

**CITY OF ELKHART  
BOARD OF PUBLIC WORKS MEETING  
AGENDA**

**Common Council Chambers  
9:00 A.M., Tuesday, January 7, 2025**

<https://signin.webex.com/join>

Join by phone: 1-415-655-0001

Meeting Number (access code): 2308 519 1611 Meeting password: BOW25

- I. Roll Call**
- II. Approve Agenda**
- III. Election of 2025 Officers**
- IV. Public Hearing on Preliminary Engineering Report (PER) Addendum to Clean Water State Revolving Fund Program**
- V. Minutes- Regular Meeting December 27, 2024**
- VI. Engineering**
  - a.) Administration
    - Oakland Avenue Project A PER Amendment #2
    - Award Bid #25-01 2025 Street Materials
    - Award Bid #25-02 2025 On-Call Street and Drainage Construction
    - Award Bid #25-03 2025 Utility Materials
    - Change Order #1 & Final: Quote #24-21 Hunters Pond to Brookwood Drive Drainage Project
    - Change Order #1 & Final: Quote #24-22 Worthmore Avenue Drainage Improvements
    - Change Order #1 & Final: Quote #24-28 Wolf Avenue Drainage Improvements
    - PSA with United Consulting for the Indiana Avenue Underpass Assessment
- VII. Utilities**
  - a.) Pretreatment
    - Notice of Violation: Simonton Lake Conservancy District
    - Notice of Violation: Norfolk Southern Permit #85-27
    - Delisting Permit Atlas Chem Milling Permit #85-16
- VIII. New Business**
  - Professional Services Agreement with Barnes & Thornburg LLP for Legal Consultation Services
- IX. Public Participation**
- X. Adjournment**

BOARD OF PUBLIC WORKS  
Friday, December 27, 2024

President Mike Machlan called a regular meeting of the Board of Public Works to order at 10:00 a.m., Friday, December 27, 2024. Clerk of the Board Nancy Wilson called the roll. Andy Jones, Rose Rivera, Ron Davis, Jamie Arce and Mike Machlan attended in person.

1. Approve Agenda

A motion was made by Jamie Arce and seconded by Ron Davis to approve the agenda. On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the agenda was amended by adding a contract with Office Interiors to New Business. The amended agenda carried 5-0.

2. Claims & Allowance Docket

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the claims and allowance docket in the amount of \$5,644,198.08, consisting of 26 pages as prepared on December 20, 2024 at 9:19 a.m.

3. Minutes Regular Meeting December 17, 2024

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the Minutes of the Regular Meeting December 17, 2024.

4. 2025 Water, Wastewater, Storm Water Utilities and Aquatics Operating and Capital Budgets (tabled)

On motion by Jamie Arce, seconded by Andy Jones and carried 5-0, the 2025 Water, Wastewater, Stormwater Utilities and Aquatics Operating and Capital Budgets were taken off the table for consideration. A motion was made by Jamie Arce and seconded by Ron Davis to approve the 2025 Water, Wastewater, Storm Water Utilities and Aquatics Operating and Capital Budgets.

Mike started the budget hearing with the Water Utility. The Board discussed the Water Utility Budget with Tory Irwin, Tim Reecer, Daragh Deegan, Donn Neff, Martin Noffsinger, Doug Reecer, Joseph Feathers, and Laura Kolo. On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the motion was amended by including a Water Utility Budget amount of \$8,740,468.03 noting a reduction in 6101-5-734-4440800 of (\$125,000.00).

The Board discussed the Wastewater Utility Budget with Tim Reecer, Tory Irwin, Laura Kolo, Daragh Deegan, Martin Noffsinger, and Matt Hoglebe. On motion by Rose Rivera, seconded by Ron Davis and carried 5-0, the motion was amended by including a Wastewater Utility Budget amount of \$17,901,303.46.

The Board discussed the Storm Water Utility Budget with Tory Irwin, Tim Reecer, and Martin Noffsinger. On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the motion was amended by including a Storm Water Utility Budget amount of \$1,100,238.00.

The Board discussed the Aquatics Budget with Daragh Deegan. On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the motion was amended by including an Aquatics Budget amount of \$100,912.00.

Mike opened the floor to public comment. Seeing none, he called for the vote for the amended motion for the Water Utility Budget of \$8,740,468.03, Wastewater Utility Budget of \$17,901,303.46, Storm Water Utility Budget of \$1,100,238.00, and an Aquatics Budget of \$100,912.00. The motion carried unanimously.



BOARD OF PUBLIC WORKS  
Friday, December 27, 2024

5. Utilities

(A.) Administration

Wastewater MRO for November 2024

On motion by Jamie Arce, seconded by Rose Rivera and carried 5-0, the Board accepted and placed on file the Wastewater Utility MRO for November 2024.

BOW Resolution 24-R-35 Establishing the Interest Rate to be Charged to Utility Customers in 2025

On motion by Jamie Arce, seconded by Andy Jones and carried 5-0, the Board adopted Board of Works Resolution 24-R-35, a Resolution of the Board of Public Works of the City of Elkhart, Indiana establishing the Interest Rate to be charged to Utility Customers in 2025.

(B.) Summary

On motion by Jamie Arce, seconded by Rose Rivera and carried 5-0, the Board ratified the following permits:

Water Assessment: Allen Edwin Homes  
2186 E. Centre Ave  
Portage, MI. 49002  
Property: 1613 Autumn Ridge Ct.  
Paid in full, \$1089.00

Allen Edwin Homes  
2186 E. Centre Ave.  
Portage, MI. 49002  
Property: 1619 Autumn Ridge Ct.  
Paid in Full, \$1089.00

Allen Edwin Homes  
2186 E. Centre Ave.  
Portage, MI. 49002  
Property: 1625 Autumn Ridge Ct.  
Paid in Full, \$1089.00

Brad Martin  
21400 Sylvan Ct.  
Bristol, IN. 46507  
Property: 1128 Parkway Ave.  
Paid in Full, \$5244.00

Star Scott  
2220 Roys Ave  
Elkhart, IN. 46516  
Property: 2220 Roys Ave.  
Paid in Full, \$1247.70

BOARD OF PUBLIC WORKS  
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Sewer Assessment:

Allen Edwin Homes  
2186 E. Centre Ave.  
Portage, MI. 49002  
Property: 1613 Autumn Ridge Ct.  
Paid in Full, \$4900.00

Allen Edwin Homes  
2186 E. Centre Ave.  
Portage, MI. 49002  
Property: 1619 Autumn Ridge Ct.  
Paid in Full, \$4900.00

Allen Edwin Homes  
2186 E. Centre Ave.  
Portage, MI. 49002  
Property: 1625 Autumn Ridge Ct.  
Paid in Full, \$4900.00

Brad Martin  
21400 Sylvan Ct.  
Bristol, IN. 46507  
Property: 1128 Parkway Ave.  
Paid in Full, \$22,800.00

Lizbeth Alvarado  
2400 S. 6<sup>th</sup> St.  
Elkhart, IN. 46517  
Property: 2400 S. 6<sup>th</sup> St.  
Paid in Full, \$4960.00

Revocable Permit:

#6593, Placed by: Unlimited Dumpsters  
Property: 620 Middlebury St.  
Permit Holder: Betty Price  
Description: Dumpster (40') placed in the parking lot.

#6594, Placed by: Borden  
Property: 730 Middlebury St.  
Permit Holder: Chrissie Bracken  
Description: Dumpster

#6595, Placed by: Kidders  
Property: 1101 Princeton Blvd  
Permit Holder: Beverly Miller-Stamper  
Description: Dumpster on the roadside.



BOARD OF PUBLIC WORKS  
Friday, December 27, 2024

6. Engineering

(A.) Administration

BOW Resolution 24-R-34 2025 Wage Resolution(tabled)

On motion by Jamie Arce, seconded by Rose Rivera and carried 5-0, the 2025 Wage Resolution was removed from the table for consideration. On motion by Jamie Arce, seconded by Rose Rivera and carried 5-0, Board of Works Resolution 24-R-34, a Resolution of the Board of Works of the City of Elkhart Indiana to establish Pay Schedules for the hourly-rate and certain salaried personnel for the calendar year 2025 was approved.

(B.) Utility

Change Order #7 for Bid #21-13 Elkhart WWTP Capacity Upgrades Phase II-QA7634 (tabled)

No action was taken.

Ratify Partial Payment Request #48 to American Structurepoint: Oakland Avenue Project C Harrison Street

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board ratified partial payment request SRF #48 of SRF loan WW22162005 in the amount of \$61,775.00 to American Structurepoint from the allocated SRF loan for professional services on the Oakland Avenue Project C Harrison Street Design.

Ratify Partial Payment #18 to C&E Excavating: Oakland Avenue Forcemain Phase A SA 7878

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board ratified partial payment request #18 in the amount of \$355,359.00 to C&E Excavating from SRF loan WW22162005, and \$19,251.00 from loan DW22232001 for construction on the Oakland Avenue Forcemain Phase A project.

Change Order Request #3 Oakland Avenue Forcemain Phase A SA 7878

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved Change Order #3 for the Oakland Avenue Forcemain Phase A project for an increase of \$63,065.00, bringing the current Contract price to \$12,345,046.38.

Change Order #3 CSO 39 Sewer Separation SA 7913/ WA 7914

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved Change Order #3 for the CSO 39 Sewer Separation Project for an increase of \$28,964.50, bringing the current Contract price to \$5,278,625.65.

7. New Business

Transfer of Fixed Assets

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board approved the transfer of Police Department Rhino Tablets to the Fire Department.

Award Bid #24-24 Walker Park Restroom Facility

On motion by Jamie Arce, seconded by Andy Jones and carried 5-0, the Board removed the Award of Bid #24-24 from the table for consideration.

On motion by Jamie Arce, seconded by Ron Davis and carried 5-0, the Board awarded Bid #24-24 Walker Park Restroom Facility including Bid Alternates, to J.A. Wagner Construction, Inc. who was the lowest responsive bid with a contract price of \$318,600.00.

Uniform Conflict of Interest Disclosure- Tom Shoff

On motion by Jamie Arce, seconded by Rose Rivera and carried 5-0, the

BOARD OF PUBLIC WORKS

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Board accepted and placed on file the Uniform Conflict of Interest Disclosure from Tom Shoff.

New Age Telecom Security Cameras- Elkhart Fire Department

On motion by Jamie Arce, seconded by Andy Jones and carried 5-0, the Board approved a Contract Agreement in the amount of \$107,000.00 with New Age Telecom, pending final Legal approval, and authorized the Elkhart Fire Department Chief or Assistant Chief to sign the agreement on behalf of the Board.

Purchase of 2024 3500 HR Cargo RWD- Elkhart Fire Department

On motion by Andy Jones, seconded by Rose Rivera and carried 5-0, the Board approved the purchase of a 2024 3500 HR Cargo RWD Ford for \$55,352.00, pending Legal Department final approval, and authorized the Elkhart Fire Department Chief or Assistant Chief to sign the agreement on behalf of the Board.

Purchase of 2024 Chevy Silverado 3500 HD Crew Long Bed- Elkhart Fire Department

On motion by Jamie Arce, seconded by Rose Rivera and carried 5-0, the Board approved the purchase of a 2024 Chevy Silverado 3500 HD Crew Cab Long Bed, and authorized the Elkhart Fire Department Chief or Assistant Chief to sign the agreement on behalf of the Board.

