



January 20, 2022

Stewart Kline, PE
Tippecanoe County Highway Department
20 N. Third St.
Lafayette, IN 47901

Subject: **Marsh Lake Dam Decommissioning Schematic Design
Professional Services Proposal**

Dear Mr. Kline:

Christopher B. Burke Engineering, LLC is pleased to provide this proposal for professional engineering services related to Marsh Lake Dam (State ID 79-6) in Tippecanoe County, Indiana. The following is our understanding of the assignment, scope of services, and estimated fee in support of the project.

UNDERSTANDING OF THE ASSIGNMENT

As you are aware, Burke previously assisted the Tippecanoe County Highway Department with the preparation of a Marsh Lake Dam preliminary engineering report. The report consisted of previous inspection reports review, an on-site inspection of the dam and spillway, environmental investigation, geotechnical analysis, topographic survey, and evaluation of alternatives for rehabilitating or decommissioning the dam. Based on the analysis completed as part of the report and the condition of the dam and spillway, it is our understanding that the TCHD would like to proceed with decommissioning the dam. As such, Burke proposes a phased approach beginning with schematic design for dam decommissioning. The first phase will include the necessary data gathering, analysis, preparation of a schematic layout, and cost estimate. The tasks and associated estimated fee for Phase 1 are included below. It is anticipated that later phases (Phases 2-5) will include final design, permitting, bidding assistance, and construction observation. We have included an outline of potential tasks for Phases 2-5 below for planning purposes. Since the estimated fees to complete Phases 2-5 are contingent upon the findings of Phase 1, we provided a range of estimated fees associated with these later phases.

SCOPE OF SERVICES

PHASE 1 – SCHEMATIC DESIGN

Task 1 – Site Investigation: Burke will conduct a site visit to assess the current condition of the site and its constraints as well as verify the project limits. The site visit will also serve the purpose of identifying changes that may have occurred at Marsh Lake Dam since the preliminary engineering report was completed and investigating the construction, operation, and condition of the upstream dam.

Task 2 – Wetland Delineation and Jurisdictional Determination: In March 2010, Burke staff completed a wetland delineation and jurisdictional determination as part of the preliminary engineering report. Burke identified a 0.20-acre wetland located at the downstream toe of the embankment. Due to U.S. Army Corps of Engineers guidelines, these jurisdictional determinations are only valid for a period of five years. As a result, Burke's previous effort will not be acceptable for permit submittal to USACE and the Indiana Department of Environmental Management. Therefore, a new wetland delineation and jurisdictional determination will need to be completed for the area investigated as part of the earlier preliminary engineering report, as well as the area surrounding the upstream dam impoundment.

As such, Burke environmental resource specialists will complete a field investigation of the site to determine the limits of wetlands and other “waters of the U.S.” The wetland delineation will be evaluated based on the methodology established by USACE in the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region*. Information collected on streams will include presence or absence of an ordinary high-water mark, OHWM dimensions, photo documentation, and GPS location of identified potentially jurisdictional streams. Burke will map wetlands found on site using a sub-meter accurate GPS unit. We will prepare a wetland delineation report that will include a narrative, exhibits, and data sheets to summarize findings. The report will be submitted to USACE with a request for a Jurisdictional Determination. The report is required for future permitting and will also be used to identify sensitive areas that may need to be mitigated or avoided during the design.

Task 3 – Bathymetric and Site Survey: Burke will subcontract TBIRD Design Services Corporation to complete a bathymetric survey of the Marsh Lake impoundment and the impoundment for the upstream dam. The bathymetric survey will determine the approximate slopes of the embankments below normal pool and the amount of sedimentation in both impoundments. In addition, TBIRD will perform a supplemental topographic survey of the upstream impoundment. These survey services will be referenced to the survey previously completed as part of the preliminary engineering report and combined to create a single surface for use in the geotechnical engineering analysis, design drawings for the dam decommissioning and conveyance system upstream of the dams, and the development of accurate quantities for cost estimating.

