



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

THIS IS AN AGREEMENT effective as of November 8, 2016 (“Effective Date”) between Board of Public Works, City of South Bend, Indiana (“Owner”) and Christopher B. Burke Engineering, LLC (“Engineer”).

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

116-095: South Bend Dam Capital Improvement Plan (“Project”).

Engineer’s Services under this Agreement are generally identified as follows:

Engineer will prepare a capital improvement plan for the South Bend Dam. Engineer will rely on information, reports, and records provided by Owner as well as limited field observations to develop an itemized list of major items related to the dam that are expected to require maintenance, repair, or replacement within the next fifty years. The intent of the capital improvement plan is to develop an opinion of probable cost for future work associated with the dam that can be used in lease negotiations between the Owner and a third party. Tasks to be completed by Engineer in support of this project include:

1. Site visit by Engineer’s personnel with expertise in dam safety, civil engineering, structural engineering, and/or mechanical/electrical engineering;
2. Review of files provided by Owner;
3. Review of files obtained from the Indiana Department of Natural Resources;
4. Review of files obtained from FERC docket(s);
5. Evaluation of operation, maintenance and repair costs for components of dam;
6. Preparation of summary report; and
7. Attendance at up to two (2) meetings with Owner.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: CBBEL will provide a draft table of costs by November 22, 2016 with the full report to be completed by December 15, 2016.
- C. NOT USED

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within ~~30~~ **35** days of receipt. ~~If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day.~~ In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all **non-disputed** claims against Engineer for any such suspension. ~~Payments will be credited first to interest and then to principal.~~

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
  - 1. For cause,
    - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins,

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

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner or by Engineer effective upon Owner's receipt of notice from Engineer.
- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
  - C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all **non-disputed** services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

#### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its

consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. Owner shall indemnify and hold harmless Engineer under this Agreement, from loss or expense, including reasonable attorney's fees, for claims or personal injuries (including death) or property damage arising out of the sole negligent act, error or omission of the Owner.
- J. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- K. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Basis of Payment—Lump Sum*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
  - 1. A Lump Sum amount of \$45,000
- B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

Attachments: Appendix 1, Engineer's Standard Hourly Rates

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

Owner:  
City of South Bend, Indiana  
Board of Public Works

Engineer:  
Christopher B. Burke Engineering, LLC

By: \_\_\_\_\_  
Title: Gary A. Gilot, President

By:   
Title: Jon D. Stolz, Managing Vice President

By: \_\_\_\_\_  
Title: Elizabeth A. Maradik, Member

By: \_\_\_\_\_  
Title: James A. Mueller, Member

By: \_\_\_\_\_  
Title: Therese J. Dorau, Member

By: \_\_\_\_\_  
Title: Suzanna M. Fritzberg, Member

Attest: \_\_\_\_\_  
Title: Linda Martin, Clerk

Date: \_\_\_\_\_

Date: November 3, 2016

Engineer License or Firm's Certificate No. PC81100049  
State of: Indiana

Address for giving notices:  
227 West Jefferson Boulevard  
South Bend, Indiana 46601

Address for giving notices:  
115 West Washington Street, Suite 1368 South  
Indianapolis, IN 46256

Designated Representative (Paragraph 8.03.A):  
Patrick Corbitt Kerr, Ph.D., P.E.

Designated Representative (Paragraph 8.03.A):  
Jon D. Stolz

Title: City Engineer

Title: Managing Vice President

Phone Number: (574) 235-5931

Phone Number: (317) 266-8000

Facsimile Number: (574) 235-9171

Facsimile Number: (317) 632-3306

E-Mail Address: [pckerr@southbendin.gov](mailto:pckerr@southbendin.gov)

E-Mail Address: [jstolz@cbbel-in.com](mailto:jstolz@cbbel-in.com)

This is **Appendix 1, Engineer’s Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated November 8, 2016 .

**Engineer’s Standard Hourly Rates**

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A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 7.01 and 7.02, and are subject to annual review and adjustment.