Purchase of Public Education Safety Trailer- Elkhart Fire Department

On motion by Jamie Arce, seconded by Rose Rivera and carried 5-0, the Board approved the purchase of a Public Education Trailer for the Fire Safety Programs in the amount of \$13,835.00.

Office Interiors Agreement

On motion by Jamie Arce, seconded by Andy Jones and carried 5-0, the Board approved the contract between the City of Elkhart and Office Interiors, pending final Legal approval, and authorized the Controller to execute the contract on behalf of the Board.

8. Adjournment

On motion by Jamie Arce, seconded by Andy Jones and carried 5-0, the Board of Works adjourned at 12:29 p.m.

\_\_\_\_\_  
Mike Machlan, President

Attest: \_\_\_\_\_ Nancy Wilson, Clerk of the Board





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## M E M O R A N D U M

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**DATE:** December 19, 2024  
**TO:** Board of Public Works  
**FROM:** Tory Irwin, Director of Public Works TI  
**RE:** **Oakland Avenue Project A – PER Amendment #2**

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The Oakland Avenue Project A is funded through the Clean Water State Revolving Fund (CWSRF) in the form of a loan from the Indiana Finance Authority (IFA). It is projected that when the project finishes in 2025, there will be remaining proceeds from the bond issuance in the range of \$2 million +/-.

IFA requires the bonds to be exhausted, and as is typical when projects end, will seek to have the Sewer Utility apply those funds to other capital projects.

When the Oakland B was bonded, there was a miscommunication between our consultants, and additional contingency for possible change orders was not included in the bond amount. We have coordinated with IFA to Amend the Oakland A Preliminary Engineering Report (PER) to include Oakland B for any possible contingencies as a pro-active move ahead of Oakland A finishing.

The Public Hearing for this Amendment is on the agenda for this BOW meeting, and has been advertised in the Elkhart Truth.

It is requested the Board of Public Works:

**Approve the amendment #2 revising the 2023 Oakland A Preliminary Engineering Report to include Oakland B Construction.**



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**MEMORANDUM**

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**DATE:** January 7, 2025  
**TO:** Board of Public Works  
**FROM:** Jeffrey Schaffer, Engineering *JJS*  
**RE:** Award Bid #25-01, Street Materials 2025 Bid

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At the December 17, 2024, Board of Public Works meeting, bids were opened for Bid #25-01, Street Materials 2025 Bid. The results are as follows:

<b>Contractor</b>	<b>Bid</b>
See attached Bid Tabulation	

This material purchases, when made, are funded by the 2025 approved Civil City and Utility Budgets.

The action requested by the Board of Public Works is as follows:

**Award Bid #25-01, Street Materials 2025 Bid, to the various contractors who submitted the lowest responsive bids at the unit prices included in their respective bids as presented in the Bid Tabulation included with this memorandum.**







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**MEMORANDUM**

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**DATE:** January 7, 2025  
**TO:** Board of Public Works  
**FROM:** Jeffrey Schaffer, Engineering *JSS*  
**RE:** **Award Bid #25-02, On-Call Street and Drainage Construction 2025 Bid**

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At the December 17, 2024, Board of Public Works meeting, bids were opened for Bid #25-02, On-Call Street and Drainage Construction 2025 Bid. The results are as follows:

<b>Contractor</b>	<b>Bid</b>
See attached Bid Tabulation	

This material purchases, when made, are funded by the 2025 approved Civil City and Utility Budgets.

The action requested by the Board of Public Works is as follows:

**Award Bid #25-02, On-Call Street and Drainage Construction 2025 Bid, to the various contractors who submitted the lowest responsive bids at the unit prices included in their respective bids as presented in the Bid Tabulation included with this memorandum.**



2025 Street On-Call Construction (Bid #25-02)

Premium Concrete

Bid Items	Description	Unit	Bid Price	Bid Price	Bid Price
<b>ITEM 1. FULL DEPTH ASPHALT</b>					
A. Shallow Patch, 1" to 3" Depth, Up to 600 SF	INDOT HMA Surface Mix	SF	\$20.00		
B. Deep Patch, 3" to 6" Depth, Up to 600 SF	INDOT HMA Surface Mix & Binder	SF	\$25.00		
<b>ITEM 2. FULL DEPTH PAVEMENT REMOVAL</b>					
A. Asphalt Roadway Removal					
1. Thickness of 6" or less		SY	\$100.00		
2. Thickness greater than 6"		SY	\$135.00		
B. Concrete Roadway Removal					
1. Thickness of 9" or less		SY	\$105.00		
2. Thickness greater than 6"		SY	\$145.00		
<b>ITEM 3. CONCRETE CURB</b>					
A. New Curb					
1. 6" X 18"		LF	\$75.00		
2. Combination Straight Curb & Gutter		LF	\$85.00		
3. Combination 4" Rolled Curb & Gutter		LF	\$85.00		
B. Curb Removal and Replacement					
1. 6" X 18" Straight Curb		LF	\$80.00		
2. Combination Straight Curb & Gutter		LF	\$90.00		
3. Combination 4" Rolled Curb & Gutter		LF	\$90.00		
<b>ITEM 4. CONCRETE PAVEMENT</b>					
A. 4" Depth / SY					
1. 4" Concrete 10 to 20 Square Yards	Approx. 18 to 36 lineal feet of sidewalk	SY	\$205.00		
2. 4" Concrete 25 to 50 Square Yards	Approx. 45 to 90 lineal feet of sidewalk	SY	\$185.00		
3. 4" Concrete 75 to 150 Square Yards	Approx. 135 to 270 lineal feet of sidewalk	SY	\$145.00		
B. 6" Depth / SY					
1. 6" Concrete 12 to 20 Square Yards	Approx. 12 LF of 12' Wide Street Lane	SY	\$195.00		
2. 6" Concrete 25 to 50 Square Yards	Approx. 24 LF of 12' Wide Street Lane	SY	\$170.00		
3. 6" Concrete 75 to 150 Square Yards	Approx. 24 LF of 24' Wide Street Lane	SY	\$155.00		
C. 9" Depth / SY					
1. 9" Concrete 12 to 20 Square Yards	Approx. 12 LF of 12' Wide Street Lane	SY	\$200.00		
2. 9" Concrete 28 to 36 Square Yards	Approx. 24 LF of 12' Wide Street Lane	SY	\$185.00		
3. 9" Concrete 60 to 68 Square Yards	Approx. 24 LF of 24' Wide Street Lane	SY	\$175.00		
<b>ITEM 5. ADA SIDEWALK CURB RAMPS</b>					
A. 4" Depth Sidewalk, Remove and Replace		SY	\$205.00		
B. 4" Depth Curb Ramp, Remove and Replace		SY	\$325.00		
C. Truncated Dome Plate, Installed, 6" Depth	2' x 5' Dome Plate	EA	\$350.00		

2025 Street On-Call Construction (Bid #25-02)

Premium Concrete

Bid Items	Description	Unit	Bid Price	Bid Price	Bid Price
D. 6" Width Stacked Curb to Match Grade		EA	\$55.00		
<b>ITEM 6. CONCRETE VALLEY GUTTER</b>					
12" Depth, 24" Wide Concrete Valley Gutter		LF	NO BID		
<b>ITEM 7. HORIZONTAL CONCRETE CUTTING</b>					
Sidewalk Trip Hazard Removal		LF	NO BID		
<b>ITEM 8. COMPACTED AGGREGATE BASE, PLACED</b>					
A. INDOT No. 53 Dense Graded Aggregate	INDOT Limestone or Crushed Stone	CY	\$150.00		
B. INDOT No. 73 Dense Graded Aggregate	INDOT Limestone or Crushed Stone	CY	\$170.00		
<b>ITEM 9. RIP RAP - PLACED</b>					
A. Average 18" Depth	INDOT Uniform	TON	NO BID		
B. Average 24" Depth	INDOT Uniform	TON			
<b>ITEM 10. GRASS - PLACED</b>					
A. Seed & Mulch		SY	NO BID		
B. Sod		SY	NO BID		
C. Hydro Seed		SY	NO BID		






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## MEMORANDUM

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**DATE:** January 7, 2025  
**TO:** Board of Public Works  
**FROM:** Jeffrey Schaffer, Engineering   
**RE:** Award Bid #25-03, Utilities Materials 2025 Bid

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At the December 17, 2024, Board of Public Works meeting, bids were opened for Bid #25-03, Utilities Materials 2025 Bid. The results are as follows:

Contractor	Bid
See attached Bid Tabulation	

This material purchases, when made, are funded by the 2025 approved Civil City and Utility Budgets.

The action requested by the Board of Public Works is as follows:

**Award Bid #25-03, Utilities Materials 2025 Bid, to the various contractors who submitted the lowest responsive bids at the unit prices included in their respective bids as presented in the Bid Tabulation included with this memorandum.**













2024 Utility Material Bid Tab (Bid #25433)									
Bid Items	Size	Brand or Company	Material Order	Material Unit	Contractor/Supplier	Contractor/Supplier	Contractor/Supplier	Contractor/Supplier	Contractor/Supplier
					Utility Supply Company	Requires Materials	Removal	Utility Supply Company	Utility Supply Company
					Bid Price	Available Days	Bid Price	Available Days	Bid Price
1. 1/2" GALVANIZED	1/2"	FORM OR APPROVED EQUAL	40	10 EA	\$ 116.64	0-180			
2. 2" COPPER	2"	FORM OR APPROVED EQUAL	40	10 EA	\$ 116.64	0-180			
3. 1/2" COPPER	1/2"	FORM OR APPROVED EQUAL	50	10 EA	\$ 84.00	0-180			
4. 1/2" COPPER	1/2"	FORM OR APPROVED EQUAL	50	10 EA	\$ 84.00	0-180			
5. 2" COPPER	2"	FORM OR APPROVED EQUAL	20	10 EA	\$ 87.18	0-180			
6. 1/2" COPPER	1/2"	FORM OR APPROVED EQUAL	1	1 EA		0-180			
7. 1/2" METAL FITTING (90-DEGREE)	1/2"	FORM	1	1 EA		0-180			
8. 1/2" METAL FITTING (90-DEGREE)	1/2"	FORM	1	1 EA		0-180			
9. 1/2" METAL FITTING (90-DEGREE)	1/2"	FORM	1	1 EA		0-180			
10. 1" METAL FITTING (90-DEGREE)	1"	FORM	1	1 EA		0-180			




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## MEMORANDUM

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**DATE:** January 7, 2025

**TO:** Board of Public Works

**FROM:** Jeffrey Schaffer, Engineering 

**RE:** **Change Order #1 and Final for Quote #24-21, Hunters Pond to Brookwood Drive Drainage Project**

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Change Order #1 and Final for Quote #24-21, Hunters Pond to Brookwood Drive Drainage Project, is an adjustment to final quantities. The net total increase in the contract price due to the Change Order is \$3,409.67, which results in a final cost that is 5.2% above the original contract price of \$65,579.93.

