BANNING ENGINEERING

853 Columbia Road, Suite 101, Plainfield, IN 46168
Phone: (317) 707-3700 | Fax: (317) 707-3800

January 31, 2024

Silas DeVaney III
Town Council President
Town of Sheridan
506 South Main Street
Sheridan, IN 46069

RE: **TOWN OF SHERIDAN VARIOUS ROADWAY RESURFACING AND REPAIRS**
Bid Recommendation Letter

Si,

A request for bid was solicited for the Town of Sheridan Various Roadway Resurfacing and Repairs project, which is funded in part by the Community Crossings Matching Grant. The bid opening convened on January 25, 2024, at the Sheridan Community Center. Four contractors submitted bids. The low bidder was Baumgartner & Company Asphalt Services with a bid of **$774,180.75**. The bid was found to be in proper form.

Based on a limited review, we recommend that the Town award this project to Baumgartner & Company Asphalt Services for seven hundred seventy-four thousand, one hundred eighty dollars and seventy-five cents (**$774,180.75**). This is a unit price bid.

Thank you for this opportunity to work with you on this project!

Sincerely,

Pete Rusche, PE
GIS and Project Manager

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An Agreement for the Provision of Limited Professional Engineering Services

Civil Engineer ("BE"): Banning Engineering, Inc.
853 Columbia Road, Suite 101
Plainfield, IN 46168

Client: Town of Sheridan
506 South Main Street
Sheridan, IN 46069
Attn: Silas DeVaney
Phone: (317) 758-2505
Email: sdevaney@sheridan.in.gov
Accts Payable Contact: _____
Accts Payable Email: _____

Date: 2/1/2024 Expected Time Frame _____ Project No 24027

Project Name: Sheridan CCMG Road Inspection BE Project Manager: Joseph Miller

Project Location: _____ Total Acreage: _____

City/Town: Sheridan County Hamilton Section: _____ Township: _____ Range: _____

Scope of Services ("Services"):

See Attached Scope

Accepted by (Client):

Silas D Vaney 2/6/24
(signature) (date)

SILAS S DEVANEY III
(printed name/title)

Approved by (BE):

_____
(signature) (date)

_____
(printed name/title)

It has been requested by our errors and omissions insurance carrier that we receive a signed contract for all work we perform. This also includes any preliminary work for a Project. The attached terms and conditions along with the scope and cost above constitute an integrated Agreement. Therefore, we need you to provide the requested information by completing this form. Our receipt of the signed agreement will represent the Client's notice to proceed, approval and assent to these terms. This proposal is valid for sixty (60) days from the date listed above.

Sheridan CCMG Road Inspection
Scope of Services

Construction Observation Scope of Services **$17,500 Hourly Estimated**

- Provide as needed updates to client on progress of work
- Coordinate schedule of contractor and alert town of expected timeframes for various roadways
    - Town to then coordinate with school corporation and public safety staff
- Review and approve project submittals as needed
- Construction inspection tasks for Concrete and Asphalt
    - Coordinate work with contractor foreman
    - Assist contractor in interpreting construction plans
    - Monitor and verify depth of excavation
    - Monitor subgrade stabilization
    - Monitor concrete work and slopes
    - Monitor pavement patching
    - Monitor pavement placement, depth and compaction
    - Collect tickets to verify tonnage of material
- Respond to issues encountered in the field as needed
- Assist in training town personnel on common observation critical items, methods of construction, and field observations

Estimated 4-5 week construction window for full time observation

BANNING ENGINEERING

Over 25 Years of Making Your Project Our Priority

SCHEDULE OF FEES

As of January 1, 2024

Engineer-1	$265 / hour
Engineer-2	$225 / hour
Engineer-3	$190 / hour
Engineer-4	$170 / hour
Engineer-5	$140 / hour
Engineer Technician	$90 / hour
Project Manager	$210 / hour
CADD-1	$150 / hour
CADD-2	$130 / hour
CADD-3	$100 / hour
GIS Manager	$175 / hour
GIS Tech 1	$135 / hour
GIS Tech 2	$90 / hour
Survey-1	$225 / hour
Survey-2	$200 / hour
Survey-3	$165 / hour
Survey-4	$130 / hour
Crew Chief	$140 / hour
Survey Field Tech	$90 / hour
Scan Crew-2	$240 / hour
Scan Crew-1	$200 / hour
Observation-1	$165 / hour
Observation-2	$145 / hour
Observation-3	$105 / hour
Observation-4	$90 / hour
Admin Staff-1	$125 / hour
Admin Staff-2	$100 / hour