B. *Schedule of Hourly Rates:*

Hourly rates for services performed on or after the Effective Date are:

<u>Personnel</u>	<u>(\$/Hr)</u>
Engineer VI.....	216
Engineer V.....	190
Engineer IV.....	168
Engineer III.....	139
Engineer I/II.....	111
Resource Planner V.....	151
Resource Planner IV.....	139
Resource Planner III.....	125
Resource Planner I/II.....	105
Engineering Technician IV.....	145
Engineering Technician III.....	130
Engineering Technician I/II.....	105
CAD II.....	121
CAD I.....	107
GIS Specialist III.....	130
GIS Specialist I/II.....	95
Environmental Resource Specialist V.....	151

Environmental Resource Specialist IV .....	139
Environmental Resource Specialist III.....	125
Environmental Resource Specialist I/II .....	105
Environmental Resource Technician .....	99
Administrative .....	69
Engineering Intern.....	60
Information Technician I/II .....	69

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**Appendix 1, Standard Hourly Rates Schedule**

**EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services.  
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**COST PROPOSAL FOR PROFESSIONAL SERVICES**

South Bend Dam Capital Plan  
South Bend, IN

Christopher B. Burke Engineering LLC

Date: 03-Nov-16

TASK	DESCRIPTION	Engineer VI	Engineer V	Engineer IV	Engineer III	Engineer I/II	Res. Planner V	Res. Planner IV	Res. Planner III	Res. Planner I/II	Eng Tech IV	Eng Tech III	Eng Tech I/II	CAD II	CAD I	GIS Spec III	GIS Spec I/II	Env Resource Specialist V	Env Resource Specialist IV	Env Resource Specialist III	Env Resource Specialist I/II	Env Resource Technician	Special Classification	Administrative	TOTAL HOURS	TOTAL FEE
		0	Project Management and Administration			4																				2
1	Site Visit (PM, Sr. Mech/Elec, Sr. Structural, Civil)		20	10	16																				46	\$7,704
2	File Review		8	8	20																					\$5,644
3	Evaluate Structural O&M and Repair Costs		10	2	10																			2	24	\$3,764
4	Evaluate Mechanical O&M and Repair Costs		10	2	10																			2	24	\$3,764
5	Evaluate Electrical O&M and Repair Costs		4	2	16																				22	\$3,320
6	Evaluate Civil O&M and Repair Costs			8	24																				32	\$4,680
7	Summary Report			8	40																				48	\$6,904
8	Meetings (up to 2)		12	16	20																				48	\$7,748
9																										
TOTAL HOURS:			64	60	156																			6	250	\$ 44,338
2016 BILLING RATE:		\$216	\$190	\$168	\$139	\$111	\$151	\$139	\$125	\$105	\$145	\$130	\$105	\$121	\$107	\$130	\$95	\$151	\$139	\$125	\$105	\$99	\$60	\$69		
STAFF FEES:			\$12,160	\$10,080	\$21,684																			\$414		
<b>TOTAL STAFF FEES: \$ 44,338</b>																										
<b>SUBCONSULTANTS:</b>												<b>DIRECT COSTS:</b>														
ID	FIRM NAME	ROLE/DESCRIPTION	CLASS	FEE	DIRECT	TOTAL FEE	ID	DESCRIPTION	AMOUNT	UNITS	RATE	TOTAL														
1				\$ -	\$ -	\$ -	1	Meals		days @	\$25															
2				\$ -	\$ -	\$ -	2	Mileage	550	miles @	\$0.55	\$299.75														
3				\$ -	\$ -	\$ -	3	Lodging (incl phone)		days @	\$80															
4				\$ -	\$ -	\$ -	4	Survey Equipment		days @	\$350															
5				\$ -	\$ -	\$ -	5	Plotting		each @	\$6.00															
6				\$ -	\$ -	\$ -	6	Photocopy		each @	\$0.07															
7				\$ -	\$ -	\$ -	7	Supplies (binders, tabs, etc)		sets @	\$25															
8				\$ -	\$ -	\$ -	8	Laboratory Testing		lot @																
9				\$ -	\$ -	\$ -	9	Equipment Usage Fee		days @	\$200															
10				\$ -	\$ -	\$ -	10	Miscellaneous 1	362	Lot @	\$1	\$362.25														
				\$ -	\$ -	\$ -	11	Miscellaneous 2		Lot @	\$1															
				\$ -	\$ -	\$ -	12	Miscellaneous 3		Lot @	\$1															
				\$ -	\$ -	\$ -	13	Miscellaneous 4		Lot @	\$1															
<b>TOTAL SUBCONSULTANT FEE: \$ -</b>						<b>TOTAL DIRECT COST: \$662.00</b>																				
<b>TOTAL COST: \$45,000.00</b>																										