



TOWN COUNCIL PUBLIC MEETING AGENDA

January 3, 2023 - 7:00 PM

PLEDGE OF ALLEGIANCE

MOMENT OF SILENCE

CALL TO ORDER/ROLL CALL:

___ Robert H. Carnahan, Ward 1
___ Julie Rivera, Ward 2
___ Nick Recupito, Ward 3
___ Ralph Miller, Ward 4
___ Colleen Schieben, Ward 5

___ John Foreman, At Large, Vice-President
___ Richard Sharpe, At Large, President
___ Jennifer Sandberg, Clerk-Treasurer
___ Chris Salatas, Town Manager
___ David Austgen, Town Attorney

PRESENTATIONS: Police Department Promotions, Chief Bill Fisher:

1. Promotion to Sgt.
 - a. Ryan Miller
 - b. Eric Godoy
2. Promotions to Cpl
 - a. Richard Pennington
 - b. Allen Sulski
 - c. Douglas Machalk

PUBLIC HEARINGS:

1. **Ordinance No. 1434** – Bay Bridge Annexation (Continued from December 6, 2022)

PUBLIC COMMENT (*on agenda items*):

CONSENT AGENDA:

1. **Minutes:** December 20, 2022, and December 28, 2022.
2. **Claims:** All Town Funds: \$369,538.25; Wastewater Operating: \$47,293.39; Water Utility: \$15,387.71; Storm Water: \$7,735.71; and Payroll: 12/22/2022 & 12/30/2022 - \$288,363.21

ORDINANCES & RESOLUTIONS:

1. **Resolution No. 1329:** Temporary Loan 2017, A, B, and C Bonds

BZA/PLAN:

1. BZA 2022-51, Gifford – 13530 Morse Street – Variance of Use

NEW BUSINESS:

1. Consider approving new Police Department hire Sabrina Stolarz
2. Y2023 Professional Services Agreement: Christopher B. Burke Engineering, Ltd.

REPORTS:

1. Town Council
2. Town Attorney
3. Clerk-Treasurer
4. Town Manager
5. Director of Operations
6. Police Department
7. Fire Department

WRITTEN COMMUNICATION:

PUBLIC COMMENT:

ADJOURNMENT:

PRESS SESSION:

NEXT MEETING: Tuesday, January 17, 2023 at 7:00 pm

The Town of Cedar Lake is subject to the requirements of the Americans with Disabilities Act of 1990. Individuals with disabilities who plan to attend this meeting and who require certain accommodations in order to allow them to observe and/or participate in this meeting, or who have questions regarding accessibility of the meeting or the facilities, please contact the Cedar Lake Town Hall at (219) 374-7400.

TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA

ORDINANCE NO: 1434

AN ORDINANCE ANNEXING CERTAIN CONTIGUOUS LAND TO THE TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA, AND ALL MATTERS RELATED THERETO.

WHEREAS, the Town Council of the Town of Cedar Lake, Lake County, Indiana (hereinafter, the "Town Council"), has received a Petition for Voluntary Annexation of certain specified real property to the Town of Cedar Lake; and

WHEREAS, the Town Council has reviewed the Petition for Annexation to the Town of Cedar Lake for annexation of approximately 20.3202 acres of land into the Town; and

WHEREAS, the Town Council seeks to annex said certain contiguous parcels and property to the Town of Cedar Lake, pursuant to the applicable provisions of I.C. §36-4-3, *et seq.*, as amended from time to time, and more particularly, I.C. §36-4-3-5.1, concerning Voluntary Annexation; and

WHEREAS, the Town Council has deemed it to be necessary and appropriate for the future development of the Town of Cedar Lake that said subject parcels for which annexation is sought be annexed do provide for the continued and coherent planned growth and development of the Town; and

WHEREAS, the Town Council has duly considered said Annexation petition and has determined said annexation to be in the best interests of the health, safety and welfare of the Town of Cedar Lake as the annexation of the subject parcel is necessary for the present and future planned coherent growth of the Town; and

WHEREAS, the Town Council has determined that the subject parcel sought to be annexed, well within the prescribed time limits, shall be provided with governmental and proprietary services by the Town in the same manner as those services are provided to areas within the municipal corporate boundaries that have similar topography, patterns of land use, and population density, and that annexation of said parcels and property are consistent with applicable federal, state and local laws, procedures and planning criteria; and

WHEREAS, the Town Council has established and approved a Fiscal Plan by its approval of Resolution No. 1324, evidencing a definite policy showing:

1. The cost estimate of planned services to the subject parcel to be annexed.
2. The methods of financing the planned services.
3. The plan for the organization and extension of the services.
4. The furnishing of services of a non-capital nature, including police protection, fire protection, and street and road maintenance to the territory within one (1) year from the effective date of the annexation, which service shall be in a manner equivalent in

standard and scope to those non-capital services provided to areas within the Town of Cedar Lake.

5. The furnishing of services of a capital nature, including, but not limited to, street construction, street lighting, sewer facilities, potable water facilities, lighting, and stormwater drainage facilities, in the same manner as is available to other parcels and properties in the vicinity, which services and facilities will be provided at the cost of the Petitioner, to the annexed territory within three (3) years after the effective date of annexation in the manner as those services are provided to areas within the municipal corporate boundaries of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA, AS FOLLOWS:

SECTION ONE: That the subject parcel(s) described on attached Exhibit "A", hereto, which are deemed contiguous to the Town of Cedar Lake, be, and the same hereby are annexed to, and made part of, the Town of Cedar Lake, Lake County, Indiana.

