

**AGREEMENT FOR PROFESSIONAL ENGINEERING AND LAND SURVEYING SERVICES**  
between the  
**BOARD OF PUBLIC WORKS of the**  
**CITY OF CHARLESTOWN, INDIANA**  
and  
**HART'S SURVEYING AND ENGINEERING, LLC**

**SECTION I. PARTIES**

This Agreement is made effective on the \_\_\_\_ day of February in the year 2023 between the BOARD OF PUBLIC WORKS of the CITY OF CHARLESTOWN, INDIANA, hereinafter referred to as CLIENT, and HART'S SURVEYING AND ENGINEERING, LLC, hereinafter referred to as the ENGINEER, for professional engineering and land surveying services.

**SECTION II. PROFESSIONAL SERVICES**

The ENGINEER shall provide the appropriate professional engineering and land surveying services as requested by the CLIENT, and said services shall be performed in conformance with the ordinary standards of care and skill of the engineering/surveying profession.

The ENGINEER shall not perform services beyond the basic services outlined below without prior written authorization of the CLIENT. These basic services may include:

1. Attending regularly scheduled meetings as needed that pertain to the Board of Public Works of the City of Charlestown; assisting with the review processes for projects being developed by the Board of Public Works within the City of Charlestown; and being available to the Board of Public Works as needed when a situation arises unexpectedly;
2. Providing investigation and evaluation of storm/drainage issues;
3. Making recommendations for potential solutions to storm/drainage issues, and assisting with development and design of such solutions, as requested by CLIENT;
4. Performing analysis of existing and proposed storm sewer infrastructure as requested by CLIENT;
5. Researching specific drainage issues as they relate to the Flood Plain and/or Flood Zone as requested by CLIENT;
6. Providing Land Surveying services and documentation pertaining to land acquisition, property lines, easements and rights-of-ways that may be associated with a project being developed by the Board of Public Works within the City of Charlestown.

**SECTION III. GENERAL CONDITIONS**

- A. The ENGINEER shall perform the above-mentioned services in a timely manner consistent with sound professional practice.
- B. The ENGINEER will strive to perform its services according to the CLIENT's schedule.
- C. The series of each task shall be considered complete when deliverables from the task have been presented to the CLIENT.
- D. The ENGINEER shall be entitled to an extension of time and compensation adjustment for any delay beyond ENGINEER control.
- E. The CLIENT shall confirm the objectives, requirements, constraints, and criteria for the projects at their inception. If the CLIENT has established design standards, they shall be furnished to ENGINEER at project inception. ENGINEER will review the CLIENT's design standards and may recommend alternate standards considering the standard of care provision.
- F. The ENGINEER will assist the CLIENT in preparing applications and supporting documents for the CLIENT to secure permits and approvals from agencies having jurisdiction over the project.

- G. The ENGINEER shall prepare cost opinions for a project based on historical information that represents the judgment of a qualified professional. The CLIENT and ENGINEER acknowledge that actual costs may vary from the cost opinions prepared and the ENGINEER offers no guarantee related to the project cost.
- H. The CLIENT agrees to pay all application, review and permit fees (Local, State and Federal), and certified mailing and newspaper publication costs associated with each individual project.
- I. The CLIENT shall provide written acceptance and authorization to the ENGINEER prior to the commencement of work on any services considered outside the scope of the basic services. Upon receipt by the ENGINEER of written acceptance and authorization by CLIENT, each proposal for additional services in connection with the project shall become part of this Agreement and shall be governed by the terms and conditions contained herein.

**SECTION IV. INDEPENDENT CONSULTING**

- A. The ENGINEER shall serve as an independent consultant for the basic services provided in this Agreement. The ENGINEER shall retain control over the means and methods used in performing their services and may retain sub-consultants to perform certain services as determined by ENGINEER.
- B. The CLIENT acknowledges that adjustments to estimated schedules and compensation may be necessary based on the actual circumstances encountered by ENGINEER in performing their services.
- C. For those projects that require independent legal and financial counsel, the CLIENT shall provide those services.
- D. For those projects designed by the ENGINEER, the CLIENT acknowledges the potential for changes in the work during construction and the CLIENT agrees to include a contingency fund in the project budget appropriate to the potential risks and uncertainties associated with the project.

The ENGINEER may offer advice concerning the value of the contingency fund; however, ENGINEER shall not be liable for additional costs that the CLIENT may incur beyond the contingency fund unless such additional costs result from a negligent act or error related to services performed by the ENGINEER.

**SECTION V. ENGINEER'S COMPENSATION**

The ENGINEER shall perform professional engineering and/or land surveying services as outlined in this Agreement for the CLIENT and shall be compensated on a time and materials basis at the following hourly rates:

Professional Engineer and Surveyor - \$200.00	1-Man Field Crew - \$140.00
Professional Land Surveyor - \$150.00	2-Man Field Crew - \$175.00
Design Engineer - \$120.00	3-Man Field Crew - \$225.00
Survey Technician - \$95.00	Research Assistant - \$90.00

The ENGINEER may submit progress payment invoices at four-week intervals during the performance of each project. At the completion of each project, the ENGINEER will submit a final invoice requesting payment by CLIENT of any remaining portion not previously requested.