Task 4 – Geotechnical Engineering Analysis: In November 2010, ATC Associates Inc. completed a geotechnical engineering evaluation for Marsh Lake Dam. The evaluation included test borings, laboratory tests, slope stability analyses, and recommendations for modifications to the dam embankment. Burke will subcontract ATLAS Technical Consultants LLC (formerly ATC) to perform additional analyses to evaluate the stability of the Marsh Lake Dam embankment for decommissioning with no water impounded in the lake. As noted in the preliminary engineering report, decommissioning the Marsh Lake Dam may have an impact on the upstream dam. To evaluate those potential impacts, ATLAS will perform additional test borings, laboratory tests, analyses, and provide recommendations for the upstream dam. The deliverable for this task will be a report that documents the analyses and recommendations for improvements needed to achieve required factors of safety for the Marsh Lake Dam embankment and the upstream dam embankment.

Task 5 – Hydrologic and Hydraulic Analyses: Burke staff will update the hydrologic and hydraulic models developed to size the outlet pipe for the decommissioning alternative in the preliminary engineering report using the results of the bathymetric and site surveys and considering the various options for the upstream dam. We will adjust the model as needed to achieve the design objectives, meet regulatory requirements, and optimize the project constructability. The hydraulic design will also consider design of the conveyance system upstream of the dam, peak flow impacts downstream of the dam, long-term stability, and erosion control measures.

Task 6 – Schematic Layout: The preliminary engineering report provided conceptual approaches to rehabilitate the Marsh Lake Dam embankment and spillway system, as well as providing a conceptual approach to decommissioning the dam. Now that the TCHD is considering dam decommissioning, schematic layout alternatives must be developed that meet the project goals. Based on the data collected from the previous tasks, Burke will update the layout of the decommissioning alternative from the preliminary engineering report for up to three dam decommissioning alternatives. The schematic layouts will show the bathymetric information, modifications to the Marsh Lake Dam and the upstream dam, schematic design of the conveyance system upstream of the dam(s), energy dissipation, existing and proposed topography, limits of jurisdictional waters, and related information.

Task 7 – Engineer’s Estimate: Burke staff will estimate quantities and prepare an opinion of probable construction cost for each dam decommissioning alternative based on the additional data gathered as part of this phase.

Task 8 – Regulatory Agency Coordination: Due to the nature of the project and potential impacts to “Waters of the U.S.,” Burke will conduct conference calls or in-person meetings with key regulatory agencies to determine the potential conditions of permits needed to decommission the dam. Regulatory agencies expected to be contacted are USACE, IDEM, and the Indiana Department of Natural Resources. This task may also include analysis, coordination, and discussions regarding the suitability of the proposed project for inclusion in the IDNR In-Lieu Fee program.

Task 9 – Schematic Design Report: Burke will prepare a written report that documents the data gathering, analyses, and schematic design alternatives for decommissioning the dam. The report will be the final deliverable for this phase of the project.

Task 10 – Meetings: Burke staff will attend up to four meetings with you for the duration of this phase. Our suggestion would be to conduct a kickoff meeting to discuss the project scope and schedule prior to commencing work, a second meeting following completion of data acquisition (end of Task 4) to discuss potential alternatives based on the gathered data, a third meeting as the hydrologic and hydraulic analyses and schematic layout alternatives are being completed, and a final meeting to discuss the schematic design report results, recommendations, and future phases of the project.

PHASE 2 – FINAL DESIGN

As noted above, an outline of potential tasks for Phases 2-5 are included below. Since the estimated fees to complete Phases 2-5 are contingent upon the findings of Phase 1, a range of estimated fees associated with Phases 2-5 has been provided for planning purposes only.

Task 1 – Design Drawings: Burke staff will prepare design drawings based on the schematic layout alternative selected from Phase 1 and comments from regulatory agencies. The drawings will be used for the dam decommissioning and will contain appropriate plan sheets, construction and erosion control details, and notes based on the nature of the design.

Task 2 – ROW Engineering: Burke will subcontract a qualified engineering firm to assist with right-of-way engineering services including research, coordination, plan preparation, legal descriptions, and related services.

Task 3 – Technical Specifications: Burke staff will prepare technical specifications for the project. The specifications will address the materials, installation procedures, testing, and quality assurance standards that must be followed by the contractor.