The action requested by the Board of Public Works is as follows:

**Approve Change Order #1 and Final for Quote #24-21, Hunters Pond to Brookwood Drive Drainage Project, increasing the contract value by \$3,409.67, resulting in a contract price of \$68,989.60.**



# CITY OF ELKHART

## PUBLIC WORKS & UTILITIES

Change Order No. One  
Dated 12/16/2024

Project: **PROJECT NAME**

Contract No. Q24-21

To: John Boettcher Sewer and Excavating  
Contractor

You are required to make the changes noted below in the subject Contract:

City of Elkhart

By \_\_\_\_\_  
President, Board of Public Works

Dated \_\_\_\_\_

### Nature of Changes

Adjustment to Final Quantities \$3,409.67

TOTAL \$ 3,409.67

These changes result in the following adjustment of Contract Price and Contract Time:

Original Contract Price	<u>\$ 65,579.93</u>
Contract Price Prior to this Change Order	<u>\$ 65,579.93</u>
Net change resulting from this Change Order	<u>\$ 3,409.67</u>
Current Contract Price including this Change Order	<u>\$ 68,989.60</u>
Current Contract Price % Change from Original Price	<u>5.2%</u>
Contract Time prior to this Change Order	<u>NO CHANGE</u> (Days or Time)
Net Time change resulting from this Change Order	<u>NO CHANGE</u> (Days)
Current Contract Time including this Change Order	<u>NO CHANGE</u> (Days or Time)

The above changes are approved:

Public Works & Utilities  
BY: [Signature]  
Engineer

December 16, 2024  
DATE

The above changes are accepted:

By: [Signature]  
Contractor  
12-16-24  
DATE



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## MEMORANDUM

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**DATE:** January 7, 2025

**TO:** Board of Public Works

**FROM:** Jeffrey Schaffer, Engineering *JJS*

**RE:** **Change Order #1 and Final for Quote #24-22, Worthmore Avenue Drainage Improvements**

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Change Order #1 and Final for Quote #24-22, Worthmore Avenue Drainage Improvements, is an adjustment to final quantities. The net total increase in the contract price due to the Change Order is \$857.75, which results in a final cost that is 1.3% above the original contract price of \$68,420.75.

The action requested by the Board of Public Works is as follows:

**Approve Change Order #1 and Final for Quote #24-22, Worthmore Avenue Drainage Improvements, increasing the contract value by \$857.75, resulting in a contract price of \$69,278.50.**



# CITY OF ELKHART

## PUBLIC WORKS & UTILITIES

Change Order No. One & FINAL  
Dated 12/16/2024

Project: WORTHMORE AVE DRAINAGE IMPROVEMENTS

Contract No. QUOTE 24-22

To: JOHN BOETTCHER SEWER & EXCAVATING

Contractor

You are required to make the changes noted below in the subject Contract:

City of Elkhart

By \_\_\_\_\_

President, Board of Public Works

Dated \_\_\_\_\_

### Nature of Changes

Adjustments to final quantities: \$857.75

TOTAL \$ 857.75

These changes result in the following adjustment of Contract Price and Contract Time:

Original Contract Price	<u>\$ 68,420.75</u>
Contract Price Prior to this Change Order	<u>\$ 68,420.75</u>
Net change resulting from this Change Order	<u>\$ 857.75</u>
Current Contract Price including this Change Order	<u>\$ 69,278.50</u>
Current Contract Price % Change from Original Price	<u>1.3%</u>
Contract Time prior to this Change Order	<u>NO CHANGE</u> (Days or Time)
Net Time change resulting from this Change Order	<u>NO CHANGE</u> (Days)
Current Contract Time including this Change Order	<u>NO CHANGE</u> (Days or Time)

The above changes are approved:

Public Works & Utilities

BY: \_\_\_\_\_

Engineer

December 16, 2024

DATE

The above changes are accepted:

By: \_\_\_\_\_

Contractor

12-16-24  
DATE




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## MEMORANDUM

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**DATE:** January 7, 2025

**TO:** Board of Public Works

**FROM:** Jeffrey Schaffer, Engineering 

**RE:** **Change Order #1 and Final for Quote #24-28, Wolf Avenue Drainage Improvements**

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Change Order #1 and Final for Quote #24-28, Wolf Avenue Drainage Improvements, includes additional sidewalk removal and replacement and is an adjustment to final quantities. The net total increase in the contract price due to the Change Order is \$10,143.00, which results in a final cost that is 11.3% above the original contract price of \$89,822.00.

The action requested by the Board of Public Works is as follows:

**Approve Change Order #1 and Final for Quote #24-28, Wolf Avenue Drainage Improvements, increasing the contract value by \$10,143.00, resulting in a contract price of \$99,965.00.**



# CITY OF ELKHART

## PUBLIC WORKS & UTILITIES

Change Order No. One  
Dated 12/24/2024

Project: Wolf Avenue Drainage Improvements

Contract No. Q24-28

To: Premiu Concrete Services  
Contractor

You are required to make the changes noted below in the subject Contract:

City of Elkhart

By \_\_\_\_\_  
President, Board of Public Works

Dated \_\_\_\_\_


### Nature of Changes

Sidewalk, Remove and Replace, 46 SYD	\$7,728.00
Adjustment to Final Quantities	\$2,415.00
<b>TOTAL</b>	<b>\$ 10,143.00</b>

These changes result in the following adjustment of Contract Price and Contract Time:

Original Contract Price	\$ 89,822.00
Contract Price Prior to this Change Order	\$ 89,822.00
Net change resulting from this Change Order	\$ 10,143.00
Current Contract Price including this Change Order	\$ 99,965.00
Current Contract Price % Change from Original Price	11.3%
Contract Time prior to this Change Order	NO CHANGE (Days or Time)
Net Time change resulting from this Change Order	NO CHANGE (Days)
Current Contract Time including this Change Order	NO CHANGE (Days or Time)

The above changes are approved:

Public Works & Utilities  
BY:   
Engineer  
12/24/2024  
DATE

The above changes are accepted:

By: \_\_\_\_\_  
Contractor  
  
DATE



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## MEMORANDUM

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**DATE:** January 7, 2025

**TO:** Board of Public Works

**FROM:** Jeffrey Schaffer, Engineering *JTS*

**RE:** **Professional Services Agreement with United Consulting for the Indiana Avenue Underpass Assessment**

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While the bridge itself remains in excellent condition, the block retaining walls at the approaches to the Indiana Avenue Underpass and at the intersection with Main Street have deteriorated over time. The intent of this agreement is to review all of the previous assessments, conduct site visits, complete some additional testing, and propose very practical and simple solutions to stabilize, reinforce, or even replace the walls. United Consulting has been selected for this work, as the Engineering Staff believes a fresh perspective is needed on this matter.

This work will be funded by the Common Council appropriated budget for Engineering Contractual Services. This is an hourly agreement with a not-to-exceed fee.

The action requested by the Board of Public Works is as follows:

**Authorized the Board President to execute the Professional Services Agreement with United Consulting for the Indiana Avenue Underpass Assessment with a fee not to exceed of \$30,000.00.**





November 8, 2024

Mr. Jeffrey D. Schaffer, PE  
Assistant City Engineer  
City of Elkhart, IN  
1201 South Nappanee St.  
Elkhart, IN 46516

RE: Professional Services Agreement  
City of Elkhart, Indiana  
Indiana Avenue Retaining Wall Evaluation

Dear Mr. Schaffer:

We are pleased to present our Professional Services Agreement between UNITED and the City of Elkhart for the project in PDF format. This agreement has been prepared in accordance with our previous discussion on November 1, 2024.

Please execute the agreement and return a digital copy to our office. We will begin work upon receipt of an executed PDF of the agreement.

If you have any questions or comments, please contact me anytime. My cell number is (317) 796-5947.

Sincerely,  
UNITED CONSULTING *WAR*

Jay N. Ridens, P.E.  
Bridge Department Manager

enclosures

c: Terry Minix - UNITED  
File Pending

ENGINEERING  
ENVIRONMENTAL  
INSPECTION  
LAND SURVEYING  
LAND ACQUISITION  
PLANNING  
WATER &  
WASTEWATER  
SINCE 1965

OFFICERS  
Steven W. Jones  
Christopher R. Pope, PE  
B. Keith Bryant, PE  
Michael A. Rowe, PE  
Jon E. Clodfelter, PE  
Paul D. Glotzbach, PE

PROFESSIONAL STAFF  
Andrew T. Wolka, PE  
Devin L. Stettler, AICP  
Michael S. O'phant, AICP  
Timothy J. Coomes, PLS  
Steven R. Passey, PE  
Brian J. Pierson, PE  
Christopher L. Hammond, PE  
Brian S. Frederick, PE  
Jay N. Ridens, PE  
Christopher J. Dyer, PE  
Jeromy A. Richardson, PE  
Heather E. Klgour, PE  
Adam J. Greulich, PLS  
Caleb C. Ross, PE  
Dann C. Barrett, PE  
Scott G. Minnich, PE  
Michael D. Farrell, CPA  
Kelton S. Cunningham, PE  
Braun S. Rodgers, PE  
Chris J. Andrzejewski, PE  
Eric S. Hamed, PE  
Andrew J. Allison, PE  
Abigail I. Godsey, PE  
Gretchen A. Meyer, PE  
Brian S. Haeftiger, PE  
Corbin A. Schwiebert, PE  
Tim B. Leenhuis, PE  
Hogan W. Sils, PE  
Kyle D. Kent, PE  
Steven D. Zehr, PE  
Elizabeth D. Magee, PE  
John D. SanGiorgio, PE  
Marcus A. Gahagen, PE  
Troy A. Casey, PE  
Mitchell D. Lankford, PE  
Melissa A. Stone, PE  
Tony Fadoul, PE

www.ucindy.com  
8440 Allison Pointe Blvd., Suite 200, Indianapolis, IN 46250 (317) 895-2585

**CITY OF ELKHART, INDIANA**  
**STANDARD FORM OF AGREEMENT**  
**FOR PROFESSIONAL SERVICES**  
**(Edition 2020)**

THIS IS AN AGREEMENT effective as of November 20, 2024 (“Effective Date”) between The City of Elkhart, Indiana, acting by and through its Board of Public Works (“Owner”) and United Consulting Engineers, Inc. (“Engineer”).

For the following Project: (“Project”).
<b>Indiana Avenue Retaining Wall Evaluation</b>

Owner and Engineer 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 Exhibit C.

C. Owner shall make available to Engineer reports, studies, regulatory decisions, programs, instructions, data, and other written information relating to the Services. Engineer may rely upon said documents without independent verification unless advised by the Owner that verification may be needed such as information from “record drawings” and GIS.

**ARTICLE 3 – DEFINITIONS**

*3.01 Defined Terms*



A. The terms used in this Agreement and Exhibits, including the singular and plural forms, have the meanings indicated in the following provisions:

1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.

2. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 1, of this Agreement.

3. *Conflict of Interest* - Conflict of interest means that because of other activities or relationships with other persons, a person or entity is unable or potentially unable to render impartial assistance or advice to the City, or the person's or entity's objectivity in performing the contract work is or might be otherwise impaired, or a person or entity has an unfair competitive advantage.

4. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

5. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which 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. §§1801 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.; and [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.

6. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.

7. *Contract Documents* – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

8. *Documents* – Data, reports, Drawings, Specifications, record drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Contractor to Owner pursuant to this Agreement.

9. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

10. *Effective Date of the Agreement* – The date indicated in this Agreement on which it becomes effective. If no such date is indicated, it means the date on which the last party duly executes this Agreement.

11. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, and authorities.

12. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.

13. *Resident Project Representative* – The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the construction phase. The Resident Project Representative will be Engineer’s agent or employee and under Engineer’s supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner.

14. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

15. *Total Project Costs* – The sum of the Construction Cost, 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 pursuant to Exhibit B of this Agreement.

16. *Work* – The entire construction or the various identifiable parts required to be provided under the contract documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the contract documents.