SECTION TWO: That subject to the terms and provisions herein, this Annexation Ordinance shall become final thirty (30) days after adoption, filing, recordation and publication thereof, and the effective date of the annexation shall be in conformance with applicable law.

SECTION THREE: That the subject parcel(s), as set forth on the attached Exhibit "A", shall be annexed with an Agricultural Zoning District Classification for the parcel and property.

SECTION FOUR: That the parcel of real estate sought to be annexed will be assigned to Ward 6 as a voting district in the Town of Cedar Lake, Lake County, Indiana, pursuant to the applicable provisions of I.C. §36-4-3-4(g), as amended.

SECTION FIVE: That the Clerk-Treasurer of the Town is hereby directed to cause this Voluntary Annexation Ordinance to be published one (1) time, within thirty (30) days from the date of the adoption of this Ordinance, in conformance with applicable law, as amended from time to time.

SECTION SIX: That all existing Town Code Sections and Ordinances, or parts thereof, in conflict with the provisions of this Ordinance, are hereby deemed null, void, and of no legal effect, and are specifically repealed.

SECTION SEVEN: That if any section, clause, provision or portion of this Ordinance shall be held to be invalid or unconstitutional by any Court of competent jurisdiction, such decision shall not affect any other section, clause, provision or portion of this Ordinance.

SECTION EIGHT: That this Ordinance shall take effect, and be in full force and effect, from and after its passage and adoption by the Town Council of the Town of Cedar Lake, Lake County, Indiana, and publication in conformance with applicable law, subject expressly upon the conditions precedent set forth herein, as well as in the Petition for Voluntary Annexation and Fiscal Policy approved in this proceeding upon which this Ordinance adoption is premised.

ALL OF WHICH IS PASSED AND ADOPTED THIS _____ DAY OF _____, 2022, BY THE TOWN COUNCIL OF THE TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA.

**TOWN OF CEDAR LAKE, LAKE COUNTY,
INDIANA, TOWN COUNCIL**

Randell C. Niemeyer, President

Richard Sharpe, Vice-President

Robert H. Carnahan, Member

John C. Foreman, Member

Ralph Miller, Member

Colleen Schieben, Member

Julie A. Rivera, Member

ATTEST:

Ms. Jennifer N. Sandberg, IAMC, CMC, CPFIM,
Clerk-Treasurer

EXHIBIT A

PARCELS OF PROPERTY IN THE ANNEXATION TERRITORY

Parcel Number	Mailing Address	Site Address
45-15-36-365-021.000-041	14400 Lake Shore Dr. Cedar Lake, IN 46303	14829 S. Gerry Crown Point, IN 46307
45-15-36-364-003.000-041	14400 Lake Shore Dr. Cedar Lake, IN 46303	5601 W. 148 th Ave. Crown Point, IN 46307
45-15-36-363-017.000-041	14400 Lake Shore Drive Cedar Lake, IN 46303	5701 W. 148 th Ave Crown Point, IN 46307
45-15-36-362-008.000-041	14400 Lake Shore Dr Cedar Lake, IN 46303	5801 W. 148 th Ave. Crown Point, IN 46307
45-15-36-361-001.000-041	14400 Lake Shore Dr. Cedar Lake, IN 46303	5901 W. 148 th Ave. Crown Point, IN 46307
45-15-36-360-001.000-041	14400 Lake Shore Dr. Cedar Lake, IN 46303	6001 W. 148 th Ave. Crown Point, IN 46307
45-15-36-366-001.000-041	14400 Lake Shore Dr. Cedar Lake, IN 46303	5917 W. 149 th Ave. Crown Point, IN 46307
45-15-36-360-001.000-041	14400 Lake Shore Dr. Cedar Lake, IN 46303	6001 W. 148 th Ave. Crown Point, IN 46307

LEGAL DESCRIPTION OF PROPERTY TO BE ANNEXED

ALL LOTS IN BLOCK 7, ALL LOTS IN BLOCK 8, ALL LOTS IN BLOCK 9 (EXCEPT LOTS 7,8, 45 AND 46 THEREOF), AND ALL LOTS IN BLOCK 12 IN THE SHADES ADDITION PLAT "J", BEING A SUBDIVISION OF PART OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 34 NORTH, RANGE 9 WEST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 27, 1915 IN BOOK 12 PAGE 16, IN LAKE COUNTY, INDIANA.

ALSO, PUBLIC RIGHT OF WAYS OF THE FOLLOWING STREETS ADJACENT TO BLOCKS 7 THROUGH 12 IN SAID SUBDIVISION: RAYMOND AVENUE, COLFAX STREET, HAMLIN STREET, KING STREET, MYOMA STREET, KELSO STREET, CRAFTON STREET AND MONTEREY STREET.

TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA

RESOLUTION NO. 1324

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA, APPROVING AND ADOPTING THE FISCAL PLAN OF J3 LLC FOR THE ANNEXATION OF CERTAIN REAL PROPERTY COMMONLY KNOWN AS 6001 W. 148TH AVE., IN LAKE COUNTY, INDIANA, AND ALL MATTERS RELATED THERETO.