If this Agreement is terminated, ENGINEER shall be paid for services performed to the effective date of termination as follows:

- A. For personnel services, the hours of services rendered at the established rates, to the effective date of termination.

- B. For services of sub-consultants and other associated professionals, their invoiced fees to the ENGINEER for services to the effective date of termination plus 5%.
- C. For reimbursable direct costs, the actual cost of direct reimbursable expenses incurred to the effective date of termination.

The Conditions of Payments are as follows:

- A. Progress payments shall be made in proportion to services rendered and expenses incurred as indicated within this Agreement and shall be due and owing within thirty days of ENGINEER'S submittal of his progress payment invoices.
- B. If the CLIENT fails to make payments due ENGINEER within sixty days of the submittal of any progress payment invoice, ENGINEER may, after giving fifteen days written notice to CLIENT, suspend services under this Agreement.
- C. No deduction shall be made from ENGINEER'S compensation on account of penalty, liquidated damages or other sums withheld from payments to construction contractors.
- D. If the project is delayed, or if ENGINEER'S services are delayed or suspended for more than ninety days for reasons beyond ENGINEER'S control, ENGINEER may, after giving fifteen days written notice to CLIENT, request renegotiation of compensation or may terminate this Agreement.

## **SECTION VI. CLIENT'S RESPONSIBILITIES**

The CLIENT shall, as required:

- A. Guarantee full and free access to ENGINEER to enter upon all public and private property required for the performance of ENGINEER'S services under this Agreement.
- B. Assist ENGINEER by placing at ENGINEER'S disposal all available information pertinent to a project including CLIENT maps and plats, previous reports, drawings, specifications and any other data relative to the design or construction of the project.
- C. Furnish to ENGINEER property and land use data pertaining to a project available to the CLIENT including, but not limited to, property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restrictions; and other related data.
- D. Provide legal, insurance and financial consulting services necessary for each individual project, and such accounting and auditing services as the CLIENT may require.
- E. Furnish permits and approvals from all governmental authorities having jurisdiction over each project and from others as may be necessary for project completion.
- F. Furnish above record information, property and land use data, and services at CLIENT'S expense in such manner that ENGINEER may rely upon them in the performance of services under this Agreement.
- G. Designate in writing a person to act as CLIENT'S representative with respect to the services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define CLIENT'S policies and decisions with respect to materials, equipment, elements and systems pertinent to ENGINEER'S services.
- H. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER. Render such decisions in a consolidated form reconciling differing views into an unambiguous single firm response to each matter requiring resolution.

- I. Provide ENGINEER with prompt written notice of any defect or suspected defect in ENGINEER'S performance of any services rendered pursuant to this Agreement or relating to the project.
- J. Give prompt written notice to ENGINEER whenever the CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER'S services, or any defect in the work of construction contractors.

## **SECTION VII. GENERAL PROVISIONS**

### **A. OWNERSHIP OF DOCUMENTATION**

Documents prepared by ENGINEER for each project are instruments of service and shall remain the property of ENGINEER until the client has compensated the ENGINEER in full for services rendered pursuant to this Agreement. Upon final payment for each basic service/project, ownership of the documents for said services shall be vested in the CLIENT. Record documents of service shall be based on the printed copy.

The ENGINEER will furnish documents electronically, however, the CLIENT releases ENGINEER from any liability that may result from documents used in this form. ENGINEER shall not be held liable for reuse of documents for any purpose other than those intended under each project.

### **B. ASSIGNMENT**

Neither party shall assign its rights, interests or obligations under this Agreement without the express written consent of the other party.

### **C. FORCE MAJEURE**

Neither party will hold the other responsible for damages or delay caused by acts of God, acts of war, strikes, accidents, or other events beyond the other's control.

### **D. DISPUTE RESOLUTION**

The CLIENT and ENGINEER agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. ENGINEER shall continue to perform services under this Agreement, and the CLIENT shall pay for such services during the dispute resolution process unless the CLIENT issues a written notice to suspend work.

### **E. SUSPENSION OF WORK**

The CLIENT may suspend services performed by ENGINEER with cause upon fourteen (14) days written notice. ENGINEER shall submit an invoice for services performed up to the effective date of the work suspension and the CLIENT shall pay ENGINEER all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, ENGINEER shall be entitled to renegotiate the project schedule and the compensation terms for the project.

F. CONTRACTOR SELECTION

The ENGINEER may make recommendation concerning award of construction contracts and products. The CLIENT acknowledges that the final selection of construction contractors and products is their sole responsibility.