## **ARTICLE 4 – SCHEDULE FOR RENDERING SERVICES**

### *4.01 Commencement*



A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

#### 4.02 *Time for Completion*

A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable. The payment of Engineer's fees as set forth in this Agreement are conditioned upon the completion of all Documents no later than February 28, 2024.

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, shall be extended for the period of such delay or Owner shall authorize Engineer to work overtime to make up such lost time, and Engineer's compensation shall be adjusted equitably.

C. If, through no fault of Owner, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services are impaired, or Engineer's services are delayed by reason of any error, inconsistency or omission of Engineer, Engineer shall compensate Owner for and indemnify it against all costs, expenses, liabilities or damages which may accrue as a result of such delay, but only to the extent such costs, expenses, liabilities or damages exceed ten percent (10%), in the aggregate of Engineer's compensation. In addition, Engineer shall provide all necessary services at its own cost, including any overtime costs and expenses, required to make up time lost to Owner because of such delay.

D. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be mutually agreed upon by the parties.

E. 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.

### **ARTICLE 5 – INVOICES AND PAYMENTS**

#### 5.01 *Invoices*

A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C, and in a manner acceptable to Owner. Engineer shall submit its invoices to Owner no more than once per month along with reasonable supporting detail. Owner shall pay approved amounts no later than 40 days after receipt or as Owner's standard practices allow.

#### 5.02 *Payments*

A. Prior to final payment to Engineer, Engineer shall furnish evidence satisfactory to Owner that there are no claims, obligations or liens outstanding in connection with its services. Acceptance of final payment shall constitute a waiver of all claims by Engineer for compensation for its services.

B. Should there be any claim, obligation or lien asserted before or after final payment is made that arises from Engineer's services, Engineer shall reimburse Owner for any costs and expenses, including attorneys' fees, costs and expenses, incurred by Owner in satisfying, discharging or defending against any such claim, obligation or lien, including any action brought or judgment recovered, provided Owner is making payments or has made payments to Engineer in accordance with the terms of this Agreement.

C. Should Engineer or its consultants fail to perform or otherwise be in default under the terms of this Agreement, Owner shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect the Owner from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

D. Engineer's expense records shall be maintained in accordance with generally acceptable accounting principles and shall be available to Owner at mutually convenient times for all services to be compensated on the basis of actual cost.

## **ARTICLE 6 – ESTIMATE OF COST**

### *6.01 Construction Cost Estimate*

A. Engineer's estimate of the Construction Cost is made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry.

### *6.02 Designing to Construction Cost Limit*

A. Owner and Engineer agree to a Construction Cost limit in the amount of **Not Applicable to this Agreement.**

B. The written acceptance by Owner at any time during Basic Services of a revised estimate of the Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.

C. If the Bidding has not commenced within three months after completion of the final design phase, the established Construction Cost limit will not be binding on Engineer. In such case, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the final design phase and the date on which proposals or Bids are sought.



D. If the lowest responsible and responsive proposal or Bid exceeds the established Construction Cost limit by more than thirty percent (30%), Owner may (1) give written approval to increase such Construction Cost limit, or (2) authorize rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall make recommendations to Owner describing ways to proceed within Owner's budget and modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost limit. All services of Engineer in respect of this Paragraph shall be at the sole expense of Engineer.

## **ARTICLE 7 – GENERAL CONSIDERATIONS**

### *7.01 Standards of Performance*

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 shall be responsible to Owner for the costs of any errors or omissions of the Engineer or of consultants retained by Engineer.

B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to written approval of Owner. The retention of such Consultants shall not reduce the Engineer's obligations to Owner under this Agreement.

D. Subject to the standard of care set forth in Paragraph 7.01.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. Engineer and Owner shall comply with applicable Laws and Regulations. Engineer shall comply with Owner-mandated standards that Owner has provided to Engineer in writing.

F. Engineer shall not be required to sign any documents 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 documents.

H. Engineer shall not at any time 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 at



the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

I. 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.

J. Engineer shall not be responsible for the acts or omissions of any Contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.

K. All Contract Documents and Applications for Payment shall be subject to Owner approval.

L. 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 phase; (2) Engineer shall have no shop drawing review obligations during construction; (3) Owner assumes all responsibility for contract administration, construction observation and review, and all other necessary construction phase engineering and professional services; and (4) the interpretation of the bid documents remains the Engineer's responsibility.

#### *7.02 Use of Documents*

A. Upon the making of final payment to Engineer, Owner shall receive ownership of the property rights of all of the Documents prepared, provided or procured by Engineer or by consultants retained by Engineer. All Documents prepared, provided or procured by Engineer or by consultants retained by Engineer shall be distributed to Owner. All Documents whether printed or electronic media format, and including AutoCad drawings, shall be provided to Owner at anytime upon the Owner's request. If this Agreement is terminated pursuant to Paragraph 7.04.B, Owner shall receive ownership of the property rights of the Documents upon payment for all services rendered according to this Agreement, at which time, Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

B. Owner may use, reproduce or make derivative works from the Documents for extensions of the Project or other projects without the prior authorization of Engineer or its consultant. However, Owner's use of the Documents for derivative work without Engineer's authorization or involvement is at Owner's sole risk unless negligence of the Engineer's work is the cause of any damages.

C. Similarly, Engineer shall obtain from its consultants property rights and rights of use that correspond to the rights given by Engineer to Owner in this Agreement.

D. A party may rely upon that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

E. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

F. The Engineer may not use the information gathered or the Documents created for this Project at the Owner's expense without the written consent of the Owner.

### 7.03 *Insurance*

A. Before commencing its services and as a condition of payment, Engineer shall procure and maintain insurance as set forth in Exhibit D, "Insurance", which will protect it from claims arising out of the performance of its services under this Agreement, whether such services are provided by Engineer or by any of its consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

B. Engineer shall require its consultants to maintain Comprehensive General Liability, Automobile Liability, Workers Compensation and Professional Liability coverage with a company satisfactory to Owner and with limits acceptable to Owner.

C. Engineer shall maintain Professional Liability insurance with a company satisfactory to Owner for claims arising from any negligent act, error, or omission of Engineer under this Agreement, which shall be a practice policy written for the amounts set forth in Exhibit D, "Insurance" with a deductible not to exceed \$100,000. The Professional Liability insurance shall contain prior acts coverage sufficient to cover all services performed by Engineer for this Project. The Professional Liability policy shall be continued in effect for three (3) years following final payment to Engineer. The deductible shall be paid by Engineer.

D. Engineer shall deliver to Owner certificates of insurance evidencing the coverages indicated in Exhibit D, and a copy of its Professional Liability policy. Such certificates and policy shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement. No policy shall be cancelled or modified without thirty (30) days prior written notice to Owner. Such requirement for prior written notice does not apply to modifications



caused by claims made against the policy. Engineer and its Professional Liability insurance carrier shall notify Owner within thirty (30) days of any claims made or loss expenses incurred against the Professional Liability policy, related to this Project. Owner shall have the right to direct Engineer to notify Engineer's Professional Liability insurance carrier of a claim against the policy.

#### 7.04 *Suspension and Termination*

##### A. *Suspension.*

1. By Owner: Owner may suspend the Project upon seven days written notice to Engineer.

2. By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement.

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

1. For cause,

a. By either party upon 14 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.

2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination.* The terminating party under Paragraph 7.04B 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.* In the event of any termination under Paragraph 7.04, Engineer will be entitled to invoice Owner and to receive payment for all acceptable services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.



E. *Delivery of Project Materials to Owner.* Prior to the effective date of termination, the Engineer will deliver to Owner copies of all completed Documents and other Project materials for which Owner has compensated Engineer.

#### 7.05 *Controlling Law*

A. This Agreement shall be governed by the law of the State of Indiana.

#### 7.06 *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 7.06B 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.

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 Contractor, Contractor's subcontractor, supplier, other 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.

#### 7.07 *Dispute Resolution*

A. Owner and Engineer agree to make a good-faith effort to resolve any claim, dispute or other matter in question arising out of or related to this Agreement by formal negotiation between authorized representatives of each party. Formal negotiations shall take place at a mutually acceptable time and place within fifteen (15) days of notice. Formal negotiations pursuant to this Section are confidential and shall be treated as compromise and settlement negotiations for purposes of federal and state rules of evidence.

B. All applicable statutes of limitation and defenses based on the passage of time shall be tolled during the formal negotiation process.

C. Any changes to the Agreement resulting from formal negotiation shall be incorporated into the Agreement by addendum.

D. Any claims not resolved through formal negotiation may be subject to litigation at the discretion of the aggrieved party.

#### *7.08 Environmental Condition of Site*

A. Owner represents to Engineer that to the best of its knowledge, no known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern are located at or near the Site, including type, quantity, and location.

B. If Engineer encounters an undisclosed Constituent of Concern, Engineer shall notify the Owner and the appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

#### *7.09 Indemnification by Engineer*

A. To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to, all fees and charges of contractors, 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, death, or to damage to or destruction of tangible property (including any resulting loss of use), but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants.

#### *7.10 Conflict of Interest –*

A. The Engineer acknowledges and agrees that it does not have a current Conflict of Interest, as defined in Section 3.01, with the Owner and will not have a Conflict of Interest with the Owner during the term of this Agreement, regardless of whether that Conflict of Interest is real or perceived.

B. The Engineer further acknowledges and agrees that the Engineer and its Consultants are not currently providing any services to any third parties and will not provide services for at least 24 months after the Project is completed that will financially benefit the Engineer and/or its Consultants directly or indirectly.

C. The Owner, in its sole discretion, may waive a Conflict of Interest if the Engineer notifies the Owner of the conflict and fully discloses the nature of the conflict before the effective date of this Agreement.



D. If the Engineer fails to disclose a Conflict of Interest before the effective date of this Agreement, the Owner may terminate this Agreement as provided in paragraph 7.04.

E. If the Engineer or its Consultants breach Subsection 7.10(B), the Owner may disqualify the Engineer from bidding or quoting on any future projects by the Owner, or reject any bids or quotes by the Engineer as not responsible.

F. If the Engineer disputes the determination of the Owner's designated representative that the Engineer has a Conflict of Interest, the Engineer may appeal the designated representative's determination to the Board of Public Works. The Board of Public Work's decision on the matter shall be final.

#### 7.11 *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 facsimile, 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, who 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 law, 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 final payment.

F. The provisions of this Agreement shall be construed according to the laws of the State of Indiana. Any action arising under this Agreement shall be brought in the Federal District Court for the Northern District of Indiana, or the Circuit or Superior Court of Elkhart County, Indiana.

### **ARTICLE 8 – E-VERIFY REQUIREMENT**

#### 8.01 *Terms*

All terms defined in I.C. § 22-5-1.7 *et seq.* are adopted and incorporated into this section.



## 8.02 *Enrollment and Participation*

A. Pursuant to I.C. § 22-5-1.7 et seq., Engineer shall enroll in and verify the work-eligibility status of all of its newly-hired employees using the E-Verify program, if it has not already done so as of the date of this Agreement.

B. Engineer shall provide Owner with documentation that it is enrolled and participating in the E-Verify program.

## 8.03 *Affidavit*

A. Engineer is required to execute an affidavit affirming that: (i) it is enrolled and participating in the E-verify program, and (ii) it does not knowingly employ any unauthorized aliens.

B. This Agreement shall not take effect until said affidavit is signed by Engineer and delivered to Owner along with the documentation of the E-Verify program enrollment and participation.