Note: Fees above are subject to change with 30-day written notice from ENGINEER to CLIENT.

TERMS AND CONDITIONS

1. **Acceptance.** This Agreement constitutes an offer by BE and may only be accepted on the exact terms herein. Documents containing additional or different terms shall not be binding on BE.

2. **Responsibilities of the Parties**. BE and Client shall cooperate with one another to fulfill their respective obligations under the Agreement and shall endeavor to maintain good working relationships among all Project team members.

Client. Client shall provide prompt written notice to BE of any error or defect in the Services or Deliverables for the Project, including any errors, omissions or inconsistencies.

a. Designated Representative. Client's designated representative shall be authorized to act on Client's behalf with respect to the Services and shall render decisions in a timely manner in response to documents submitted by BE to avoid delay in the orderly progress of the Services.

b. Client's Duties. Client shall assist BE with the performance of the Services and shall: (a) provide previous reports, construction drawings, and all available information related to the Project site; (b) when lawful, guarantee and provide access to, and make provision for entrance into, public and private lands as required to perform the Services; (3) examine and timely report its comments on reports, sketches, drawings and other documents presented for examination regarding the Project; and (4) furnish all legal, auditing, insurance and accounting services required of Client and necessary for the Services.

c. Payment. Client shall pay the Fee which includes all Amendments and Reimbursable Expenses, and fees for additional services incurred by BE, its employees, agents or representatives in the performance of the Services.

Engineer. BE shall be entitled to rely on the accuracy and completeness of any information furnished by the Client for the Services.

a. Designated Representative. BE's designated representative shall be authorized to act on BE's behalf with respect to the Project and Services.

b. BE's Duties. BE shall perform all Services that are required under the Agreement; and, Client will be responsible for the completion of all other services involved in the development, construction and completion of the Project.

3. **Means and Methods**. BE shall supervise and direct the Services and have control over all means, methods, techniques, sequences and procedures related to the Services. The Services shall not include governmental permits or fees of any kind; testing, removal and disposal of contaminated or hazardous materials, or of any materials containing hazardous material as defined by the EPA; relocating Client's property; restoration related to Client's prior Project activities, including repair of damage to roadways, driveways, or sidewalks resulting from equipment or vehicles.

4. **Warranty and Disclaimer**. All warranties (written, express implied or oral), including any implied warranty of merchantability, workmanship and fitness for a particular purpose, are excluded from this Agreement.

5. **Standard of Care.** The standard of care for all Services performed by BE and its sub-consultants shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. BE shall perform its Services as expeditiously as is consistent with such professional skill and care and the orderly and timely progress of the Project.

6. **Insurance.** Client has personal, property and casualty insurance. BE shall maintain workers' compensation; general liability; automobile liability, professional liability insurance for the duration of this Agreement in the limits represented in its Certificate of Insurance which is available upon written request.

7. **Delays / Interruption**. Client recognizes that events out of BE's reasonable control may prevent the timely provision of the Services. If the Services are delayed or interrupted by any act or neglect of Client or a separate service provider employed by Client or by changes in the Services, labor disputes, fire, unusual delay in deliveries, adverse weather conditions, unavoidable casualties, or other causes beyond BE's reasonable control, the Completion Date shall be extended for a period of time equal to the delay. It is expressly agreed that Client shall not be entitled to any damage for delay in the Services.

