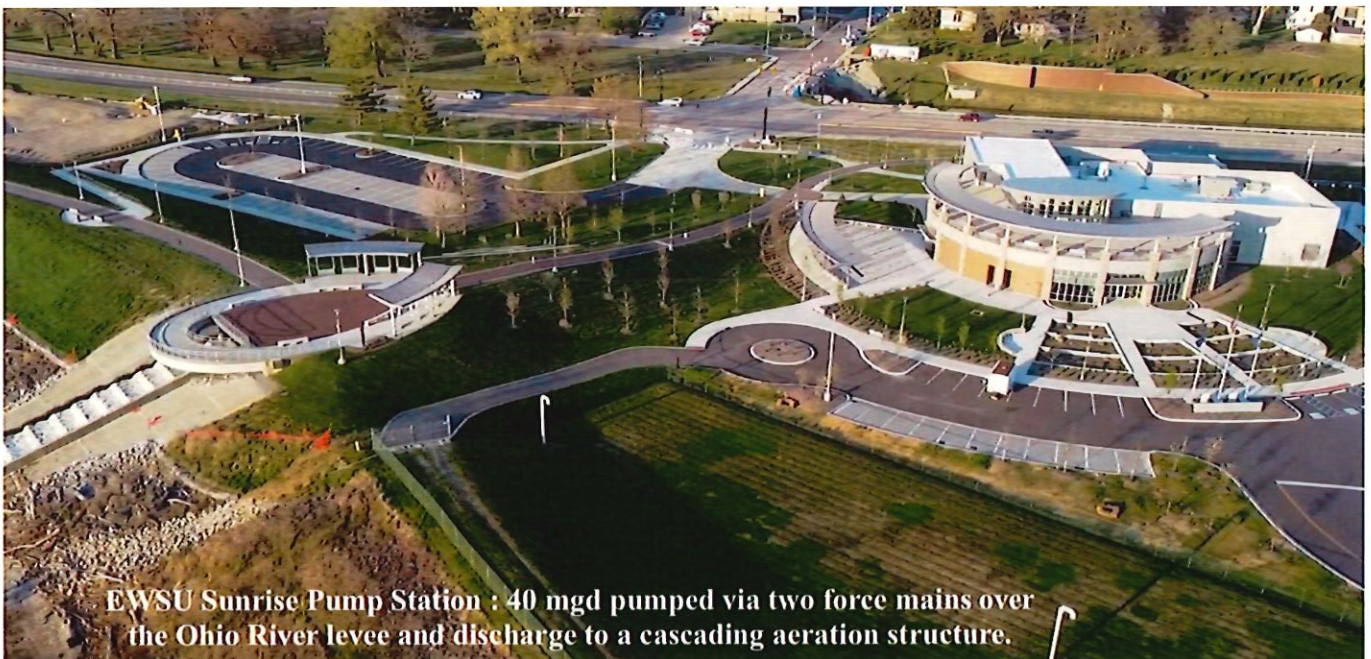
A progress report / spreadsheet will accompany monthly invoices



Lawrence Water Tower

Clients Served Since 2009

Atlanta	Lawrence
Ben Davis Conservancy District	Lewisville
Boonville	Lizton
Brooklyn	Martinsville
Brownsburg	Mecca
Brownstown / Jackson County Water Utility	Montpelier
Charlestown State Park	Mooreville
City of Charlestown	Morristown
Coatesville	Mount Vernon
Cordry Sweetwater Conservancy District	Mulberry
Crawfordsville	New Albany
Edwardsport	Newburgh
Edwardsville Water Corporation	North Webster
Evansville Sewer & Water Utility	Owensville Waterworks
Fall Creek Regional Waste District	Peoga
Forest Volunteer Fire Department	Peru
Frankfort	Petersburg
Greenfield	Reelsville
Greensburg	Remington
Greentown	Riley
Greenville	Salem
Hamilton County	Seymour
Hanover	Shirley
Huntington	Southport
Indiana-American Water Company, Inc.	Speedway
Ingalls	Tell City
Jackson County Water	Terre Haute WWTP
Jeffersonville	Uniondale
Kirklin	Warsaw
Knightstown Hoosier Gym	Whitestown
Lafayette (City)	Winslow
Lafayette (Parks & Recreation)	



CITY OF ANGOLA, INDIANA

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES



CONSTRUCTION PHASE SERVICES POKAGON INFRASTRUCTURE IMPROVEMENTS PROJECT DIV. 1: POKAGON WATER SYSTEM IMPROVEMENTS

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.