## 8.04 *Subcontractors*

A. Should Engineer subcontract for the performance of any work under this Agreement, the Engineer shall require any subcontractor to certify by affidavit that: (i) the subcontractor does not knowingly employ or contract with any unauthorized aliens, and (ii) the subcontractor is enrolled and participating in the E-verify program.

B. Engineer shall maintain a copy of such certification for the duration of the term of any subcontract.

C. Engineer shall also deliver a copy of the subcontractor certification to the Owner within seven days of the effective date of the subcontract.

## 8.05 *Employment of Unauthorized Aliens*

A. If Engineer, or any subcontractor of Engineer, knowingly employs or contracts with any unauthorized alien, or retains an employee or contract with a person that the Engineer or subcontractor subsequently learns is an unauthorized alien, Engineer shall terminate the employment of or contract with the unauthorized alien within thirty (30) days.

B. Should the Engineer or any subcontractor of Engineer fail to terminate the employment of, or contract with, the unauthorized alien within thirty (30) days, Owner has the right to terminate this Agreement without consequence.

## 8.06 *When E-Verify is not Required*

A. The E-Verify program requirements of this Agreement will not apply should the E-Verify program cease to exist.

## **ARTICLE 9 – EXHIBITS AND SPECIAL PROVISIONS**

### *9.01 Exhibits Included*

- A. Exhibit A, “Engineer’s Services,” consisting of one (1) page(s).
- B. Exhibit B, “Owner’s Responsibilities,” consisting of one (1) page(s).
- C. Exhibit C, “Payments to Engineer for Services and Reimbursable Expenses,” consisting of three (3) pages.
- D. Exhibit D, “Insurance,” consisting of one (1) page.
- E. Exhibit E, “Affidavit of E-Verify Enrollment and Participation” consisting of one page.
- F. Exhibit F, “Certification Statement Regarding Investments in Iran,” consisting of one (1) page.
- G. Exhibit G, “Title VI Notice,” consisting of two (2) pages.

### *9.02 Total Agreement*

A. This Agreement constitutes the entire agreement between Owner and Engineer for the Project and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, or modified by a duly executed written instrument.

### *9.03 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 individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

### *9.04 Suspension and Debarment*

A. Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any state department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any state department or agency. Necessary certification forms shall be provided by the Owner.

### *9.05 Investments in Iran*

A. The Engineer shall sign a certification statement regarding investments in Iran, and said statement is incorporated herein.

9.06 *Title VI Notice*

A. The Engineer shall sign an acceptance certification statement regarding Title VI notification and compliance with the City of Elkhart's Title VI Policy during the duration of this agreement, and said statement is incorporated herein.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

OWNER: City of Elkhart, Indiana, acting by and through its Board of Public Works		ENGINEER:	
By:		By:	<i>Michael Rowe</i>
Title:	President, Board of Public Works	Title:	Michael A. Rowe, PE President
Date Signed:	November 8, 2024	Date Signed:	<i>11/8/2024</i>
Attest:		Engineer License or Certification No.:	PE# 10001062
Clerk		State of:	Indiana
		Attest:	<i>Chris R. Pope</i>
		Chris R. Pope, PE Senior Vice President	
<b>Address for giving notices:</b>		<b>Address for giving notices:</b>	
Elkhart City Board of Public Works		United Consulting	
229 S. Second Street		8440 Allison Point Blvd.	
Elkhart, Indiana 46516		Indianapolis, IN 46250	

<b>Designated Representative:</b>		<b>Designated Representative:</b>	
Jeffrey Schaffer, PE		Michael A. Rowe, PE	
Title:	Assistant City Engineer	Title:	President
Phone Number:	(574) 293-2572	Phone Number:	(317) 895-2585
Facsimile Number:		Facsimile Number:	(317) 895-2596
E-Mail Address:	jeff.schaffer@coei.org	E-Mail Address:	michael.rowe@ucindy.com

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

### **Engineer's Services**

1. The Engineer shall conduct an on-site assessment of the condition of the retaining walls.
2. The Engineer shall review the retaining walls' existing plans and shop drawings.
3. The Engineer shall provide the owner with Geotechnical Investigation options based on the assessment and review of the retaining walls.
4. The Engineer shall develop a letter-based Assessment Report based on the results of the Geotechnical Investigation that includes repair options and construction cost estimates for the retaining walls.

### **Engineer's Schedule**

Work by the Engineer under this Agreement shall be completed and delivered to the Owner for review and approval within the following approximate time periods. Variations from this schedule may be agreed upon by the Owner and the Engineer.

1. On-site assessment shall be completed within 28 calendar days after the Agreement commencement date.
2. Letter-based Assessment Report shall be completed within 84 calendar days of the completion of the Geotechnical Investigation.



This is **EXHIBIT B**, consisting of 1 page(s), referred to in and part of the **Agreement between Owner and Engineer for Professional Services**

### **Owner's Responsibilities**

The Owner shall furnish the Engineer with the following:

1. Guarantee access to enter upon public and private lands as required for Engineer to perform work under this Agreement.
2. Criteria for design and details for signs, signals, lighting, highways, and structures such as grades, curves, sight distances, design loadings, etc.
3. Plans of any existing structures within the project limits, if available.
4. Specification and standard drawings applicable to the project.
5. All written views pertinent to the project that is received by the Owner.

This is **EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**

**Payments to Engineer for Services and Reimbursable Expenses**

Engineer's services will be billed monthly. Payment shall be made under the provisions of Article 5. If the Owner has questions or comments concerning our services or charges during the course of the work, they are to be brought to Engineer's attention immediately so that any problem can be resolved quickly.

The Owner shall reimburse the Engineer all fees paid to review agencies to secure permits necessary for the project.

The Engineer shall receive as payment for the work performed under this Agreement the total fee not to exceed \$30,000.00 unless a modification of the Agreement is approved in writing by Owner.

The Engineer shall be paid on the basis of actual hours of work performed by essential personnel working exclusively on this project at the billing rates as set forth in the Billing Rates by Classification tables included with Exhibit C.



**UNITED Consulting**  
2024 Billing Rates by Classification

CLASSIFICATION	HOURLY BILLING RATES
1 Department Manager	\$260.00
2 Project Team Leader	\$235.00
3 Senior Project Manager	\$230.00
4 Project Manager	\$200.00
5 Project Engineer / Surveyor	\$175.00
6 Construction Manager I	\$175.00
7 CADD / RW Designer	\$162.00
8 Design Engineer / Surveyor	\$162.00
9 Environmental Specialist	\$150.00
10 Survey Crew Chief	\$145.00
12 Survey / Data Technician	\$140.00
13 Survey Professional	\$135.00
13 Construction Manager II	\$135.00
14 Construction Manager III	\$115.00
15 Interns	\$95.00

**NOTES:**

- (1) Billing Rate Includes Overhead and Profit Margin
- (2) Overtime Hours will be billed at 130% of the rates above.
- (3) Mileage shall be reimbursed at \$0.67 per mile
- (4) Per Diem shall be reimbursed at \$39.00 per night.
- (5) Other direct costs such as Permit Fees, Recording Fees, Legal Fees, Advertising Fees, Hotel Cost, Etc. shall be reimbursed at their actual costs.
- (6) These rates shall be increased by 5% on January 1 of each year subsequent to 2024.
- (7) Work performed by Subconsultants shall be reimbursed at their actual cost.

**Terracon Consultants, Inc.**

**Billing Rates**

October 27, 2024

Classification		Billing Rates	
		2025	
1	Principal	\$	288.15
2	Group Manager	\$	249.10
3	Senior Engineer	\$	214.87
4	Project Engineer	\$	202.22
5	Senior Staff Engineer	\$	166.91
6	Staff Engineer	\$	135.64
7	Senior Geophysicist	\$	163.80
8	Project Geophysicist	\$	146.62
9	Assistant Project Manager	\$	110.62
10	Drilling Dept. Manager	\$	147.04
11	Lab Manager	\$	104.26
12	Assistant Geologist	\$	86.08
13	CAD Designer	\$	123.65
14	Administrative Staff	\$	100.88

Mileage billed at \$0.49/mile

This is **EXHIBIT D**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**

**Insurance**

Paragraph 7.04 of the Agreement is amended and supplemented to include the following agreement of the parties:

*Insurance*

A. The limits of liability for the insurance required by paragraph 7.04 of the Agreement for Engineer are as follows:

1. Workers' Compensation:	Statutory
2. Employer's Liability --	
a. Each Accident	\$1,000,000
b. Disease, Policy Limit:	\$1,000,000
c. Disease, Each Employee:	\$1,000,000
3. Commercial General Liability --	
a. Each Occurrence:	\$1,000,000
b. General Aggregate:	\$2,000,000
c. Products/Completed Operations:	\$1,000,000
d. Personal and Advertising	\$1,000,000
e. Contractual Liability--	
Each Occurrence:	\$1,000,000
General Aggregate	\$2,000,000
4. Contractual Liability--	
a. Each Occurrence:	\$1,000,000
b. General Aggregate	\$2,000,000
5. Excess Umbrella Liability --	
a. Each Occurrence:	\$5,000,000
b. General Aggregate:	\$5,000,000
6. Business Automobile Liability --	
a. Bodily Injury –Each Accident:	\$1,000,000
b. Property Damage –Each Accident:	\$1,000,000
7. Professional Liability Insurance	
a. Each Claim Made:	\$1,000,000
b. Annual Aggregate:	\$1,000,000



This is **EXHIBIT E**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**

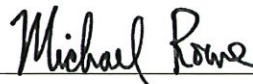
**AFFIDAVIT OF E-VERIFY ENROLLMENT AND PARTICIPATION**

I, Michael Rowe, being first duly sworn, depose and say that I am familiar with and have personal knowledge of the facts herein and, if called as a witness in this matter, could testify as follows:

1. I am over eighteen (18) years of age and am competent to testify to the facts contained herein.
2. I am now and at all times relevant herein have been employed by United Consulting (“Engineer”) in the position of President.
3. I am familiar with the employment policies, practices, and procedures of Engineer and have the authority to act on behalf of the Engineer.
4. Engineer is enrolled and participates in the federal E-Verify program. Documentation of this enrollment and participation is attached as Exhibit “A” and incorporated herein.
5. Engineer does not knowingly employ any unauthorized aliens.
6. To the best of my information and belief, the Engineer does not currently employ any unauthorized aliens.

I swear and affirm under the penalties for perjury that the foregoing statements and representations are true and accurate to the best of my knowledge and belief.

EXECUTED on the 7 day of November, 2024.



Printed: Michael A. Rowe

This is **EXHIBIT F**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**

**CERTIFICATION STATEMENT REGARDING INVESTMENTS IN IRAN**

I, Michael Rowe, certify to the following:

1. Pursuant to Indiana Code 5-22-16.5 *et seq.*, I am not now engaged in investment activities in Iran.
2. I understand that providing a false certification could result in the fines, penalties, and civil action listed in I.C. 5-22-16.5-14.

EXECUTED THIS 7 DAY OF November, 2024.