8. **Claims for Consequential Damages**. Client and BE waive claims against each other for consequential damages arising out of or relating to this Agreement. This waiver includes damages incurred for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity along with liable for any loss of business, revenues, profits, or any other special, incidental, consequential or punitive damages of any nature, or for any kind or any related claims made by a third-party.

9. **Changes**. Client may request changes within the general scope of the Services, in which event the Fee and Completion Date shall be adjusted by written Amendment. Unless otherwise agreed, the cost of change or additional Services shall be determined on the basis of the costs of the change, plus a reasonable allowance for overhead and profit. If conditions are encountered at the Project which differ from the conditions anticipated by BE or from those ordinarily found to exist and generally anticipated in the Services, the Fee and Completion Date shall be equitably adjusted by written Amendment. Circumstances beyond BE's control include, but are not limited to, the following: (1) a change in the instructions or approvals given by the Client that necessitate revisions in the BE's Deliverables;

(2) enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Deliverables; (3) decisions of the Client not rendered in a timely manner; (4) a significant change in the Project including, but not limited to, location, size, complexity, the Client's schedule or budget, or procurement method; (5) failure of performance on the part of the Client.

No changes to the Services will be effective without the prior written consent of BE, which consent may be withheld in the sole discretion of BE. Any additional services or other changes to the Services will be documented in an Amendment, which will become part of this Agreement. Should the parties be unable to mutually agree to the necessary modification, BE may proceed with performance of the Agreement and Client shall continue to make all other payments due and owing BE under this Agreement.

10. **Boundary Determinations**. Boundary determinations occasionally disclose unseen or unknown conflicts between the record documents and the location of physical improvements. Upon discovery of any latent or patent ambiguity, uncertainty, or dispute disclosed by the records or by placement of the boundaries, Services will be suspended and Client will be notified. BE will present alternatives for possible resolution and any additional services required. If Client decides to forego resolution, all Services completed to date will be invoiced and the Project file will be archived. If Client chooses resolution, BE will act as Client's consultant. Upon resolution, the Agreement will be completed in accordance with its terms subject to interim rate increases.

11. **Indemnification**. To the fullest extent permitted by law, Client or BE shall indemnify and hold harmless the other party and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from provision of the Services, provided that such claim, damage, loss or expense is attributable to sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of a party, anyone directly or indirectly employed by it or anyone whose acts it may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by the party indemnified hereunder.

12. **Limits on Liability**. In recognition of the relative risks, rewards and benefits of the Services provided for the Project to both the Client and BE, the risks have been allocated so that the Client agrees that, to the fullest extent permitted by law, BE's total liability to the Client for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this Agreement, whether based in contract, tort, strict liability or otherwise, from any cause or causes, shall not exceed the total amount of $50,000.00 or the amount of the Fee (whichever is greater). This limit is not affected by any insurance limits described in (6) above.

13. **No Responsibility for the Work of Others.** BE shall not have control over or charge of or be responsible for the acts, omissions or failure of the Client's contractors, subcontractors, or their agents or employees, or any other persons or entities to perform their work, labor or services in accordance with the Project's requirements.

14. **Safety, Protection of Persons and Property**. BE shall take necessary precautions to comply with applicable federal, state and municipal safety laws. BE shall not be responsible for the safety of any person or property within or on the Project site. The Client's contractors, subcontractors, or their agents or employees, shall be solely responsible for the safety of their employees and others affected by its/their work at the Project. The Client shall cause its contractors, subcontractors, agents or employees to take necessary precautions for the safety of its own employees and the Client's property.

15. **Hazardous Waste.** The Client shall promptly notify BE of the existence of any hazardous substance on or adjacent to the Project site. The phrase "hazardous waste" shall be defined by the Superfund Act (Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended) and shall include similar definitions of a substance subject to a similar control by state or local law. The Client, or its other agents or subcontractors, shall have responsibility for compliance with all federal, state and local laws, regulations, guidance or other requirements relating to the handling, treatment, storage or disposal of hazardous wastes, substances or constituents. Client agrees that BE, as well as its owners, officers, directors or employees are not an owner, handler, generator, operator, treater, storer, transporter, disposer or Potentially Responsible Party, under the Resource Conservation and Recovery Act of 1976, as amended, the Comprehensive Environmental Response, Compensation and Liability Act as amended, or any other similar federal, state or local law or regulation, including the Indiana Environmental Legal Action statute. Client agrees to defend, indemnify and hold harmless BE, its owners, officers, directors and employees from and against all claims and liabilities resulting from any form of allegation that BE, its owners, officers, directors or employees are an owner, handler, generator, operator, treater, storer, transporter, disposer, or potentially responsible party under any federal, state, or local law or regulation.