WHEREAS, J3 LLC, an Indiana Limited Liability Company (hereinafter, "Petitioner"), has filed a Voluntary Petition for Annexation of certain real property abutting the Town of Cedar Lake, Lake County, Indiana (hereinafter, the "TOWN");

WHEREAS, Petitioner has submitted, a Fiscal Plan for its Voluntary Annexation Petition, pursuant to the provisions of I.C. §36-4-3-13, as amended; and

WHEREAS, the Voluntary Petition for Annexation seeks the annexation of certain real property into the TOWN, which parcel(s) of real are commonly known as 6001 W. 148th Ave., Lake County, Indiana, which parcel is legally described on Exhibit "A" attached hereto; and

WHEREAS, The Town Council of the Town of Cedar Lake, Lake County, Indiana (hereinafter, the "Town Council") has reviewed said Fiscal Plan, and now finds that the same complies with applicable law, as amended, and should in all respects be approved; that said proposed Fiscal Plan is attached hereto as Exhibit "B", and, is made a part hereof by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA, AS FOLLOWS:

SECTION ONE: That the Fiscal Plan attached hereto as Exhibit "B" is hereby approved as set forth herein; and

SECTION TWO: That all existing Resolutions, or parts thereof, in conflict with the provisions of this Fiscal Plan Approval Resolution, are hereby deemed null, void, and of no legal affect, and are specifically repealed; and

SECTION THREE: That if any section, clause, provision or portion or portion of this Resolution shall be held to be invalid or unconstitutional by any Court of competent jurisdiction, such decision shall not affect any other section, clause, provision, or portion of this Approval Resolution; and

SECTION FOUR: That this Resolution shall take effect, and be in full force and effect, from and after its passage and approval by the Town Council of the Town of Cedar Lake, Lake County, Indiana, in conformance with applicable law.

ALL OF WHICH IS PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA THIS _____ DAY OF _____, 2022.

**TOWN OF CEDAR LAKE, LAKE COUNTY,
INDIANA, TOWN COUNCIL**

Randell C. Niemeyer, Town Council President

Richard Sharpe, Town Council Vice-President

Robert H. Carnahan, Town Councilmember

John C. Foreman, Town Councilmember

Colleen Schieben, Town Councilmember

Ralph Miller, Town Councilmember

Julie A. Rivera, Town Councilmember

ATTEST:

Ms. Jennifer N. Sandberg, IAMC, CMC, CPFIM,
Clerk-Treasurer

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LEGAL DESCRIPTION OF PROPERTY TO BE ANNEXED

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ALSO, PUBLIC RIGHT OF WAYS OF THE FOLLOWING STREETS ADJACENT TO BLOCKS 7 THROUGH 12 IN SAID SUBDIVISION: RAYMOND AVENUE, COLFAX STREET, HAMLIN STREET, KING STREET, MYOMA STREET, KELSO STREET, CRAFTON STREET AND MONTEREY STREET.

J3 LLC

1

By: _____

Title: _____

EXHIBIT B

A FISCAL PLAN FOR THE ORGANIZATION AND EXTENSION OF SERVICES FOR A PROPOSED ANNEXATION TO THE TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA,

This document is the written Fiscal Plan that establishes a definite policy for the provision of municipal services to the parcels of real property legally described on Exhibit "A" attached hereto (hereinafter "20.32 acres"), which parcel is being proposed for annexation.

Once this Fiscal Plan is adopted by Resolution, and an Annexation Ordinance is adopted by the Town Council of the Town of Cedar Lake, Lake County, Indiana, this Fiscal Plan shall serve as the official document regarding fiscal planning for the above-described subject parcel to be annexed, together with all other land use and development requirements of the Town of Cedar Lake for the development planned for the subject parcel, which is to be made in combination with a parcel or parcels of real property already situated in the corporate boundaries of the Town of Cedar Lake. At the time the annexation becomes effective, all Departments of the Town of Cedar Lake will modify their respective jurisdictions and activities accordingly in order to implement this Fiscal Plan.

Police and fire protection, emergency medical services, solid waste collection, and traffic control will be provided for the health and safety of the area to be annexed. All other non-capital services, such as street maintenance, and all administrative functions of the Town, will be provided such services upon annexation and in the same manner as similar areas are normally provided within the Town of Cedar Lake. As indicated elsewhere in this Fiscal Plan, there are facilities and improvements (infrastructure) anticipated and at the time of development a need for park services or other similar services will be provided by the Petitioner/Owner.

The supporting documentation indicates a nominal cost to be incurred for providing these services as the 20.32 acres, with the adjacent development parcels, develop. When the proposed area development parcel is fully developed, it is anticipated that revenues from the property taxes collected from the owners of property in the 20.32 acres will exceed the costs incurred by a Town to provide such services. This project is based upon the assumption that the Town of Cedar Lake, by its Town Council and Plan Commission, respectively, approve and adopt the proposed RT PUD (Planned Unit Development) Zoning Classification sought, and to be applied for by the Annexation Petitioner and Owner.

Subject to the provision hereinafter in this Fiscal Plan for provision by the Town of Municipal Services, the Town of Cedar lake shall implement and provide the planned

J3 LLC

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By: _____

Title: _____

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services of a noncapital nature, including police protection, fire protection, street and road maintenance, and other noncapital services normally provided within the Town municipal corporate boundaries within one (1) year after the effective date of annexation, and that said services will be provided in a manner equivalent in standard and scope to those noncapital services provided to areas within the Towns municipal corporate boundaries. Furthermore, and also subject to the provisions hereinafter in this Fiscal Plan for provision by the Town for Municipal Services, the Town of Cedar Lake will provide services of a capital nature, including street construction, street lighting, sewer facilities, water facilities, stormwater drainage facilities, within three (3) years after the effective date of the annexation in the same manner as those services are provided to areas within the Town municipal corporate boundaries, regardless of similar topography, patterns of land use, and population density, and in a manner consistent with federal, state and local laws, procedures, and planning criteria, unless otherwise provided for hereinafter. **The capital services herein referenced will be funded, constructed and/or provided by the Developer and Petitioner in connection with the development of the subject parcel to be annexed, whether on the subject parcel solely, or in combination with the adjacent parcels already within the Town, and will be provided by the Petitioner and Owner and not the Town, as set forth in this Fiscal Plan.**

PROVISIONS FOR MUNICIPAL SERVICES

The following categories identify the municipal services that are normally provided to properties within the municipal corporate boundaries of the Town of Cedar Lake, Lake County, Indiana. Within each listing is an explanation of the nature of the services as it relates to the proposed annexation and the estimated cost for same.