Printed: Michael A. Rowe

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



## **Title VI Notice**

### Title VI Policy

**The City of Elkhart, Indiana (Elkhart) is committed to a policy of inclusiveness, fairness, and accessibility of its programs, activities and services to all persons in Elkhart. As provided by Title VI of the Civil Rights Act of 1964 and all related statutes, Elkhart assures that no person shall, on the on the grounds religion, race, color, national origin, sex, age, disability/handicap, sexual orientation, gender identity, limited English proficiency, or low income status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any City of Elkhart program, activity or service. The City of Elkhart further assures every effort will be made to ensure non-discrimination in all of its programs, activities, and services, whether those program, activities and services are federally funded or not. In the event the City of Elkhart distributes Federal aid funds to another entity, the City of Elkhart will include Title VI language in all written agreements.**

The Title VI Coordinator is:

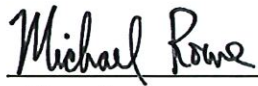
Title VI Coordinator  
City of Elkhart  
229 S 2<sup>nd</sup> Street  
Elkhart, Indiana 46516

Voice: (574) 294-5471  
Fax: (574) 293-7658  
TDD: (574) 389-0198  
Email: [titlevicoordinator@coei.org](mailto:titlevicoordinator@coei.org)



Acceptance by Engineer

I hereby certify that I have received the City of Elkhart's "Title VI Notice" and agree to comply with the requirements and provisions of the City of Elkhart's Title VI Policy during the duration of this Agreement with the City of Elkhart.



\_\_\_\_\_  
Signed

Michael A. Rowe

\_\_\_\_\_  
Printed Name

November 7, 2024

\_\_\_\_\_  
Dated

The City of Elkhart Title VI Policy may be accessed here:

<https://elkhartindiana.org/government/human-resources/#tab-b900fced1bdffd36578>

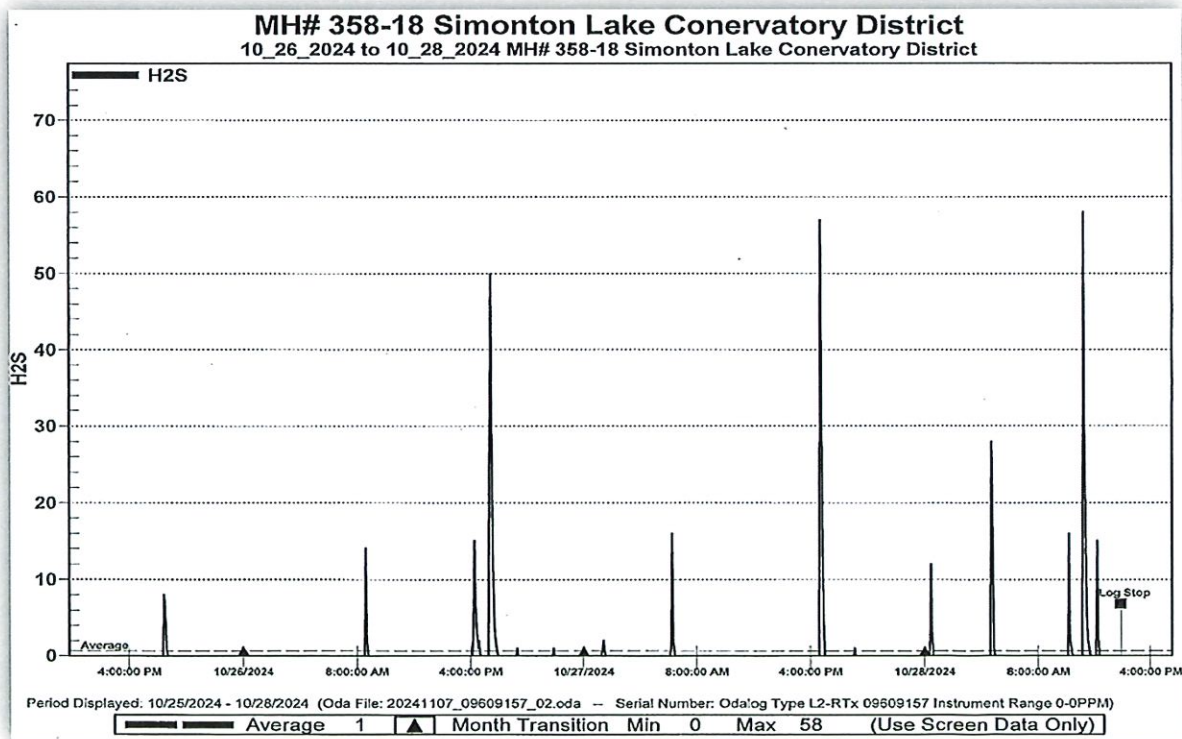


## M E M O R A N D U M

Date December 25, 2024  
To Mike Machlan, Board of Works President  
From Steve Brown, Pretreatment Manager  
RE Simonton Lake Conservancy District

Pretreatment Staff conducted monthly H<sub>2</sub>S monitoring for Simonton Lake Conservancy District on October 26-28, 2024. The H<sub>2</sub>S result of 58 ppm exceeded the maximum limit of 50 ppm set by the Wastewater Use Ordinance.

The Enforcement Response Plan (ERP) recommends “Discharges that cause average concentration of hydrogen sulfide (H<sub>2</sub>S) gas in the POTW to exceed 5 ppm or the maximum concentration of 50 ppm at any time” for second violation a penalty of \$1,500.



Please find Simonton Lake Conservancy District in violation of the Wastewater Use Ordinance and assign a penalty of \$1,500.



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## M E M O R A N D U M

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Date December 31, 2024  
To Mike Machlan, Board of Works President  
From Steve Brown, Pretreatment Manager  
RE Norfolk Southern – Permit # 85-27

Pretreatment Staff hand delivered three Notice of Violations (NOV) to Norfolk Southern on November 13, 2024. These NOV's require a User response in writing within 15 calendar days of receipt (November 28, 2024).

The following three NOV's pertain to:

- 1) Failure to conduct required self-monitoring for the month of July 2024, penalty of \$100 each limit violated (pH, TSS, cBOD5, COD, TPH) total penalty \$500.
- 2) Failure to submit self-monitoring report by deadline, for the month of August 2024, penalty of \$250.
- 3) Failure to submit self-monitoring report by deadline, for the month of September 2024, penalty of \$250. (Violation and penalty for this event to be rescinded on 12/17/24, due to postmarked mailing acceptance)

The Wastewater Utility Enforcement Response Plan recommends a penalty of \$250 for "Failure to respond to NOV by the due date". As stated above there were NOV's that Pretreatment Staff failed to receive a response.

**For a total recommended penalty of \$750.**

Please find Norfolk Southern – Permit # 85-27 in violation for failing to respond to Notice of Violations issued on November 13, 2024, and assign a penalty of \$750.





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## M E M O R A N D U M

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Date December 31, 2024  
To Mike Machlan, Board of Works President  
From Steve Brown, Pretreatment Manager  
RE Atlas Chem Milling – Permit # 85-16

The Pretreatment Office respectfully requests that the Board approve the delisting of Atlas Chem Milling, Permit # 85-16, located at 1627 W. Lusher Ave., Elkhart, Indiana 46517.

Atlas Chem Milling has discontinued their metal finishing operations, and there are no remaining chemicals or solvents associated with this location. The building is now substantially empty and may potentially be demolished in the future.

Please approve delisting of Atlas Chem Milling, Industrial Wastewater Discharge Permit # 85-16, located at 1627 W. Lusher Ave.

## Summary

The following was received February 13, 2024.

### **Plan of Action for Atlas Chem-Milling**

Atlas Chem-Milling a division of Atlas Die, LLC and dba of an Impact Company has decided that it is the best interest to close the doors on the facility in Elkhart Indiana. With that being said, we will be decommissioning all chemicals throughout the building and will be terminating our wastewater permit with the City of Elkhart. This will take place starting as soon as January 8, 2024, as this is our 30-day notice of termination. This process has a tentative completion date of March 29, 2024, but may take a little longer depending on some of the pickup dates for chemical removal.

#### **Disposal of chemicals:**

We will be using the company Univar Solutions as they are our regular chemical disposal company. They will be picking up chemicals that will be placed in steel or plastic drums along with boxes that are properly wrapped in plastic for removal. Any chemicals that we have here that are not regular disposed of items are also being logged and they will come out and complete lab packs and remove those chemicals as well. We will also use US Waste for our ferric acid removal. Both vendors, Univar and US Waste, are our regular disposal vendors that we use throughout each year.



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## MEMORANDUM

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**DATE:** January 2, 2025

**TO:** Michael Machlan, President of the Board of Public Works and Utilities

**FROM:** John M. Espar, Corporation Counsel

**RE:** Professional Service Agreement for Legal Consulting Services of  
Barnes & Thornburg LLP

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Barnes & Thornburg LLP has submitted a proposed letter of engagement to the City to assist the Administration and the Department of Law in connection with the termination of tax abatements previously issued by the City of Elkhart, Indiana.

The services which Barnes & Thornburg LLP will be providing include, but are not necessarily limited to, reviewing tax abatement procedures, considering any legal actions necessary to terminate tax abatements and the grounds on which to pursue such terminations, and assisting the City by preparing or reviewing any resolutions or ordinances for consideration by the appropriate approving authorities related to the termination of a tax abatement.

The Department of Law has appropriated funds available within its current budget for such matters.

I am requesting that the Board authorize Corporation Counsel to enter into an agreement with Barnes & Thornburg LLP for professional services, substantially in the form of the attached proposed letter of engagement, but as Corporation Counsel may approve in a final form of agreement.



# BARNES & THORNBURG LLP

201 S. Main Street, Suite 400  
South Bend, IN 46601-2130 U.S.A.  
(574) 233-1171  
Fax (574) 237-1125

[www.btlaw.com](http://www.btlaw.com)

Randolph R. Rompola  
(574) 237-1244  
[randy.rompola@btlaw.com](mailto:randy.rompola@btlaw.com)

December 19, 2024

VIA EMAIL

John M. Espar  
Corporation Counsel  
CITY OF ELKHART, INDIANA  
229 S. Second Street  
Elkhart, Indiana 46516

**Re: Advice Regarding Termination of Tax Abatements**

Dear John:

I am providing this letter to you for the purpose of confirming the terms and conditions under which our Firm will provide advice regarding the termination of tax abatements previously issued by the City of Elkhart, Indiana (the "City") (the "Matter").

I am enclosing our Standard Terms of Engagement for Legal Services (2024), setting forth the standard terms upon which our Firm accepts client engagements. Our engagement by you in this matter will be governed by these standard terms to the extent not expressly modified by this letter. In particular, the Section in the Standard Terms of Engagement for Legal Services under the caption "**Waiver of Certain Potential Conflicts of Interest**" will not apply in this engagement.

It is important from the outset of our relationship that we have a clear understanding as to the identity of our client. Our only client in this matter is the City. Our representation does not extend to any subsidiary, parent, affiliate, member, officer, director or other persons or entities that are not specifically identified in this engagement letter.

As counsel to the City in connection with the Matter, we will, as and when requested, meet with City representatives and other parties to review tax abatement procedures and consider any actions necessary to terminate tax abatements and the grounds on which to pursue such terminations and assist the City by preparing or reviewing any resolutions or ordinances for consideration by the appropriate approving authorities related to the termination of a tax abatement. As we discussed, to the extent you require assistance with respect to a specific company, we of course would need to run conflicts check prior to providing advice.

Our fees for this Matter will be based primarily on the hours actually worked by each lawyer and legal assistant involved in this matter. Our fees will be computed using hourly billing rates for the lawyer or legal assistant and the type of work involved that are in effect at the time you are billed for the work. Our billing rates are adjusted annually, typically in December (beginning in December 2025 for purposes of this engagement).

John M. Espar  
Corporation Counsel  
CITY OF ELKHART, INDIANA  
December 19, 2024  
Page 2

Although I will be the lawyer responsible for this matter, I may assign portions of the work to be done to other Firm lawyers. In an effort to affect greater efficiencies and to reduce total fees, I may also ask one or more of our legal assistants to assist in this matter as well.