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

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

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

THIS IS AN AGREEMENT effective as of _____ ("Effective Date") between
City of Angola, Indiana ("Owner") and
Fleis & VandenBrink Engineering, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
Construction Phase Services for Pokagon Infrastructure Improvements Projects, Division 1: Pokagon Water Improvements

("Project").

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

Engineer's services under this Agreement are generally identified as follows: BOT Delivery Change from Bidding, Contract Administration, and Post Construction Services.

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 monthly. Invoices are due and payable within 30 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 30 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 thirtieth 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 in which the Project is located.

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. **Not Used**
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit. **Not Used**
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions. **Not Used**
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

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: City of Angola, Indiana

Engineer: Fleis & VandenBrink Engineering, Inc.

By: _____

By: _____

Print name: David B. Martin

Title: Mayor

Date Signed: _____

Print name: Craig Shumaker, P.E.

Title: Senior Vice President

Date Signed: _____

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

State of: N/A

Address for Owner's receipt of notices:

City of Angola, Indiana

210 N Public Square

Angola, IN 46703

Address for Engineer's receipt of notices:

Fleis & VandenBrink, Inc.

110 Commerce Drive

Danville, IN 46122

Designated Representative (Paragraph 8.03.A):

Amanda Cope, P.E.

Title: Angola City Engineer

Phone Number: 260-665-6748

E-Mail Address: acope@angolain.org

Designated Representative (Paragraph 8.03.A):

Lori A. Young, P.E.

Title: Indiana Group Manager – Water & Wastewater

Phone Number: 317-745-6995

E-Mail Address: Lyoung@fveng.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 _____

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 WORK PERFORMED UNDER PREVIOUS CONTRACT. THIS SCOPE OF WORK IS NOT INCLUDED IN THIS CONTRACT.

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: well capacity upgrades, construction of a new water treatment plant and installation of new water mains including associated valves and hydrants.
 - 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.

Exhibit A – Engineer's Services

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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:
(None)
15. Furnish 5 review copies of the Report and any other Study and Report Phase deliverables to Owner. 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 requested copies of the revised Report and any other Study and Report Phase deliverables to the Owner.

Exhibit A – Engineer's Services

- 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 (WORK PERFORMED UNDER PREVIOUS CONTRACT. THIS SCOPE OF WORK IS NOT INCLUDED IN THIS CONTRACT.)

- A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) 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: Preliminary Construction Plans and identify easement need
 10. Furnish 2 review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner and review them with Owner. 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 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables 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 (WORK PERFORMED UNDER PREVIOUS CONTRACT. THIS SCOPE OF WORK IS NOT INCLUDED IN THIS CONTRACT.)

- 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 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, 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, with the Final Design Phase, and review them with Owner. 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 final copies of such documents to Owner 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.

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- 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 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 TWO. 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 (DESIGN-BID INCLUDED IN PRIOR CONTRACT. ADDITIONAL SERVICES RELATED TO BUILD OPERATE TRANSFER AND PROJECT SCOPE MODIFICATION INCLUDED UNDER THIS CONTRACT.)

- 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: Hold a pre-bid conference and provide technical coordination with the SRF Loan Program (bidding documents, contract documents and submittal of all bid related documents).
- 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 –(Included in this Contract)

- 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.

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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 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:* Contractor shall establish Baselines and Benchmarks in the field for construction.
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

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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.

Exhibit A – Engineer's Services

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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, 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

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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 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:
As-Built Plans: Electronic PDF copy of plans and one hard-copy set of As-Built Plans;
Operation and Maintenance Manuals: Two hard copy sets and an electronic PDF copy of all O&M Manuals.

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- 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*

- 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
 - 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

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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 – shall be performed as part of the Construction Phase Services.
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.
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

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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 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 _____.

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.

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.

- 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 constructability 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 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [REDACTED].

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates

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) – Standard Hourly Rates 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. 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 services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants’ charges, if any.
 2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer’s services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer’s Consultants’ charges.
 3. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
 4. The total compensation for services under Paragraph C2.01 is estimated to be **\$225,000** based on the following estimated distribution of compensation:

a. Study and Report Phase	\$0 – not included in this agreement
b. Preliminary Design Phase	\$0 – not included in this agreement
c. Final Design Phase	\$0 - not included in this agreement
d. Bidding or Negotiating Phase	\$20,000 – BOT Project Delivery Change
e. Construction Phase	\$190,000
f. Post-Construction Phase	\$15,000
 5. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed

the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.

6. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultants' charges.
7. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.
8. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of April) to reflect equitable changes in the compensation payable to Engineer.

C2.02 Compensation For Reimbursable Expenses

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. 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; 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.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of **1.1**.
- D. **The following Reimbursable Expenses for Sub-Consultant Services are included in this agreement: INDOT Permit Settlement Monitoring Sub-Consultant. Sub-Consultant: Contract with Apex for INDOT Permit Required Settlement Monitoring; APEX Sub-Agreement Amount = \$14,800 X 1.1 = \$16,300. Contract allowance up to \$20,000. This amount is not included in Basic Services identified in C2.01.A.4.**

C2.03 Other Provisions Concerning Payment

- A. 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 **1.1**.
- B. **Factors:** The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. *Estimated Compensation Amounts:*

1. 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.
2. 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 the Engineer's services during the 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.

- D. 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

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 attached.

EQUIPMENT CHARGE RATES

Our standard rates and equipment charges for 2024 are as follows:

Interoffice Charges	Rate	
COMB BINDING		
1/4" – 3/8"	\$1.50 each	
1/2" – 5/8"	\$1.75 each	
3/4" – 1 1/2"	\$2.00 each	
1 3/4" – 2"	\$3.00 each	
COPIES	Black & White	Color
8.5 x 11"	\$0.10 each	\$0.25 each
11 x 17"	\$0.20 each	\$0.50 each
PLOTTING	Black & White	Color
11 x 17"	\$0.20 each	\$5.20 each
18 x 24"	\$0.75 each	
24 x 36"	\$1.50 each	\$20.00 each
30 x 42"	\$2.19 each	\$35.00 each
36 x 48"	\$3.00 each	
Larger	\$4.00 per sft	
Mylar (24 x 36")	\$10.00 each	
OTHER		
Binder(1"-4")	\$6.50 - \$13.00 each	
Fax	\$1.00 each	
CD's	\$1.30 each	
FIELD EQUIPMENT CHARGES		
SURVEY & CONSTRUCTION OBSERVATION		
GPS (Leica)	\$37.50 / hour	
GPS (Handheld)	\$100.00 / day	
3D Scanner	\$318.18 / day	
Robotic Survey System	\$21.88 / hour	
Staking Supplies	\$10.00 each	
Concrete Testing	\$35.00 / day	
Troxler (Nuclear Density)	\$60.00 / day	
Drone	\$265.00 / day	
ENGINEERING & ENVIRONMENTAL		
Smoke Blower	\$50.00 / day	
Disposable Bailers	\$10.00 each	
Free Product Interface Probe	\$80.00 / day	
HDPE Tubing	\$0.80 / foot	
Teflon Lined Tubing	\$1.50 / foot	
PFAS – Free Bladder Pump	\$200.00 / day	
PFAS – Sample Dipper	\$50.00 / day	

Continues on following page.

EQUIPMENT CHARGE RATES CONTINUED

ENGINEERING & ENVIRONMENTAL CONT.		
Hand Auger	\$50.00 / day	
Hammer Drill	\$50.00 / day	
Low Flow Unit	\$250.00 / day	
Liquid Smoke	\$50.00 / gal	
Well Pump	\$100.00 / day	
Nitrile Gloves	\$20.00 / pair	
Ph Meter	\$25.00 / day	
Photoionization Detector (PID)	\$100.00 / day	
Multirate PID & 4 Gas Detector	\$200.00 / day	
Paint Mil Gauge	\$25.00 / day	
Peristaltic Pump	\$60.00 / day	
Power Pack Generator	\$20.00 / day	
ISCO Pump Station Flow Meter	\$20.00 / day	
Rain Gauge	\$3.00/ day	
Sludge Depth Probe	\$20.00 / day	
Solinst Meter (sewer meter)	\$3.25 / day	
Amp/Volt Meter	\$35.00 / day	
Vapor Pin Install	\$150.00 / pin	
Water Level Probe	\$50.00 / day	
MFM – Pump Station Monitor (3 mo)	\$400.00 / month	
MFM – Pump Station Monitor	\$150.00 / month	
MFM – Raine Gauge (3 mo)	\$150.00 / month	
MFM – Rain Gauge	\$50.00 / month	
MFM – Water Level Meter	\$75.00 / month	
MFM – Trailer	\$100.00 / day	
VEHICLES		
	Light Duty	4x4
Trucks: Construction Observation	\$0.655 / mile + \$20.00 / day	\$0.655 / mile + \$25.00 / day
Trucks: Survey	\$0.655 / mile + \$20.00 / day	\$0.655 / mile + \$25.00 / day
Autos & Vans	\$0.655 / mile + \$10.00 / day	
Personal Vehicles	\$0.655 / mile	
Boat	\$200 / day	

Note: All chargeable rates will be billed at 1.1.