1. **Police Protection** – The real property being considered for annexation consists of a land area of approximately 20.32 acres, more or less, and would be easily patrolled. The addition of the land area would result in some additional roadways; however, existing police patrols will accommodate the annexed area will be offset by increased revenues generated by the 20.32 acres development property taxes. The current budget provides for 23 full-time Police Officers and a part-time Code Enforcement Officer.

2. **Fire Protection** – The area is currently being serviced by the Cedar Lake Municipal Fire Department. Once annexed, the area will be serviced by the Town of Cedar Lake Municipal Fire Department. While some additional burden on the Town of Cedar Lake will exist for fire protection, which will be assumed immediately upon completion of the annexation process, the burden is minimal since the land is vacant and unoccupied. The present manpower and equipment of the Cedar Lake Municipal Fire Department is sufficient to service the additional area to be annexed. The current budget provides for 14 full-time Members and for 2 ambulances.

J3 LLC

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By: _____

Title: _____

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3. Emergency Medical Services – The area is currently being served by the Town of Cedar Lake Municipal Fire Department Emergency Medical Services. The present manpower and equipment of the Town of Cedar Lake Fire Department Emergency Medical Services is sufficient to handle any contingencies that may arise in the additional area to be annexed.

4. Solid Waste (Garbage Refuse/Receivables) Collection – The Town of Cedar Lake, by agreement with a private waste collection service, currently provides each household with residential waste collection. The Town charges a monthly fee for this service that is payable on the monthly utility bill issued to each household for such service.

5. Traffic Control – Traffic control for this area would be under the jurisdiction of the Town of Cedar Lake Metropolitan Police Department. Installation of automatic traffic control devices/signals or other measures are not anticipated at this time, or in the foreseeable future. If required for the anticipated development, the installation of same would be at the cost of the Developer of the 20.32 acres.

6. Streets and Roads – The proposed annexation would result in additional public streets for maintenance costs. It is anticipated that gas tax revenues will cover the maintenance costs for these streets. No additional equipment or manpower would be required as a result of this annexation. Upon development of the 20.32 acres, the Developer will install streets and roadway improvements in the subdivision in accordance with the Town's Subdivision Control Ordinance, development standards of the Town, and/or land use and development approvals for development, including any PUD Agreement or Zoning Commitment(s) under applicable law.

7. Street Lights and Signage – The proposed annexation would result in additional street lights and signage for maintenance costs. It is anticipated that gas tax revenues will cover the maintenance costs for these street lights and signage. No additional equipment or manpower would be required as a result of this annexation. Upon development of the 20.32 acres, the Developer will install streets and roadway improvements in the subdivision in accordance with the Town's Subdivision Control Ordinance, development standards of the Town, and/or land use and development approvals for development, including any PUD Agreement or Zoning Commitment(s) under applicable law.

8. Parks – No additional parks are anticipated for the 20.32 acres. Upon completion of development and/or at the time of building permit issuance, the Town will assess a Park Impact Fee in the amount of \$1, 868.01, per each platted parcel or identified parcel delineated for residential structure, as approved. This Park Impact Fee may then be used by the Town for any permitted and authorized park improvements.

J3 LLC

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By: _____

Title: _____

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9. General Administrative Functions – The cost of the general administrative services to be provided to the area to be annexed is insignificant. It is anticipated that the Administrative Staff of the Town of Cedar Lake will be able to handle appropriately any additional administrative duties and responsibilities that may result from the annexation.

10. Planning and Building – It is not anticipated that any additional funds will be required to be expended by the Department of Building and Planning for planning activities associated with the area to be annexed. The Building Department will generate sufficient permit fees to cover any added expenses as the proposed and anticipated project develops and residential home building permits are issued.

11. Water – The Cedar Lake Municipal potable water supply will be available to all residents in the proposed 20.32 acres to be annexed. Infrastructure necessary to supply water to each of the proposed lots within the development will be constructed and paid for in the course of development construction by the Developer. Water usage will be paid for by the Town billing household users at the then current rates directly on a monthly basis, when service is provided.

12. Sanitary Sewers – Pursuant to an agreement with the Town of Lowell, the Lowell Wastewater Treatment Plant has sufficient capacity allotted to the Town of Cedar Lake to service the 20.32 acres to be annexed. Infrastructure necessary to provide a sanitary sewer connection and wastewater treatment service to each of the proposed lots will be constructed and paid for in the course of the development construction by the Developer. Sanitary sewer usage will be paid for by Town billing household users at the then-current rates directly on a monthly basis.

13. Storm Water Drainage – Storm water drainage is currently being handled by farm tiles and an open drain. Storm sewers and other storm water flow control measures will be provided, installed and paid for by the Developer in accordance with the stormwater development regulations for the Town of Cedar Lake. Stormwater User Rate fees will be paid for by the Town billing household users at the then current rates directly on a monthly basis.