Unless Barnes & Thornburg LLP otherwise agrees in a subsequent letter, all future engagements between the City and Barnes & Thornburg will be governed by the enclosed Standard Terms of Engagement for Legal Services, to the extent not expressly modified by this letter.

If this letter does not correctly reflect your understanding of the terms and conditions of our representation of you, please inform me at once. If you agree with the terms and conditions as stated above, please acknowledge your agreement by signing below and returning this letter to me.

We are pleased to have this opportunity to be of service and to work with the City. Please let me know if you have any questions.

Very truly yours,

BARNES & THORNBURG LLP



Randolph R. Rompola

RRR/bej  
Enclosure: Standard Terms of Engagement

ACKNOWLEDGED AND AGREED:

CITY OF ELKHART, INDIANA

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_



## BARNES & THORNBURG LLP

### TERMS OF ENGAGEMENT FOR LEGAL SERVICES

The following terms are an integral part of our agreement with you and, unless modified expressly in writing by mutual agreement, govern all of our engagements for you. We ask that you review these terms carefully and write us promptly if you have any questions. We suggest that you retain this document in your file together with our engagement letter(s).

#### Our Client

The person or entity that we represent is the person or entity identified as our client in our engagement letter and does not include any affiliates or relatives of such person or entity. This means that, unless we specifically agree otherwise, we do not have any lawyer-client relationship with:

- Your subsidiaries, parent company or other business entities in a commonly controlled group, without regard to any internal arrangements for the management of affairs between our client and any such affiliate, or any operational commonality among such entities such as consolidated administrative services, common in-house legal functions, or any overlapping officers, directorships or ownership;
- Your owners, shareholders, members, managers, partners, directors, officers, employees, representatives or agents;
- The beneficiaries of a trust administered by a trustee who is our client;
- Your spouse, partner, children or other family members.

Therefore, our representation of you will neither limit nor impair our ability to represent another client with interests adverse to any such affiliated entity, affiliated person or family member without obtaining your consent.

#### The Scope of Our Work

Our practice with new clients is to describe the scope of our initial engagement in the letter we send accepting employment. With existing and recurrent clients, we may or may not provide a description of new matters depending on the circumstances. In any engagement we limit our services to those you ask us to perform and those we deem reasonably necessary to accomplish the requested services. If you ask us to limit our work to only one or certain aspects of a transaction, matter or case, we will address only what you request, even if full legal representation on such matter would normally be more involved or extensive.

Except to the extent you expressly request in writing that we advise or assist you concerning the following

matters, you agree to take full responsibility yourself for:

- Ascertaining or obtaining insurance coverage that you may have for any claim, potential liability, attorneys' fees or expenses and promptly notifying your carrier(s) as required to invoke any coverage;
- Tax implications of any transaction, settlement or course of action;
- Data security or privacy compliance practices;
- Compliance by you, associated persons or beneficial owners with the Corporate Transparency Act and reporting thereunder.

The outcome of legal matters and proceedings cannot be predicted with certainty. If we offer an assessment of the likely outcome of a matter, that is merely our opinion based on our understanding of the facts and the law at the time. We cannot guarantee results.

#### Who Will Provide the Services

Each client matter handled by our Firm is assigned to a principal lawyer contact. The principal lawyer should be someone in whom you have confidence and with whom you enjoy working. You are free to request a change of principal lawyer at any time. Under the supervision of the principal lawyer, your work or parts of it may be performed by other lawyers and legal assistants in the Firm.

To help us serve our clients, we employ law clerks (often law students), paralegals, lobbyists, investigators, patent agents, foreign lawyers, research librarians, environmental analysts, translators, draftsmen, ediscovery/litigation support personnel and other technical (non-legal) specialists. Such personnel possess training, experience and skills that enable them to assist our lawyers in discharging their responsibilities, but they are not lawyers. Accordingly, you should not construe or rely upon any communications you receive from such personnel as legal advice.

#### How Fees Will Be Set

The basis on which our fees will be determined is described in the pertinent engagement letter. Usually the time and effort required are the primary factors on which our fees are based. We will record the time we devote to your work (typically in increments of 1/10th of an hour). This time may include conferences (both in person and over the telephone), negotiations, court appearances, factual and legal research and analysis, document preparation and revision, required travel and other related matters. Peer collaboration and review is an important element of providing quality services, and



so our time records will often include discussions between lawyers within our Firm concerning the matters in which we have been engaged. The hourly rates we charge for our lawyers and service providers are based on their relative experience, skills, reputation, the type of engagement, market factors and similar considerations. We review our hourly rates at least annually and adjust them periodically. Our statements will reflect the applicable rates in effect at the date of the statement even if they exceed the applicable hourly rates in effect on the date the services were performed.

We are sometimes requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter on which our fees are hourly or otherwise variable. But fees and costs are often unpredictable. Accordingly, except in those engagements in which we specifically agree in writing to a flat or maximum fee, we make no commitment concerning the maximum fees and costs that will be necessary to resolve or complete the matter, even when we have provided an estimate. The ultimate cost is invariably more or less than the amount estimated. In addition, your obligation to pay the Firm's fees and costs is in no way contingent on the ultimate outcome of the matter.

In instances in which we offer and you accept a flat fee, that flat fee covers only the services within the scope of work specified in the flat fee proposal. Any additional work will be billed at our standard hourly rates unless otherwise agreed in writing.

### Other Charges

In addition to our fees we will likely bill you for various charges that we itemize separately. These may include charges or fees for:

- messengers and couriers
- photocopying, desktop publishing or printing
- data storage
- ediscovery data hosting services
- litigation support technology services
- computerized research
- certain clerical services
- filing fees (including electronic filings)
- court reporters
- witnesses
- outside experts and consultants, including for example accountants, appraisers and other legal counsel
- travel
- phone and Web conferencing

Certain of these other charges may represent more than our out-of-pocket cost to contribute toward covering indirect expenses we incur. For example, we establish and adjust from time to time fixed charges for certain services of our managing clerk's office (such as

filings with courts or public agencies), notarial services (including remote notary services), and other services. Such charges reflect the fair value of such services. We incur outside charges on your behalf as your agent. You agree to pay these charges when due. We may require that you pay significant expenses directly or in advance. In some instances when we make advance payment on your behalf as a convenience, we may be entitled to incentives, rebates or rewards from our banks or credit card companies for using their services. Such arrangements lower our overhead and administrative expense and are not passed along to clients.

In some engagements, it is necessary to engage legal counsel in a foreign country. When we engage counsel in a foreign country on your behalf, we are not guarantors or indemnitors for such foreign counsel's work, nor are we in a position to review the adequacy of their legal work or translation of documents. We engage foreign counsel to assist you specifically because we are not licensed or familiar with the applicable legal system and therefore are not in a position to provide those legal services or judge their adequacy.

### Terms of Payment

We will bill you on a regular basis, typically monthly, for both fees and other charges. Our fees and charges are due when you receive our statement. Also, if you do not pay us within 30 days of our statement or as otherwise agreed, you agree that we may discontinue providing services immediately and withdraw from representing you after providing reasonable notice of our intention to do so. You also agree that until we are paid in full on all of your legal matters, and except to the extent otherwise prohibited or limited by law, we shall have a lien on all papers and files in our possession related to any of the matters in which we have represented you, and any property recovered or obtained as a result of our work on your behalf. To the extent not prohibited by applicable law or court rule, you agree to pay us finance charges at the rate of six percent (6%) per annum on all fees and charges that you fail to pay within 30 days of our invoice(s) (or, if applicable, a later past due date agreed by us in writing). You agree to pay the costs of collecting your debt to us, including court costs, filing fees and reasonable attorneys' fees.

### Security Retainers (Advance Deposits)

New clients of our Firm will ordinarily be asked to deposit a security retainer (an advance deposit) with the Firm. The Firm may also in its sole discretion at any time during our representation require existing clients to provide a security retainer based, for example, on past payment history, creditworthiness, increases in the scope or intensity of our work, or other factors that



may cause the Firm to conclude it is appropriate to do so.

If we require a security retainer from you, we will charge or draw against it for fees and other charges as our legal services are provided. We will issue regular statements to you describing the fees and other charges which have been deducted and the amount which must be paid to replenish the retainer to the agreed level. If the security retainer is insufficient to cover fees and other charges anticipated in the current and following month, or if the scope or intensity of our work is anticipated to increase, we may require that the balance be increased. At the conclusion of our legal representation, once we are fully paid, or at such time as the security retainer is no longer necessary or may appropriately be reduced, the remaining balance, if any, or a portion thereof, will be returned to you.

### Funds Held in Our Trust Account

Any security retainer we receive from you will be held in our trust account until it is charged for fees and other charges or is returned to you. No interest is paid on amounts held by us in our trust account. In particular, court rules in jurisdictions in which we practice require that interest earned on pooled client trust accounts is payable to a charitable foundation established in accordance with the court's rule. While your security retainer is held by us in our trust account, it remains your property. You authorize us to apply it to any fees, expenses, or other charges that you owe us.

Other deposits that we receive to cover specific items, and any funds that we recover or receive in representing you, will also be held by us in our general trust account (without interest) and disbursed as provided in our agreement with you, or at your direction or as required by law, and you will be notified from time to time of the amounts applied or withdrawn. You grant us a security interest in any funds we receive and hold in trust for you (including any security retainer) to secure payment of any outstanding fees or other charges you owe us. Any amount remaining after disbursement or application to your account will be returned to you.

### Identifying Conflicts of Interest

We maintain an electronic database relating to our client engagements which we use in evaluating and avoiding conflicts of interest. The Rules of Professional Conduct governing lawyers generally prohibit a lawyer or law firm from representing one client in a matter directly adverse to another client unless the affected clients provide informed consent confirmed in writing. To allow us to identify and address potential conflict issues, you represent to us that you have identified for us all persons and entities that are or may become involved in the matter in which we are being engaged,

including all persons and entities affiliated with you whose interests could be affected. You also agree that you will promptly notify us if you become aware of any other persons or entities that are or may become involved in the matter.

### Waiver of Certain Potential Conflicts of Interest

As you are aware, we are a large law firm with multiple practices in multiple offices throughout the United States, and we represent many different clients in many different industries and countries, including clients who are competitors of each other and sometimes adversaries in legal matters. In taking on your representation, we commit that we will not represent any other client in any matter adverse to you that is substantially related to a matter in which we represent you. In this context, "substantially related" is a term that has come to have a settled meaning in the case law and in Bar ethics opinions. What this commitment means is that we will not take on any matter adverse to you on behalf of another client in circumstances in which any of your confidential data or information, as normally would have been obtained by us in our representation of you, would be material to any representation adverse to you that we might accept from another client.

In return for our agreement to represent you in this matter and future matters (if any), you consent and agree that we may be adverse to you on behalf of other clients in matters that are not substantially related to any matter we undertake on your behalf now or in the future. Such unrelated matters may include, but are not limited to:

- a. Agreements, business contracts, licenses, mergers and acquisitions, joint ventures, loans and financings, and securities offerings, including contract negotiations with you in which we represent another party, and preparation for other clients of contracts or other legal documents to which you will be a party or that may affect your rights or obligations, as well as related negotiations, subsequent amendments or disputes;
- b. Advice regarding the existence, scope or validity of your rights in real, personal or intellectual property and/or concerning the interpretation and application of provisions of contracts or other legal documents to which you may be party or that may affect your legal rights or obligations;
- c. Advice and representation of our other clients regarding the existence or potential existence of legal claims that our other clients may have against you or that you may have against them, in disputes with you of any nature, or in claims our other clients may assert against you or you against them including litigation in a court, agency or other tribunal, and in arbitration or mediation.