Task 4 – Engineer’s Estimate: Burke staff will estimate quantities and prepare an opinion of probable construction cost for the project.

Task 5 – Meetings: Burke staff will attend up to two meetings to review design progress and address comments on the construction documents. Our suggestion would be to hold one meeting when the plans are approximately 50% complete and another at 95% completion.

PHASE 3 – PERMITTING

Permits will be required from state and federal agencies for this project including IDNR, IDEM and USACE. In addition, other agencies will be allowed to comment on and/or review aspects of those permits. Burke will communicate with the regulatory agencies and represent TCHD in negotiating conditions to the permits.

Task 1 – Early Coordination Meeting: As early as possible in the work, Burke staff will schedule an early coordination meeting with regulatory agencies to discuss potential project elements. The early coordination meeting is expected to include representatives of USACE, IDEM, and IDNR. Additional agencies, such as the

local soil and water conservation district, may also be invited. This task would include active participation at a single joint meeting on site with the regulatory agency representatives to coordinate permitting activities of the proposed work. The early coordination process should significantly improve the processing of required permits but should not be construed as the actual detailed permit applications.

Task 2 – Section 401 and 404 Permit Applications: Burke will complete and submit a Section 401 application to IDEM and a Section 404 application to USACE for the proposed project impacts. Burke will develop the required exhibits, data and documentation for the supplemental information required for the Section 401 and 404 permit applications. Burke will coordinate the agencies’ progress and project review.

Task 3 – Construction in a Floodway Permit Application: Burke staff will prepare and submit the application for an IDNR Construction in a Floodway permit for the dam decommissioning. Burke will submit an official public notice to the applicable adjacent landowners as required. Burke will periodically check with IDNR after the permit is submitted regarding its status and respond to questions as needed.

Task 4 – Construction Stormwater General Permit Application: As of December 18, 2021, IDEM’s construction stormwater program is no longer administered through 327 IAC 15-5 and has been replaced with the new Construction Stormwater General Permit. Burke will prepare and secure a CSGP for the project. This includes the submittal of a Notice of Intent using IDEM’s Regulatory E-Portal, and a Stormwater Pollution Prevention Plan that will utilize new Best Management Practice standards and enhanced construction site practices.

PHASE 4 – BIDDING ASSISTANCE

Task 1 – Front-end Documents: Burke staff will edit your standard front-end contract documents for use on this project. We will consult with TCHD on key decisions regarding the contract documents. The front-end documents will be combined with the technical specifications into a project manual that will be issued with the final design drawings during the construction bidding process.

Task 2 – Distribute Bid Documents: Burke will work with TCHD to develop a list of contractors experienced in dam construction to be notified about the project. Burke will also provide the necessary bid advertisement. Burke will assist with distribution of the bid documents to interested bidders.

Task 3 – Pre-Bid Meeting: Burke will arrange and facilitate a pre-bid meeting to be held at the project site for contractors interested in bidding on the project. We will develop an agenda for the meeting and answer contractor questions about the bid documents, then prepare and distribute meeting minutes and appropriate addenda to the bid documents based on comments received during and after the pre-bid meeting.

Task 4 – Bid Review: Following the bid opening, Burke will review the bids for completeness and compare the bids on the basis of cost and a demonstration of the contractor’s ability to complete the project. Burke will then provide a recommendation to the TCHD for proceeding with the selection of a contractor.

PHASE 5 – CONSTRUCTION RELATED SERVICES

Task 1 – Site Visits: Burke staff will perform full-time construction observation to track the progress and quality of the work being completed and determine if the work observed is being performed in accordance with the contract documents. Construction observation will also enable Burke to responsibly sign and certify record drawings which are required as a condition of the IDNR Construction in a Floodway permit.

Task 2 – Submittal Review: Burke staff will review shop drawings and product data submittals provided by the contractor as required by the technical specifications. We will stamp, sign and date, and indicate the contractor’s requirements for revisions or correction of the submittal.

Task 3 – Requests for Information: Burke will respond to questions from the contractor and/or TCHD during construction to provide additional information or clarification on construction-related issues. We will document each request and return a formal response to the contractor and TCHD.