16. **Payment.** Invoices will be submitted monthly for Services and reimbursable expenses. Payment is due within thirty (30) days. Invoices shall be based upon Services provided through the date of Invoice. Undisputed Invoices unpaid thirty (30) days from the Invoice date shall entitle BE to immediately suspend the Services or terminate this Agreement upon seven (7) days written notice to Client, in the sole discretion of BE, without any further liability to BE under this Agreement. By exercising

its rights of suspension or termination, BE does not waive any rights it may have under any applicable law. Before resuming the Services, BE shall recover from the Client all undisputed amounts due BE for all Services performed pursuant to this Agreement and Reimbursable Expenses incurred. In the event of Service stoppage, the Completion Date, shall be extended and the Fee increased by the amount of BE's reasonable costs of shutdown, delay and start up pursuant to an Amendment and the Client may not withhold its approval of same. If BE incurs any cost or expense, including attorneys' fees and/or costs of collection, to recover undisputed sums due and owing, Client shall be responsible for payment of all such sums. The Client shall make no deductions from the BE's compensation on account of sums withheld from payments to others providing services, materials or labor at the Project

17. **Reimbursable Expenses**. Reimbursable Expenses are in addition to the compensation for the Services and include, but are not limited to, expenses for the following: (1) filing fees, title searches, submittal fees, certified letters, reproduction of drawings and specifications or other documents, as well as the handling costs associated therewith; (2) any fees paid for securing approval of authorities having jurisdiction over the Project; (3) Client authorized travel and electronic communications and (4) the expense of professional liability insurance dedicated exclusively to this Project or the expenses of additional insurance coverage or limits requested by the Client in excess of that normally carried by BE and its consultants. BE shall not be obligated to advance payment associated with the foregoing expenses and upon written notice to Client, the Client may be required to make direct payment of these expenses.

18. **Default**. In the event of default, the non-defaulting entity shall give to the defaulting entity forty-eight (48) hours to cure such default. In addition to any other legal remedies available to BE, under this Agreement, law or equity, BE shall have the absolute right to immediately discontinue the Services when Client is in default of any of its obligations or fails to make timely payment.

19. **Disputes**. The parties agree to provide one another with written notice of a dispute within a reasonable time, not to exceed thirty (30) days, after obtaining knowledge of the same and shall include: (1) a statement specifying that a dispute has occurred that falls within the scope of this paragraph, (2) a statement of the party's position and a summary of evidence and arguments that support such position, and (3) the name and title of the disputing party's authorized representative. Within twenty (20) days after receipt of the disputing party's notice, the responding party shall submit a written response to the disputing party. The response shall contain: (1) a statement of the responding party's position and a summary of evidence and arguments that support such position; and (2) the name and title of the responding party's authorized representative. In the absence of an agreement to the contrary, the parties' authorized representatives shall meet in Hamilton County, Indiana, at a mutually acceptable time and place within ten (10) days after the disputing party receives a response and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. If the dispute has not been resolved within forty (40) days after the disputing party receives the response, or if the responding party refuses or fails to comply with the provisions of this paragraph, then the disputing party may commence mediation or legal action.

20. **Mediation**. If negotiations prove fruitless, the parties shall endeavor to settle the dispute by mediation (which shall be conducted, administered and governed by the Indiana Rules for Alternative Dispute Resolution or by other process agreed to by the parties) before recourse to other dispute resolution methods are used. Mediation shall be concluded within sixty (60) days after the conclusion of the initial thirty (30) day dispute negotiation period. Either party may terminate the mediation at any time after the first session. The cost of any mediation proceeding shall be shared equally by the Parties. If mediation efforts are not successful, the parties may exercise all of their rights under law.