14. Other Utilities- Natural gas and electric service is provided to the annexation area by NIPSCO (Northern Indiana Public Service Company), by utility and transmission lines located on or near the annexation area. Telephone, internet, and cable services are available to the annexation area by multiple service providers.

J3 LLC

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By: _____

Title: _____

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REVENUES

The total amount of tax revenues payable to the Town of Cedar Lake, once the development project is completed, will increase in direct proportion with the number of residential units and approved amenities constructed in the 20.32 acres development, as confirmed by the 2022 budget report prepared by the Town Financial Advisor, O.W. Krohn and Associates, LLP.

FINANCIAL SUMMARY OF FISCAL IMPACT OF AREA TO BE ANNEXED

The estimated annual costs to service the area by the Town of Cedar Lake will be nominal in relationship to the 2023 annual budget of the Town of Cedar Lake.

METHOD OF FINANCING PLANNED SERVICES

The noncapital services will be financed by the Town of Cedar Lake's General Fund and provided within the first year of annexation, or as required, depending on the rate of development within the 20.32 acres and annexed area. The capital services, as required, will be funded by the payment of property taxes assessed against improvements as the 20.32 acres development is constructed and completed. All costs and expenses of development improvement herein will be the responsibility of the Petitioner/Developer as set forth herein, or any other agreement entered pursuant to law of land use approvals for the development proposed and to be constructed on the subject parcel, or combination of parcel proposed for development.

J3 LLC

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By: _____

Title: _____

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January 3, 2023

ALL TOWN FUNDS	\$369,538.25
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WASTEWATER OPERATING	\$47,293.39
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WATER UTILITY	\$15,387.71
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STORM WATER	\$7,735.71
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PAYROLL 12/22/22 & 12/30/22	\$288,363.21
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TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA

RESOLUTION NO. 1329

**A RESOLUTION AUTHORIZING A TEMPORARY LOAN FOR THE 2017 RDA A, B, & C BONDS OF THE
TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA**

WHEREAS, a shortfall of the 2021 Pay 2022 Fall Tax Settlement was received before December 31, 2022, and therefore sufficient funds were not available to make the Lease Payment obligation due by January 15, 2023; and

WHEREAS, an extraordinary emergency exists at this time and it is necessary for said Town to borrow sufficient funds to meet debt obligations. Therefore, the **Wastewater Treatment Plant Special Fund #633** of said Town shall temporarily advance to the **2017 RDA A, B, & C Bond Fund #412** for calendar year 2023; and

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CEDAR LAKE,
INDIANA THAT:**

SECTION ONE: The sum of **\$212,326.61** shall be transferred from the Wastewater Treatment Plant Special Fund #633 to the 2017 RDA A, B, & C Bond Fund #412, in order to meet necessary debt service expenditures.

SECTION TWO: That the repayment shall be made upon receipt of the 2022 pay 2023 Spring Tax Settlement anticipated on or before June 30, 2023.

SECTION THREE: That an emergency exists and this Resolution shall be in full force and effect from and after its passage and approval by the Town Council of the Town of Cedar Lake, Lake County, Indiana.

**ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA THIS
3rd DAY OF JANUARY, 2023.**

TOWN COUNCIL OF THE TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA

Richard Sharpe, President

John Foreman, Vice President

Robert H. Carnahan

Julie Rivera

Ralph Miller

Nicholas Recupito

ATTEST:

Colleen Schieben

Jennifer N. Sandberg, IAMC, CMC, CPFIM
Clerk-Treasurer



December 15, 2022

To: Cedar Lake Town Council
7408 Constitution Ave
Cedar Lake, IN 46303

From: Cedar Lake Board of Safety
Cedar Lake, IN 46303

RE: Approval to Hire – Sabrina Stolarz

Dear Cedar Lake Town Council:

At the Wednesday, December 14, 2022 Cedar Lake Board of Safety Public Meeting, the Board discussed their support in regards to the hiring of Sabrina Stolarz to the Cedar Lake Police Department for Police Officer Patrolman position.

The Cedar Lake Board of Safety made motion and voted unanimously 5:0 to send Favorable Recommendation to the Cedar Lake Town Council to approve allowing the Cedar Lake Police Department to proceed with the hiring process of Ms. Stolarz through PERF.

Please consider this at your January 3, 2023 Town Council meeting for approval. If you have any questions, please let us know.

Sincerely,

Lester C. Kaper
Cedar Lake Board of Safety Chairman



December 29, 2022

Town Council
Town of Cedar Lake
P.O. Box 707
Cedar Lake, IN 46303

Subject: **Town Engineer Services – Master Agreement
Christopher B. Burke Engineering, LLC**

Dear Town Council Members:

On behalf of Christopher B. Burke Engineering, LLC (CBBEL), we would like to thank you for the opportunity to provide Town Engineering Services to the Town of Cedar (Town). CBBEL has enjoyed our experience with the Town since we became partners in 2004. This Agreement is a Master Agreement and shall be the agreement for all projects authorized by the Town. Specific duties authorized by this contract shall include but not be limited to:

- Meeting attendance (Town Council, Plan Commission, Stormwater Management Board, Redevelopment Commission, etc.) including presentation, written/verbal reporting, engineering, and other tasks as requested.
- Site Inspection and Plan Reviews. This would include on-site inspections for active developments, MS4 site inspections/reporting, as-built surveys for developments and individual lots, plan reviews for Plan Commission, etc.
- Project Management, Administration, Public Outreach, Grant Writing Services
- Federal/State Agency Meetings

CBBEL is a multi-discipline engineering firm capable of a wide array of services to create innovative and cost-effective solutions. CBBEL can offer services including water resources engineering, green infrastructure and sustainable planning, environmental/wetland resources, structural design, civil design, traffic operations, construction engineering and surveying. These services are available from any staff from our Illinois and Indiana offices. All Town services will be coordinated through our Crown Point office.