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 [REDACTED].

Standard Hourly Rates Schedule

E. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

F. *Schedule: **See Attached.***

PROFESSIONAL RATE SCHEDULE

As projects are identified and selected for funding, we propose to provide appropriate project scopes and budgets using the following rates:

Classification	Rate
CIVIL ENGINEERS	\$58 - \$260
Intern	\$58
Engineers-in-Training	\$130
Engineer	\$147 - \$180
Engineer Manager	\$180 - \$193
Senior Engineer Manager	\$205 - \$260
PROJECT MANAGERS	\$166 - \$220
Project Manager	\$166 - \$192
Senior Project Manager	\$205 - \$220
TECHNICIANS	\$87 - \$190
Technician	\$87 - \$133
Office Technician	\$112
Senior Engineer Technician	\$140 - \$190
SURVEYORS	\$114 - \$194
Survey Crew Chief	\$114 - \$135
Survey Manager	\$153 - \$194
SITE DEVELOPMENT	\$102 - 198
Landscape Designer	\$102 - \$114
Landscape Architect	\$141 - \$162
Architect	\$156 - \$176
Senior Landscape Architect	\$170 - \$194
Senior Architect	\$198
ENVIRONMENTAL	\$81 - \$158
Environmental Technician	\$81 - \$106
Environmental Resource Specialist	\$97 - \$153
Chemist	\$120 - \$129
Geologist	\$116 - \$138
Senior Geologist	\$158
ADMINISTRATIVE AND BUSINESS SERVICES (IT, HR, MARKETING, ACCOUNTING, BUSINESS DEVELOPMENT)	\$78 - \$230
Administrative Assistant	\$78 - \$112
Senior Administrative Assistant	\$140 - \$230

Note: 2024-2025 rates are typically adjusted annually in April.

This is **EXHIBIT E**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____



NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
Owner

And To: _____
Contractor

From: _____
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

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

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: \$1,000,000
 - 2) Bodily injury by disease, each employee: \$ 500,000
 - 3) Bodily injury/disease, aggregate: \$ 100,000
- c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - 2) General Aggregate: \$1,000,000
- d. Excess or Umbrella Liability --
 - 1) Per Occurrence: \$1,000,000
 - 2) General Aggregate: \$1,000,000
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
\$1,000,000
- f. Professional Liability --
 - 1) Each Claim Made \$1,000,000
 - 2) Annual Aggregate \$2,000,000
- g. Other (specify): None

2. By Owner:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --

Exhibit G – Insurance.

- 1) Bodily injury, Each Accident \$1,000,000
- 2) Bodily injury by Disease, Each Employee \$ 500,000
- 3) Bodily injury/Disease, Aggregate \$ 100,000
- c. General Liability --
 - 1) General Aggregate: \$1,000,000
 - 2) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
- d. Excess Umbrella Liability
 - 1) Per Occurrence: \$1,000,000
 - 2) General Aggregate: \$1,000,000
- e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):
\$1,000,000
- f. Other (specify): None

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. Fleis & VandenBrink Engineering, Inc.
Engineer
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 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____

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 by **INDIANA ASSOCIATION OF MEDIATORS**. 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 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____

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 bylaws 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 \$1,000,000.
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: **cost of replacement power, loss of use of equipment or of facility, loss of profits or revenue, loss of financing, regulatory fines, etc.**

- 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 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. 1

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:

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: _____

Title: _____

Date Signed: _____

By: _____
Print _____
name: _____

Title: _____

Date Signed: _____



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AMENDMENT NO. 1
TO AGREEMENT
BETWEEN
CITY OF ANGOLA, INDIANA
AND
WESSLER ENGINEERING, INC.
FOR
LIFT STATION AND SCADA IMPROVEMENTS

THIS AMENDMENT NO. 1 to existing AGREEMENT, entered into by and between City of Angola, 210 North Public Square, Angola, IN 46703 (hereinafter named OWNER) and Wessler Engineering, Inc., 6219 S. East Street, Indianapolis, IN 46227 (hereinafter named ENGINEER) executed on April 16, 2024:

OWNER and ENGINEER hereto mutually covenant and agree as follows:

ARTICLE II
SCOPE OF PROFESSIONAL SERVICES – BASIC SERVICES
SHALL BE AMENDED AS FOLLOWS:

ADD the following paragraphs after Article II.C:

D. Additional Bid Services

1. Additional bid services related to delayed construction timeline.

Upon successful completion of the Bid Phase for the PROJECT, the ENGINEER shall begin Construction Administration Phase services upon issuance of a Notice-to-Proceed to the successful Contractor.