- d. Bankruptcies, reorganizations, receiverships or insolvencies (including proceedings under the US Bankruptcy Code or state insolvency proceedings); non-judicial debt restructurings, including representation of creditors, liquidators or other insolvency professionals in domestic or international matters in which you are a creditor, debtor or other party in interest;
- e. Patents, copyrights, trademarks, trade secrets or other intellectual property matters; including advice to other clients regarding the existence, scope or validity of your rights in intellectual property and assistance in securing or protecting other clients' intellectual property in ways that may limit or constrain your rights;
- f. Real estate, zoning and environmental matters in which your interests in real property may be involved or adversely affected, or in which you may face liability for environmental contamination;
- g. Representation and advocacy with respect to legislative issues, policy issues, or regulatory issues, including rulemakings, administrative proceedings and enforcement proceedings; and,
- h. Third-party discovery requests (including subpoenas) to be served on you, and discovery requests (including subpoenas) that have been served by you on others.

If at a later time you withdraw or modify this advance waiver in any respect, you agree and consent to our withdrawal from our representation of you pursuant to these Terms of Engagement and the applicable Rules of Professional Conduct.

In addition, if there are parties adverse to you in the matter we are undertaking on your behalf, it is possible that those adverse parties will have need for counsel in matters which do not have a substantial relationship to the matter in which we represent you. Even though we would, as a result, be receiving fee income from your adversary, you consent to our representing such parties in matters that are not substantially related to any of our work for you. For our part, we commit to continued zealous representation of your interests in the matters in which we do represent you notwithstanding any fee income we may receive from your adversary. Of course, the foregoing consent does not affect our obligation to protect confidential information you share with us in connection with our representation of you and not to use such information to your detriment.

#### **Our Non-Legal Affiliates**

As further described below, you should be aware that our Firm has ownership interests in non-legal services businesses (the "non-legal affiliates"), and the services of such non-legal affiliates may be provided by Firm

personnel or others. Such non-legal affiliates may provide non-legal services to a party that is an adversary of yours in an unrelated matter in which the Firm is representing you. Such a party contracting with a non-legal affiliate is not a client of the Firm, but you should consider that our financial interest in the non-legal affiliate services to such party could give rise to a conflict of interest because of the potential influence on our independent judgment in our legal representation of you. This confirms your consent, in advance, to any conflict of interest that may arise by virtue of our Firm's economic interest in a non-legal affiliate providing services to a party adverse to you in a legal representation.

Should you engage a non-legal affiliate for non-legal services, that affiliate will provide its own contract for services to you. Such services are not governed by these Terms of Engagement. No lawyer-client relationship will exist (or could exist) between such entity and you, even if services by such non-legal affiliate are provided by personnel who are employed by or partners of our Firm. You should seek independent counsel to advise you on your contract with such non-legal affiliate. Because of our ownership interest, we will not represent you in entering into that contract. This confirms your consent, in advance, to any conflict of interest that may arise by virtue of our Firm's economic interest in a non-legal affiliate you engage for non-legal services.

#### **Electronic Communications and Cloud Storage**

We caution you that, to maintain the confidentiality and privilege of electronically stored or transmitted information and communications related to your legal matters, you should not use a computer, other electronic device, network or Internet address that is owned, controlled, or on which your communications may be accessed, by anyone other than you. This warning includes electronic venues provided by a hotel, a library, publicly available Internet, or even a shared home computer or employer-provided technology if you are engaging us as an individual rather than on behalf of your employer. Any device you use to communicate with us should be password protected and not accessible by any third party. You agree to let us know if you are sending any files or documents that contain sensitive or personal information so we can arrange to receive such information via secure file transfer. Additional documents such as a Data Processing Agreement ("DPA") may be required before we can receive or share such information.

You agree that both you and our Firm may use electronic devices and Internet services that are managed by third parties and which allow us to communicate with each other and share documents and information notwithstanding some risk that such communications and documents may be intercepted or



accessed by and disclosed to unauthorized parties. We will also store electronic data relating to our representation of you remotely with cloud-based data storage services managed by third parties. You understand that, while reasonable efforts may be taken to prevent inadvertent or unauthorized disclosure of, or access to, information relating to our representation of you, we cannot guarantee that no unauthorized access will occur. You agree that the benefits of using these technologies outweigh the risks of unauthorized or inadvertent disclosure and that the Firm is not responsible for the unauthorized access of information sent via these services. Our use of such technology may include unencrypted email, messaging, mobile phones, voice over Internet, electronic data/document websites or storage or transfer services, video conferencing, and other technology in which your documents and information are transmitted, stored or processed using off-premises or cloud-based services managed by third parties.

### Use of Artificial Intelligence

Artificial Intelligence ("AI") describes computer technology with varied abilities to analyze and generate data to find patterns, reach conclusions and predict future behavior, or to create text or images based on data and inputs provided. We may employ AI or tools that incorporate AI including to increase efficiencies and reduce costs when performing certain legal and non-legal tasks. The Firm has a protocol regarding any use of AI. You agree that we may utilize AI in connection with our representation of you consistent with Firm protocol and the Rules of Professional Conduct.

### Privacy Notice and Data Security

During the course of this engagement, the Firm may collect and process personal information relating to the matters in which we are representing you. You agree you have all legal rights necessary to provide any personal information you provide to us for use and processing consistent with the terms of our engagement and agree to execute a DPA and similar compliance agreements with the Firm where required. You agree to provide only the minimum amount of personal information necessary for us to perform our legal services and to take measures to protect and secure all sensitive, confidential, and personal information. Our collection and processing of personal information is further governed by the firm's Privacy Notice at [btlaw.com/privacy-policy](http://btlaw.com/privacy-policy), as well as applicable privacy and data protection laws, regulations, and codes of professional conduct.

You agree you are responsible for providing all physical, technical, administrative, and organizational safeguards necessary to secure and protect any information under your control relating to our

engagement and are responsible for the breach of any security of information caused via your or your affiliates' or third party service providers' systems. You agree to immediately and without undue delay report and take steps to mitigate any actual or attempted security incident or breach of security of data related to or which could affect you, the Firm, or our representation of you in any manner.

Certain laws may require your consent before we may send you certain electronic communications. These electronic communications include, among others, announcements, briefings on legal developments, and invitations to seminars and other events. In connection with your engaging us to render legal services, you consent to our sending you these electronic communications. You may withdraw your consent (or update your profile information) at any time by using the unsubscribe link in a communication or by notifying us at [privacy@btlaw.com](mailto:privacy@btlaw.com).

### Certain Client Responsibilities

You agree to cooperate fully with us, to provide promptly and candidly all information (including documents and electronic data) known or available to you that is relevant to our representation. If your engagement involves actual or potential claims or litigation, you have an obligation to preserve potentially relevant information, including electronic data and communications. You must ensure automatic deletions or record retention policies are suspended as necessary to ensure this information is preserved. If you have questions, you should discuss these issues with us at the outset of our engagement involving any claim or litigation or as soon as a dispute or litigation related to any matter on which you have engaged us becomes reasonably foreseeable. You also agree to respond promptly to our requests for direction and other communications and to attend meetings and court proceedings at our request.

### Use of Publicly Available Information

We will protect nonpublic, confidential information related to your representation in accordance with our professional obligations. To best serve all of our clients, however, it is helpful for us to be able to describe our experiences in the practice of law to assist others in choosing counsel and for other business reasons. Accordingly, unless you specifically instruct us to the contrary, you authorize us to truthfully disclose or describe to others information related to our representation of you that is otherwise publicly available (e.g., in public filings, government publications, press releases, on the Internet).



### Consultations with Firm Legal Counsel

In part because of the number of clients we represent and the complexity of the matters in which we are engaged, issues may arise from time to time that involve questions as to our duties as lawyers, including under the professional conduct rules. Such questions might include, for example, issues raised because of a disagreement between us and a client over the handling of a client's matter. Under normal circumstances when such issues arise, we would seek advice from our in-house legal counsel who have deep experience in such matters. We consider such consultations to be attorney-client privileged communications between firm personnel and legal counsel for the firm. Accordingly, you agree that if we determine in our own discretion during the course of the representation that it is helpful to consult with our firm counsel, we may do so on the understanding that you agree that these communications are privileged and confidential to the firm.

### Termination and Withdrawal

You may terminate our representation of you at any time without cause simply by notifying us. Your termination of our services will not affect your responsibility for payment of fees and other charges incurred before termination and in connection with an orderly transition of the matter.

We are subject to the Rules of Professional Conduct that require or allow us to withdraw from representing a client in various circumstances. These may include any circumstances in which withdrawal can be accomplished without material adverse effect on the interests of the client. Among other circumstances that may give rise to withdrawal, subject to the Rules of Professional Conduct, we may withdraw from representing you if you do not fulfill your obligations to us, including failure to pay our fees and charges, or if we determine that our relationship has become impaired, such as by your failure to follow our advice relating to a representation.

Unless previously terminated, our representation of you in any matter terminates upon our completion of the services you retained us to perform. Generally, this will be indicated by your receipt of our final statement for services rendered on that matter. In general, our representation shall be deemed completed if there is no billable work for a period of six months and there are no ongoing appeals or proceedings.

Except where applicable laws require otherwise, you agree that the following provisions will govern the way we handle materials and records related to our representation of you. We typically store the materials we retain in electronic form. We do not keep our copies of such materials and records indefinitely. We will

discard or delete the materials we retain related to your representation when we believe it is reasonable to do so, without further notice to you. Accordingly, you are strongly encouraged to keep your own files related to our representation, especially important legal documents. So that you can do so, we will provide you with copies of materials we have retained whenever you request them during our representation. Even after your matter is completed, on request we will provide you with copies in electronic form of any materials we still have to which you are entitled. You agree to pay our charges for retrieving and copying materials for you, and any other fees and charges that remain outstanding in connection with our representation of you. You hereby agree that we may require such payment before delivering such materials, to the extent allowed by applicable Rules of Professional Conduct. You authorize us to follow these procedures without providing you further notices or seeking further instructions in the future.

Our representation of you in any matter is limited to that specific matter, and will not give rise to any ongoing attorney-client relationship. After our representation of you in any matter has ended, we may from time to time represent you in such subsequent matters as you may request. However, we are under no obligation to represent you in any subsequent matters, and nothing herein should be construed to give rise to any attorney-client relationship after our representation has concluded or terminated. If we do undertake to represent you in any subsequent matter, the scope and duration of our representation will be limited to that specific subsequent matter and, unless we expressly establish new terms of engagement with you at that time, the terms of engagement stated in this document and our engagement letter will apply.

If our Firm or any of our lawyers or staff are named as a party, or are subpoenaed or otherwise lawfully compelled to respond or produce evidence or appear in a legal proceeding or deposition relating to our services performed for you (excluding claims for lawyer misconduct or negligence), you agree, even after our representation has terminated, to pay us for our lawyers' and non-lawyers' time and other charges and expenses incurred in connection with our defense or participation in such proceeding, on the same basis that applies to our standard hourly fees and charges in effect at the time.

After our representation of you in any matter has ended, changes may occur in applicable laws or regulations that could have an impact upon your rights and liabilities. Unless you subsequently engage us to provide such advice on the same matter, our Firm has no continuing obligation to advise you with respect to future legal developments.