The Terms of Service would be January 1, 2023 thru January 1, 2024. We propose to increase the schedule of charges since our previous agreement by 3%. There are two rate schedules proposed depending on the particular tasks involved with the contract. In general, the Town rate is for direct work for the Town and the Outside rate is intended for all plan and project reviews for Plan Commission and any other such work that the Town may then bill to an outside party for reimbursement of those costs.

CHRISTOPHER B. BURKE ENGINEERING, LLC
STANDARD CHARGES FOR PROFESSIONAL SERVICES
CEDAR LAKE TOWN ENGINEERING SERVICES, JANUARY 2023

<u>Personnel</u>	<u>Town Charges* (\$/Hr)</u>	<u>Outside Charges* (\$/Hr)</u>
Principal	130	141
Engineer VI	112	123
Engineer V	102	112
Engineer IV	97	107
Engineer III	90	102
Engineer I/II	83	97
Survey V	112	123
Survey IV	102	112
Survey III	90	102
Survey II	83	97
Survey I	63	73
Resource Planner V	97	107
Resource Planner IV	90	102
Resource Planner III	83	97
Resource Planner I/II	78	90
Engineering Technician IV	83	97
Engineering Technician III	73	83
Engineering Technician I/II	68	78
CAD Manager	97	107
Assistant CAD Manager	90	102
CAD II	73	83
GIS Specialist III	90	96
GIS Specialist I/II	78	83
Landscape Architect	68	78
Environmental Resource Specialist V	100	105
Environmental Resource Specialist IV	97	102
Environmental Resource Specialist III	90	97
Environmental Resource Specialist I/II	83	97
Environmental Resource Technician	78	90
Administrative	73	83

Direct Costs

Outside Copies, Blueprints, Messenger, Delivery Services, Mileage, Permit Fees
Cost

*Charges include overhead and profit

If the Cedar Lake Town Council requests additional services that are not described in the above Scope of Services, the billing rates will be applied as noted below. Special services may include expert witness testimony and/or participation at hearings for a legal matter specifically requested by the Town, depositions, large-scale design projects/construction observation, etc., and external to the regular engineering services described within this document.

<u>Personnel</u>	<u>(\$/Hr)*</u>
Principal	143
Engineer VI	127
Engineer V	116
Engineer IV	107
Engineer III	102
Engineer I/II	88
Survey V	122
Survey IV	102
Survey III	92
Survey II	83
Survey I	67
Resource Planner V	101
Resource Planner IV	96
Resource Planner III	91
Resource Planner I/II	84
Engineering Technician IV	88
Engineering Technician III	82
Engineering Technician I/II	75
CAD Manager	101
Assistant CAD Manager	95
CAD II	80
GIS Specialist III	92
GIS Specialist I/II	80
Landscape Architect	96
Environmental Resource Specialist V	102
Environmental Resource Specialist IV	100
Environmental Resource Specialist III	95
Environmental Resource Specialist I/II	83
Environmental Resource Technician	80
Administrative	80

Direct Costs

Outside Copies, Blueprints, Messenger, Delivery Services, Mileage, Permit Fees
Cost

*Charges include overhead and profit

If this agreement meets with your approval, please sign it and return one copy of the signed document to us. We thank you again for the opportunity to be of service to the Town. We look forward to continuing a high level of service and responsiveness to you and the citizens of Cedar Lake.

Very truly yours,



Thomas T. Burke, Jr., PE, PhD
Head, Water Resources Engineering Department
Vice President

This Proposal, Schedule of Charges, and General Terms and Conditions accepted for:

Town of Cedar Lake, Lake County,
Indiana, a Municipal Corporation

By: _____
Town Council President

Date: _____

Attest: _____
Jennifer Sandberg,
Clerk-Treasurer

Date: _____

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1. **Relationship Between Engineer and Client:** Christopher B. Burke Engineering, LLC (Engineer) shall serve as Client's professional engineer consultant in those phases of the Project to which this Agreement applies. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Client or Engineer.

Furthermore, causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of substantial completion.

2. **Responsibility of the Engineer:** Engineer will strive to perform services under this Agreement in accordance with generally accepted and currently recognized engineering practices and principles, and in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Client and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the Engineer.

3. **Changes:** Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Client shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes, if commercially possible.
4. **Suspension of Services:** Client may, at any time, by written order to Engineer (Suspension of Services Order), require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the resumption of the services upon expiration of the Suspension of Services Order. Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.

5. **Termination:** This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.
6. **Documents Delivered to Client:** Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer. The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

When and if record drawings are to be provided by the Engineer, Client understands that information used in the preparation of record drawings is provided by others and Engineer is not responsible for accuracy, completeness, nor sufficiency of such information. Client also understands that the level of detail illustrated by record drawings will generally be the same as the level of detail illustrated by the design drawing used for project construction. If additional detail is requested by the Client to be included on the record drawings, then the Client understands and agrees that the Engineer will be due additional compensation for additional services.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right to retain the original tapes/disks and to remove from copies provided to the Client all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

The Client understands that the automated conversion of information and data from the system and format used by the Engineer to an alternate system or format cannot be accomplished without the introduction of inexactitudes, anomalies, and errors. In the event Project Documentation provided to the Client in machine readable form is so converted, the Client agrees to assume all risks associated therewith and, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

The Client recognizes that changes or modifications to the Engineer's instruments of professional service introduced by anyone other than the Engineer may result in adverse consequences which the Engineer can neither predict nor control. Therefore, and in consideration of the Engineer's agreement to deliver its instruments of professional service in machine readable form, the Client agrees, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse, or reuse by others of the machine readable information and data provided by the Engineer under this Agreement. The foregoing indemnification applies, without limitation, to any use of the Project Documentation on other projects, for additions to this Project, or for completion of this Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

7. **Reuse of Documents:** All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Client or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Client's confidential and proprietary information if the Client has previously advised the Engineer in writing of the specific information considered by the Client to be confidential and proprietary.