ENGINEER's services under the Bid Phase will be considered complete upon signing of the Construction Agreement between the OWNER and Contractor.

E. Construction Administration Phase

1. Microsoft SharePoint. ENGINEER shall administer and utilize a web-based, collaborative document management platform, "Microsoft SharePoint", for this PROJECT. All submittals, requests for information, field orders/field transmittal memos, change orders, and other communication between contractor and ENGINEER shall be made using Microsoft SharePoint. Login information for and any necessary training on Microsoft SharePoint will be made available to OWNER and contractor at the start of the PROJECT. General Administration of Construction Contract. Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of ENGINEER as assigned in the General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. 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 General Conditions except as otherwise provided in writing.
2. Pre-Construction Conference. Prepare agenda for and participate in a Pre-Construction Conference for each construction contract prior to commencement of Work at the Site. Prepare and distribute meeting minutes to all attendees following the meeting.
3. Construction Progress Meetings. Attend monthly/up to 4 (four) construction progress meetings with OWNER and Contractor. Prepare and distribute meeting minutes to all attendees following the meeting.
4. 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.
5. 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 and quality of Contractor's executed Work (assumed 4 visits). 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 Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the 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 Contract Documents, and ENGINEER shall keep OWNER informed of the progress of the Work.

- b. The purpose of ENGINEER's visits to, and representation by the Resident Project Representative 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 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 Contract Documents. ENGINEER shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
6. Defective Work. Recommend to OWNER that Contractor's Work be rejected while it is in progress if, on the basis of ENGINEER's observations, ENGINEER believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
7. Clarifications and Interpretations; Field Transmittal Memorandums. Issue clarifications and interpretations of the Contract Documents as needed for the completion of the Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Transmittal Memo's (FTM's) authorizing minor variations in the Work from the requirements of the Contract Documents.
8. 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.
9. Shop Drawings and Samples. Review and process Shop Drawings and Samples, and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, 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.

10. 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 the Contract Documents.
11. Inspections and Tests. Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the 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 Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.
12. Rendering Decisions Related to Contractor's Work. Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by OWNER or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if ENGINEER in its discretion concludes that to do so would be inappropriate. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
13. 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. 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 quality of such Work is generally in accordance with the 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 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 Contractor's Work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
 - b. By recommending any 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 and the Contract Documents. 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 Contractor's Work in progress 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 moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, 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.

14. Contractor's Completion Documents. Receive, review, and transmit to OWNER maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples, and annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by ENGINEER will be limited as referenced above.
15. Substantial Completion. Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with OWNER and Contractor, conduct an inspection to determine if the Work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the Work substantially complete; ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.
16. Record Drawings. Using the change order and the annotated record documents maintained by the Contractor, prepare and deliver to OWNER one full-size hard copy set of reproducible record drawings, and one electronic set in Adobe pdf format.
17. Final Notice of Acceptability of the Work. Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice that the Work is acceptable to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.
18. Obtain from the Contractor the warranty certification, releases, waiver of liens, and other closing documents as required by the Contract Documents. Review and submit the documents to the OWNER for the OWNER's permanent file and record.
19. 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, Construction Phase services may be rendered at different times in respect to the separate contracts. ENGINEER shall be entitled to an equitable increase in compensation if Construction Phase services are required after the original date for final completion of the Work as set forth in the construction Contract.

20. Limitation of Responsibilities. ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. ENGINEER shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

ENGINEER's services under the Construction Administration Phase will be considered complete upon issuance of ENGINEER's recommendation for final acceptance and payment to Contractor and when the record drawings have been delivered to OWNER.

**ARTICLE VII
COMPENSATION
SHALL BE AMENDED AS FOLLOWS:**

The total increase of this Amendment No. 1 is \$40,000.00

ADD Paragraphs D and E after Article VII.C:

- D. Compensation for Professional Services described in Article II.D shall be on a lump sum fee basis as follows:

Article II.D – Additional Bid Services	\$7,500.00
--	------------

- E. Compensation for Professional Services described in Article II.E shall be on a time and materials basis in the not-to-exceed amount as follows. The total not-to-exceed fee shall not be exceeded without prior written approval of the OWNER.