Task 4 – Record Drawing Preparation: Burke will prepare and submit record drawing documentation of completed work to IDNR and TCHD. The record drawing documentation will be based on field mark-ups to be provided by the contractor as well as Burke’s own site visits. It is also expected that the contractor will provide an as-built topographic survey of work for incorporation in the record documents.

Task 5 – Meetings: Burke staff will conduct a pre-construction meeting with the necessary stakeholders and the selected contractor. We will also conduct monthly progress meetings, a substantial completion meeting, and a final completion meeting. Burke will facilitate and prepare an agenda and minutes for each meeting.

ESTIMATED FEE

We have estimated the total fee for completing **Phase 1** of this project shall not exceed **\$123,000**. We will bill you monthly, on a time and material basis, for assigned tasks in accordance with our attached standard charges for professional services. The estimated costs for services associated with Phases 2-5 of the project have not been determined at this time since they are dependent upon the findings and recommendations of Phase 1. An amendment request detailing the anticipated tasks and estimated fees for the remaining phases of the project will be prepared and submitted following completion of Phase 1 services. A breakdown of the Phase 1 estimated fee and the Phases 2 – 5 estimated fee ranges are below:

Phase		Estimated Fee
Phase 1	Schematic Design	\$123,000
Later Phases		Estimated Fee Range for Planning Purposes
Phase 2	Final Design	\$75,000 - \$100,000
Phase 3	Permitting	\$20,000 - \$30,000
Phase 4	Bidding Assistance	\$10,000 - \$20,000
Phase 5	Construction-related Services	\$150,000 - \$200,000

In addition, our contract will be established in accordance with the attached general terms and conditions, which are expressly incorporated into and are an integral part of this contract for professional services. It should be emphasized that any requested additional meetings or additional services that are not included in the preceding fee will be billed at the attached hourly rates.

If this proposal meets with your approval, please sign where indicated and return an executed original to us as our notice to proceed. The executed proposal, along with the estimated fee, attached standard charges for professional services, and the general terms and conditions constitute the whole of our agreement. Any modification to any part of this agreement without prior acknowledgement and consent by Burke will make null and void this agreement. Any time commitment made by Burke as part of the agreement does not begin until Burke has received an executed original.

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. Please contact me, David Eichelberger, PE, or Jeff Fox, PE at the number listed above if you have any questions.

Sincerely,



Jon D. Stolz, PE
Managing Vice President

THIS PROPOSAL, ESTIMATED FEE, STANDARD CHARGES FOR PROFESSIONAL SERVICES AND GENERAL TERMS AND CONDITIONS ARE ACCEPTED BY THE TIPPECANOE COUNTY COMMISSIONERS:

Signature: _____

Name (Printed): _____

Title: _____

Signature: _____

Name (Printed): _____

Title: _____

Signature: _____

Name (Printed): _____

Title: _____

Date: _____

Enclosures: Standard Charges for Professional Services
 Tippecanoe County General Terms and Conditions
 Tippecanoe County Additional Terms and Conditions



Standard Charges for Professional Services, January 2022

<u>Personnel</u>	<u>(\$/Hr)</u>
Engineer VI.....	225
Engineer V.....	210
Engineer IV.....	175
Engineer III.....	155
Engineer I/II.....	113
Resource Planner V.....	175
Resource Planner IV.....	150
Resource Planner III.....	130
Resource Planner I/II.....	105
Engineering Technician IV.....	165
Engineering Technician III.....	139
Engineering Technician I/II.....	105
CAD II.....	130
CAD I.....	107
GIS Specialist IV.....	160
GIS Specialist III.....	150
GIS Specialist I/II.....	100
Environmental Resource Specialist V.....	175
Environmental Resource Specialist IV.....	145
Environmental Resource Specialist III.....	125
Environmental Resource Specialist I/II.....	105
Environmental Resource Technician.....	100
Administrative.....	85
Engineering Intern.....	60
Information Technician I/II.....	85

Direct Costs
 Outside Copies, Blueprints, Messenger, Delivery Services, Mileage Cost + 12%

**Charges include overhead and profit*

Christopher B. Burke Engineering, LLC reserves the right to increase these rates and costs by 5% if the contract is executed after December 31, 2022.