8. **Standard of Practice:** The Engineer will strive to conduct services under this agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions as of the date of this Agreement.
9. **Compliance with Laws:** The Engineer will strive to exercise usual and customary professional care in his/her efforts to comply with those laws, codes, ordinance and regulations which are in effect as of the date of this Agreement.

With specific respect to prescribed requirements of the Americans with Disabilities Act of 1990 or certified state or local accessibility regulations (ADA), Client understands ADA is a civil rights legislation and that interpretation of ADA is a legal issue and not a design issue and, accordingly, retention of legal counsel (by Client) for purposes of interpretation is advisable. As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed.

Further to the law and code compliance, the Client understands that the Engineer will strive to provide designs in accordance with the prevailing Standards of Practice as previously set forth, but that the Engineer does not warrant that any reviewing agency having jurisdiction will not for its own purposes comment, request changes and/or additions to such designs. In the event such design requests are made by a reviewing agency, but which do not exist in the form of a written regulation, ordinance or other similar document as published by the reviewing agency, then such design changes (at substantial variance from the intended design developed by the Engineer), if effected and incorporated into the project documents by the Engineer, shall be considered as Supplementary Task(s) to the Engineer's Scope of Service and compensated for accordingly.

10. **Indemnification:** Engineer shall indemnify and hold harmless Client up to the amount of this contract fee (for services) from loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage to the extent caused by the sole negligent act, error or omission of Engineer.

Client shall indemnify and hold harmless Engineer under this Agreement, from loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error or omission of Client.

In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties), which caused the personal injury or property damage.

Engineer shall not be liable for special, incidental or consequential damages, including, but not limited to loss of profits, revenue, use of capital, claims of customers, cost of purchased or replacement power, or for any other loss of any nature, whether based on contract, tort, negligence, strict liability or otherwise, by reasons of the services rendered under this Agreement.

11. **Opinions of Probable Cost:** Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his/her opinions of probable Project Construction Cost provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her judgment as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by him/her. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.

12. **Governing Law and Dispute Resolutions:** This Agreement shall be governed by and construed in accordance with Articles previously set forth by (Item 9 of) this Agreement, together with the laws of the State of Indiana.

Any claim, dispute or other matter in question arising out of or related to this Agreement, which cannot be mutually resolved by the parties of this Agreement, shall be subject to mediation as a condition precedent to arbitration (if arbitration is agreed upon by the parties of this Agreement) or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

The Client and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Requests for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

13. **Successors and Assigns:** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, provided, however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
14. **Waiver of Contract Breach:** The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.

15. **Entire Understanding of Agreement:** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.
16. **Amendment:** This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement."
17. **Severability of Invalid Provisions:** If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.
18. **Force Majeure:** Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
19. **Subcontracts:** Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.
20. **Access and Permits:** Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer performs such services.
21. **Designation of Authorized Representative:** Each party (to this Agreement) shall designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.
22. **Notices:** Any notice or designation required to be given to either party hereto shall be in writing, and unless receipt of such notice is expressly required by the terms hereof shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereafter furnish to the other party by written notice as herein provided.
23. **Limit of Liability:** The Client and the Engineer have discussed the risks, rewards, and benefits of the project and the Engineer's total fee for services. In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that the Client agrees that to the fullest extent permitted by law, the Engineer's total aggregate liability to the Client for any and all injuries, claims, costs, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this Agreement from any cause or causes, including attorney's fees and costs, and expert witness fees and costs, shall not exceed the total Engineer's fee for professional engineering services rendered on this project as made part of this Agreement. Such causes included but are not limited to the Engineer's negligence, errors, omissions, strict liability or breach of contract. It is intended that this

limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

24. **Client's Responsibilities:** The Client agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Client's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

The Client agrees to furnish and pay for all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services which the Client may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Client.

The Client agrees to require the Contractor, to the fullest extent permitted by law, to indemnify, hold harmless, and defend the Engineer, its consultants, and the employees and agents of any of them from and against any and all claims, suits, demands, liabilities, losses, damages, and costs ("Losses"), including but not limited to costs of defense, arising in whole or in part out of the negligence of the Contractor, its subcontractors, the officers, employees, agents, and subcontractors of any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Losses are caused in part by a party indemnified hereunder. Specifically excluded from the foregoing are Losses arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, and the giving of or failure to give directions by the Engineer, its consultants, and the agents and employees of any of them, provided such giving or failure to give is the primary cause of Loss. The Client also agrees to require the Contractor to provide to the Engineer the required certificate of insurance.

The Client further agrees to require the Contractor to name the Engineer, its agents and consultants as additional insureds on the Contractor's policy or policies of comprehensive or commercial general liability insurance. Such insurance shall include products and completed operations and contractual liability coverages, shall be primary and noncontributing with any insurance maintained by the Engineer or its agents and consultants, and shall provide that the Engineer be given thirty days, unqualified written notice prior to any cancellation thereof.