Article II.E. – Construction Admin Phase	\$32,500.00
--	-------------

All other terms and conditions contained in the AGREEMENT shall remain unchanged and continue in full force and effect.

This AMENDMENT to AGREEMENT may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same AMENDMENT to AGREEMENT. An electronic, telecopied, or facsimile signature shall be equivalent to and as binding as an original signature.

IN WITNESS WHEREOF, the parties have made and executed this AMENDMENT No. 1 to existing AGREEMENT, this _____ day of _____, 20____.

ENGINEER
WESSLER ENGINEERING, INC.

OWNER
CITY OF ANGOLA, INDIANA



C. Aaron Hutton, P.E.
Vice President

David B. Martin
Mayor



Attest: _____
Jessie L. Lestinsky
Project Manager

Attest: _____
Ryan P. Herbert
Clerk-Treasurer

Date: 7/2/2025

Date: _____

ADDRESS FOR GIVING NOTICE:
Wessler Engineering, Inc.
6219 South East Street
Indianapolis, IN 46227

ADDRESS FOR GIVING NOTICE:
City of Angola
210 North Public Square
Angola, IN 46073

JLL/dmk Clients/Angola/Proposals/P03656/LS and SCADA Improvements – Amend No. 1 CA RPR

Attachments: No. 1 - 2025 Hourly Rate and Reimbursable Expense Schedule



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ATTACHMENT NO. 1

2025 HOURLY RATE and REIMBURSABLE EXPENSE SCHEDULE

<u>Position</u>	<u>Hourly Rate*</u>
Principal Engineer I/II	\$250/\$265
Senior Project Manager I/II	\$220/\$250
Senior Project Engineer I/II	\$220/\$250
Project Manager I/II	\$170/\$185
Assistant Construction Project Manager	\$155
Project Engineer I/II/III/IV	\$140/\$155/\$170/\$185
Engineer	\$125
Electrical/Control System Senior Project Manager I/II	\$220/\$265
Electrical/Control System Senior Project Engineer I/II	\$220/\$240
Electrical/Control System Project Manager I/II	\$170/\$185
Electrical/I&C Project Engineer I/II/III/IV	\$140/\$155/\$170/\$185
Electrical/I&C Engineer	\$125
Control System Engineer I/II/III/IV	\$140/\$155/\$170/\$195
Control System Technician I/II	\$95/\$105
Environmental Services Senior Project Manager I/II	\$175/\$190
Environmental Services Project Manager I/II	\$150/\$160
Environmental Services Assistant Project Manager	\$115
Environmental Scientist I/II/III	\$90/\$100/\$120
Senior CAD Manager I	\$190
CAD Manager I/II	\$145/\$160
GIS Manager I/II	\$130/\$155
Senior Designer I/II	\$135/\$150
Designer	\$120
GIS Technician I/II/III	\$100/\$115/\$125
Technician I/II/III/IV	\$75/\$95/\$105/\$115
Senior Resident Project Representative I/II	\$130/\$140
Resident Project Representative I/II/III/IV	\$80/\$100/\$110/\$120
Senior Field Services Manager	\$160
Field Services Manager I/II	\$120/\$135
Registered/Professional Land Surveyor	\$220
Senior Survey Technician	\$165
Survey Manager I/II	\$135/\$145
Survey Crew Chief I/II/III/IV	\$90/\$110/\$120/\$135
Utility Coordinator	\$135
Senior Project Analyst	\$145
Project Analyst I/II	\$110/\$125
Project Coordinator	\$90
Project Administrator	\$70



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Reimbursable Expenses shall be charged as follows:

<u>Item and Unit</u>		<u>Unit Cost</u>
Mileage (per mile)		At current IRS published rate
Copies:(each) Black & White	8.5"x11" / 11"x17"	\$0.20
	24"x36"	\$1.00
Color	8.5"x11" / 11"x17"	\$0.25/\$0.50
Plots-Bond: (each)	12"x18" / 24"x36"	\$0.50/\$1.00
GPS Survey Equipment/Robotic Total Station/ GPS Map Kit		\$30.00 per hour
Drone Equipment		\$30.00 per hour
Sewer CCTV Camera		\$50.00 per hour
Postage/shipping/freight, Lodging and Per Diems		At Cost
Subcontractor/Subconsultant fees		Cost + 10%
eCommunication Construction Software License through Eastern Engineering (per project)		At Cost

This Schedule is subject to change.

January 1, 2025