Tippecanoe County General Terms and Conditions

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.
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. **Ownership of Documents:** All documents and electronic files, including survey data, tracings, drawing files, reports, estimates, specifications, filed notes, etc. (“the Documents”), completed or partially completed by the Engineer under the terms of the Contract shall become and remain the property of the Client upon demand or completion or termination of this Contract. It is the understanding of the parties that the Documents may become public records upon submittal to the Client. Any use of the Documents by the Client, its assigns, or any person, firm or corporation acting on behalf of the Client, shall be without additional compensation to the Engineer. Details prepared by the Engineer as part of its specific Scope of Work under this Contract may be transmitted to other persons, firms or corporations acting on behalf of the Client without Engineer’s approval. Engineer retains all of its copyrights not otherwise transferred to the Client under this Contract including its copyright in any habitable buildings represented in the Documents.

The Client agrees that the Engineer shall have no liability for any claims, demands, injury, loss or damage arising out of, or relating to, the use by the Client, its assigns or any person, firm or corporation acting on behalf of the Client, of the documents, or copies of the documents, for any work or project not included within the specific Scope of Work under this contract. All of the Engineers pre-existing or proprietary computer programs or software developed by Engineer outside of and unrelated to this Contract shall remain the exclusive property of Engineer, except to the extent that such programs or software may be necessary to read or access the Documents, in which case Engineer agrees to grant the Client a license to use the programs or software for the limited purpose of reading or editing said documents and/or electronic files. In that situation, such license shall be granted without additional compensation to the Engineer.

All plans or “as-built” drawings submitted to the Client for their approval will be subject to the conditions stated above. The plans shall be submitted in both a digital format and on paper before the Client will grant final approval of said plans or “as-built” drawings.

The digital submittal will be one copy each in a .DXF and .PDF/.DWF format. Other formats for digital submittals may be used with prior written approval of the Client.

7. **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.
8. **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.
9. **Indemnification:** 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 omission of Client.
10. **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 opinions of probable Project Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best 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.
11. **Governing Law:** This Agreement shall be governed by and construed in accordance with Articles

previously set forth by (Item 8 of) this Agreement, together with the laws of the State of Indiana.

12. **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.
13. **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.
14. **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.
15. **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."
16. **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.
17. **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.
18. **Subcontracts:** Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.
19. **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 perform such services.
20. **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.
21. **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.

22. **Client's Responsibilities:** 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 further agrees to require the Contractor to name the Engineer, its agents and consultants 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.

23. **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.
24. **Payment:** Client shall be invoiced once each month for work performed during the preceding period. Client shall endeavor to pay each invoice within thirty (30) days of its receipt.

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.

January, 2010



Tippecanoe County Additional Terms and Conditions

The attached and forgoing agreement between Tippecanoe County, in the state of Indiana (County) and Christopher B. Burke Engineering, LLC (Contractor) is amended to incorporate by reference the following terms and conditions. Any provisions in the attached agreement which may be inconsistent with the following provisions shall be ineffective to the extent of any such inconsistency.

Funding for a Multi-year agreement-In the event that the County is not able to obtain funding, after affirmatively requesting such funding, for the provision of the goods and or services to be provided in accordance with this Agreement, County may terminate this Agreement on thirty (30) days written notice to **Contractor**. In such event, County agrees that it shall reimburse **Contract** for all expenses incurred under this Agreement before written notice of termination is received. Such charges, however, shall not exceed the total purchase price under this Agreement. **Contractor** and County understand that the funding for a multi-year agreement is done on a year-to-year basis, and this provision applies annually.

Non-Discrimination-Pursuant to IC 22-9-1-10, **Contractor** and its subcontractors, if any, shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of the covenant may be regarded as a material breach of this Agreement.

Default-If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

Indemnification-**Contractor** shall indemnify and hold County, and its agents, officers and employees from and against any and all losses, claims, demands, judgments, costs and expenses arising out the performance of this Agreement.