G. SHOP DRAWING REVIEW

If included in the scope of service, ENGINEER shall review shop drawing submittals from the contractor solely for their conformance with the design intent of performance criteria specified for a project. ENGINEER shall not be liable for the performance of or consequential damages of any equipment furnished by the contractor under the project.

H. CONSTRUCTION REVIEW

If included in the scope of the service, ENGINEER shall observe the progress and content of the work to determine if the work is proceeding in general accordance with the Contract Documents. This construction review is intended to observe, document, and report information concerning the construction process. Observation of work at a project site shall not make ENGINEER responsible for the work performed by another party, the means, methods, techniques, sequences, or procedures selected by another party, nor the safety precautions or programs of another party.

I. REJECTION OF WORK

The ENGINEER may recommend that the CLIENT reject work by construction contractors that does not conform to the requirements of the project.

J. SAFETY

The ENGINEER shall be responsible solely for the safety precautions or programs of its employees and no other party.

K. INFORMATION FROM OTHER PARTIES

The CLIENT and ENGINEER acknowledge that ENGINEER will rely on information furnished by other parties in performing its services under this Agreement. ENGINEER shall not be liable for any damages that may be incurred by the CLIENT in the use of third-party information.

L. EXTENT OF AGREEMENT

This Agreement represents the entire understanding and agreement between the CLIENT and ENGINEER for professional engineering services pertaining to services described in Section II and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the CLIENT and ENGINEER.

M. NO WAIVER

Failure of the ENGINEER or the CLIENT to insist upon strict and punctual performance of any terms or conditions of this Agreement shall not be construed to constitute a waiver of, or estoppel against, asserting the rights to require such performance. Neither shall a waiver nor an estoppel in one instance constitute a waiver or an estoppel with respect to a later default, whether similar or dissimilar in nature.

N. SEVERABILITY

If any part of this Agreement is determined by a court to be in conflict with statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.

O. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Indiana.

P. INSURANCE

The ENGINEER shall acquire and maintain Professional liability insurance coverage with an annual aggregate limit of at least \$1,000,000.

Q. INDEMNIFICATION

The CLIENT and ENGINEER each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and subcontractors, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of CLIENT and ENGINEER, they shall be borne by each party in proportion to its negligence. Notwithstanding the above, neither the CLIENT nor ENGINEER shall have the right of recourse to the other party for any consequential damages incurred due to the fault of the CLIENT or the ENGINEER, their employees, agents, or subcontractors, irrespective of any forewarning of potential for such damages arising.

R. THIRD PARTY CLAIMS

The CLIENT will compensate ENGINEER for services performed in defense of any third-party claim unless the claim resulted from the negligent act, error, or omission of ENGINEER.

S. TERMINATION

The CLIENT or ENGINEER may terminate services under this Agreement upon seven (7) days written notice in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. ENGINEER shall submit an invoice for services performed up to the effective date of termination and the CLIENT shall pay ENGINEER all outstanding invoices within fourteen (14) days. The CLIENT may withhold an amount for services that may be in dispute provided that the CLIENT furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

T. REMEDIES

Except as may be otherwise provided in this Agreement, all claims, counterclaims, disputes and other matters in question between the CLIENT and ENGINEER arising out of or relating to this Agreement or the breach thereof will be decided by arbitration if the PARTIES mutually agree, or in an Indiana court of competent jurisdiction. In the event litigation is commenced to enforce any term

or condition of this Agreement, the prevailing party shall be entitled to costs and expenses of litigation including reasonable attorney's fees.

U. WARRANTY

The ENGINEER warrants that they will deliver products under this Agreement within the standard of care. The ENGINEER provides no other expressed or implied warranty.

V. SURVIVAL

All provisions of these terms that allocate responsibility or liability between the CLIENT and ENGINEER shall survive the completion or termination of services for any project.

W. LIEN RIGHTS

ENGINEER may file a lien against the CLIENT's property in the event that the CLIENT does not make payment within the time prescribed in this Agreement. The CLIENT agrees that services by ENGINEER are considered property improvements and the CLIENT waives the right to any legal defense to the contrary.

X. CONSEQUENTIAL DAMAGES

Neither the CLIENT nor ENGINEER shall be liable to the other for any consequential damages regardless of the nature or fault.

Y. ENVIRONMENTAL MATTERS

The CLIENT warrants they have disclosed all potentially hazardous materials that may be encountered on any project. In the event unknown hazardous materials are encountered, ENGINEER shall be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. The CLIENT shall indemnify ENGINEER from any claim related to hazardous materials encountered on any project except for those events caused by negligent acts of ENGINEER.

**SECTION VIII. APPROVAL**

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers and partners and is made effective the day and year first above written.

CLIENT:  
Board of Public Works  
City of Charlestown  
304 Main Cross St.  
Charlestown, IN 47111

CONSULTANT:  
Hart's Surveying & Engineering, LLC  
958 Water Street  
Charlestown, IN 47111

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

By: \_\_\_\_\_  
Harold L. Hart, P.E., P.L.S., Owner

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_