In the event the foregoing requirements, or any of them, are not established by the Client and met by the Contractor, the Client agrees to indemnify and hold harmless the Engineer, its employees, agents, and consultants from and against any and all Losses which would have been indemnified and insured against by the Contractor, but were not.

When Contract Documents prepared under the Scope of Services of this contract require insurance(s) to be provided, obtained and/or otherwise maintained by the Contractor, the Client agrees to be wholly responsible for setting forth any and all such insurance requirements. Furthermore, any document provided for Client review by the Engineer under this Contract related to such insurance(s) shall be considered as sample insurance requirements and not the recommendation of the Engineer. Client agrees to have their own risk management department review any and all insurance requirements for adequacy and to determine specific types of insurance(s) required for the project. Client further agrees that decisions concerning types and amounts of insurance are specific to the project and shall be the product of the Client. As such, any and all insurance requirements made part of Contract Documents prepared by the Engineer are not to be considered the Engineer's recommendation, and the Client shall make the final decision regarding insurance requirements.

25. **Information Provided by Others:** The Engineer shall indicate to the Client the information needed for rendering of the services of this Agreement. The Client shall provide to the Engineer such information as is available to the Client and the Client's consultants and contractors, and the Engineer

shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer and the Engineer's subconsultants harmless from any claim, liability or cost (including reasonable attorneys' fees and cost of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.

26. **Payment:** Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. The Client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly and as follows:

Collection Costs. In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies.

Suspension of Services. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in (Item 4 of) this Agreement.

27. **Indemnity Clause:** When construction observation tasks are part of the service to be performed by the Engineer under this Agreement, the Client will include the following clause in the construction contract documents and the Client agrees not to modify or delete it:

Contractor (and any subcontractor into whose subcontract this clause is incorporated) agrees and acknowledges that Engineer shall be considered a third party beneficiary of those contracts into which this clause has been incorporated; and agrees to assume the entire liability for all personal injury claims suffered by its employees, including without limitation, claims asserted by persons allegedly injured on the Project; waives any limitation of liability defense based on the Workers' Compensation Act, court interpretations of said Act or otherwise; and to the fullest extent permitted by law, agrees to indemnify and hold harmless and defend Owner and Engineer and their agents, employees, and consultants (the "Indemnitees") from and against any such loss, expense, damage or injury, including attorneys' fees and costs that the Indemnitees may sustain as a result of such claims.

28. **Job Site Safety/Supervision and Construction Observation:** The Engineer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the Work since they are solely the Contractor's rights and responsibilities. The Client agrees that the Contractor shall supervise and direct the work efficiently with his/her best skill and attention; and that the Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of

construction and safety at the job site. The Client agrees and warrants that this intent shall be carried out in the Client's contract with the Contractor. The Client further agrees that the Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work; and that the Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the subject site and all other persons who may be affected thereby. The Engineer shall have no authority to stop the work of the Contractor or the work of any subcontractor on the project.

When construction observation services are included in the Scope of Services, the Engineer shall visit the site at intervals appropriate to the stage of the Contractor's operation, or as otherwise agreed to by the Client and the Engineer to: 1) become generally familiar with and to keep the Client informed about the progress and quality of the Work; 2) to strive to bring to the Client's attention defects and deficiencies in the Work and; 3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. If the Client desires more extensive project observation, the Client shall request that such services be provided by the Engineer as Additional and Supplemental Construction Observation Services in accordance with the terms of this Agreement.

The Engineer shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Engineer does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

When municipal review services are included in the Scope of Services, the Engineer (acting on behalf of the municipality), when acting in good faith in the discharge of its duties, shall not thereby render itself liable personally and is, to the maximum extent permitted by law, relieved from all liability for any damage that may accrue to persons or property by reason of any act or omission in the discharge of its duties. Any suit brought against the Engineer which involves the acts or omissions performed by it in the enforcement of any provisions of the Client's rules, regulation and/or ordinance shall be defended by the Client until final termination of the proceedings. The Engineer shall be entitled to all defenses and municipal immunities that are, or would be, available to the Client.

29. **Insurance and Indemnification:** The Engineer and the Client understand and agree that the Client will contractually require the Contractor to defend and indemnify the Engineer and/or any subconsultants from any claims arising from the Work. The Engineer and the Client further understand and agree that the Client will contractually require the Contractor to procure commercial general liability insurance naming the Engineer as an additional named insured with respect to the work. The Contractor shall provide to the Client certificates of insurance evidencing that the contractually required insurance coverage has been procured. However, the Contractor's failure to provide the Client with the requisite certificates of insurance shall not constitute a waiver of this provision by the Engineer.

The Client and Engineer waive all rights against each other and against the Contractor and consultants, agents and employees of each of them for damages to the extent covered by property insurance during construction. The Client and Engineer each shall require similar waivers from the Contractor, consultants, agents and persons or entities awarded separate contracts administered under the Client's own forces.

30. **Hazardous Materials/Pollutants:** Unless otherwise provided by this Agreement, the Engineer and Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or

disposal of or exposure of persons to hazardous materials/pollutants in any form at the Project site, including but not limited to mold/mildew, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic/hazardous/pollutant type substances.

Furthermore, Client understands that the presence of mold/mildew and the like are results of prolonged or repeated exposure to moisture and the lack of corrective action. Client also understands that corrective action is an operation, maintenance and repair activity for which the Engineer is not responsible.

February 23, 2010-INDIANA