Governing Law-Exclusive Jurisdiction; Exclusive Venue-This Agreement is entered into in Indiana and all matters arising under or related to this Agreement shall be governed by and construed in accordance with the substantive law (and not the law of conflicts) of the State of Indiana. Courts of competent authority located in Tippecanoe County, Indiana shall have sole and exclusive jurisdiction of any action arising out of or in connection with the Agreement, and such courts shall be the sole and exclusive venue for any such action.

Severability-Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Force Majeure-In the event that any party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster, actions or decrees of governmental bodies or communication line failure not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to other parties and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of such notice of the Force Majeure Event, the part whose ability to perform has not been so affected may be given written notice to terminate this Agreement.

Affirmative Action-The Contractor for the work specified in this Contract agrees to take affirmative action to ensure that applicants and employees of the **Contractor** (and any Subcontractors) are treated in a manner which provides equal employment opportunity and tends to eliminate inequality, based upon race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status with regard to public assistance. Affirmative action shall include but not be limited to the issuance of a policy statement regarding equal employment and its communication to all personnel involved in recruitment, hiring, training, assignment, and promotion; notification of all employment sources of company policy and active efforts to review the qualifications of all applicants regardless of race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status, or status with regard to public assistance; recruiting in the minority/female group community for employees; and establishing an internal system of reporting concerning equal employment, recruiting, hiring, training, upgrading and the like. Breach of the obligation to take affirmative action shall be a material breach of the contract for which the County shall be entitled to at its option: (1) Cancel, terminate, or suspend the contract in whole or in part; and/or (2) Declare the **Contractor** or Vendor ineligible for further County contracts.

E-Verify Employment Eligibility Verification-In accordance with IC 22-5-1.7, if **Contractor** has any employees or subcontractors, and the E-Verify program as defined in IC 22-5-1.7-3 is in existence, **Contractor** shall enroll in and verify the work eligibility status for all of **Contractor's** newly hired employees through the E-Verify program. **Contractor** shall not knowingly employ or contract with an unauthorized alien, nor shall **Contractor** retain an employee or contract with a person that **Contractor** subsequently learns is an unauthorized alien.

Contractor shall:

1. Sign and deliver to County a sworn affidavit that affirms that the **Contractor** has enrolled and is participating in the E-Verify program;
2. Provide documentation to County substantiating that **Contractor** has enrolled and is participating in the E-Verify program; and
3. Sign and deliver to County an affidavit affirming that **Contractor** does not knowingly employ an unauthorized alien.

Contractor shall require all subcontractors, who perform work under this contract, to certify to **Contractor** in a manner consistent with federal law that the subcontractor, at the time of certification, does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. **Contractor** agrees to maintain this certification throughout the duration of the term of each subcontract.

County may terminate the contract if **Contractor** fails to cure a breach of this provision no later than thirty (30) days after being notified thereof by County or another state agency or political subdivision. In accordance with IC 22-5-1.7, any challenge by **Contractor** to a termination pursuant to this provision must be made in Tippecanoe County Circuit or Superior Court not later than twenty (20) days after **Contractor** receives notice of such termination.



The undersigned, on behalf of Christopher B. Burke Engineering, LLC certifies that, as required by IC 5-22-16.5-13, Christopher B. Burke Engineering, LLC is not engaged in investment activities in Iran.

Signature:  Date: 01/20/2022

Printed Name: Jon D. Stolz

Title: Managing Vice President

Company Name: Christopher B. Burke Engineering, LLC

Address: 115 W. Washington Street, Suite 1368 South, Indianapolis, IN 46204



Employee Eligibility Verification Certification

Christopher B. Burke Engineering, LLC has enrolled in and is verifying the work eligibility of all newly hired employees through the E-Verify program operated by the United States Department of Homeland Security. The undersigned affirms under the penalty of perjury that Christopher B. Burke Engineering, LLC does not knowingly employ an unauthorized alien.

Company Name: Christopher B. Burke Engineering, LLC

Address: 115 W. Washington Street, Suite 1368 South, Indianapolis, IN 46204

Signature:  Date: 01/20/2022

Printed Name: Jon D. Stolz, PE

Title: Managing Vice President