21. **Litigation/Venue**. Exclusive venue for all claims or disputes arising out of this Agreement or Services provided hereunder shall be in Hamilton County, Indiana and any litigation between the parties that arises under this Agreement shall be prosecuted in Hamilton County, Indiana.

22. **Termination for Cause.** This Agreement may also be terminated by a party upon not less than seven (7) days' written notice should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the party initiating termination. If the Client fails to make payments to the BE in accordance with this Agreement, such failure shall be considered substantial nonperformance of services under this Agreement and BE may terminate this Agreement for cause. In the alternative, BE may suspend the Agreement.

23. **Termination Due to Delay or Suspension.** If the Services are stopped, suspended or delayed for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of any *force majeure*, act or neglect of the Client's contractors, subcontractors, agents or employees, changes ordered in the Services, labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the control of the BE or its agents or employees, then the BE shall be entitled to a reasonable extension in the Completion Date pursuant to an Amendment and the Client may not withhold its approval of same. In the alternative, BE may upon not less than seven (7) days' written notice to the Client, terminate this Agreement and recover from the Client all amounts due BE for all Services performed pursuant to this Agreement and Reimbursable Expenses

incurred, including overhead and profit, together with any other liabilities, obligations, damages or commitments, attorneys' fees and/or costs of collection of the amounts due under this Agreement.

24. **Termination for Convenience**. BE or Client may terminate this Agreement for its sole convenience. In the case of termination for convenience or without cause, BE shall be entitled to receive payment from Client for all amounts due for all Services performed pursuant to this Agreement and Reimbursable Expenses incurred.

25. **Assignment**. Client may assign the Agreement to a separate entity, but only with the prior written consent of BE. This Agreement will be binding upon the parties, their successors, executors, administrators, and assigns.

26. **Notice**. Notice shall be in writing and delivered via e-mail, fax, overnight delivery, hand delivery, or certified mail. Notice shall be considered provided as of the date of delivery. Where notice cannot be immediately provided in writing, telephonic notice may be made followed by written notice.

27. **No Third-Party Beneficiaries**. It is agreed that the Services are for Client's sole use and benefit at the Project; as such, BE and Client agree that this Agreement is not intended to benefit any third-party.

28. **Ownership of BE's Deliverables**. All Deliverables, including, but not limited to, original drawings, field notes, reports, written data, and electronic data are and shall remain the exclusive property of BE until BE is paid in full under this Agreement and may not be used by the Client for any other endeavor without the written consent of BE. Upon completion of the Services and final payment of the Fee, the Client shall have a non-exclusive license to reproduce the Deliverables. Client shall also be permitted to make changes, corrections or additions to the Deliverables for the purposes of completing, using and maintaining the Project or for future additions or alterations to the Project; provided however, that the Client's use of the Deliverables shall be at the Client's sole risk and without liability to BE. In the event BE is not fully compensated under this Agreement, Client shall remit the Deliverables and related documents to BE upon BE's demand. In the absence of BE's demand for remittance or upon completion of the BE's Services under this Agreement, the Client shall have a non-exclusive license to reproduce BE's drawings and related documents.

29. **Applicable Law**
The terms and conditions of this Agreement will be governed by the laws of the State of Indiana.

30. **Severability.** In case any one or more of the provisions contained in this Agreement or any application thereof shall be judicially determined to be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

31. **Miscellaneous**. This Agreement represents the entire and integrated agreement between BE and Client, supersedes all prior negotiations, representations and agreements, written or oral, and shall not be modified, supplemented or interpreted by evidence of course of dealing, course of performance or usage of trade. If any provision of the Agreement is found by a court to be illegal, invalid, void or otherwise unenforceable, the remaining terms and conditions shall remain in full force.

32. **Public Projects within Indiana.**
a.**Employee Eligibility Verification.** (i) BE affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien.
(ii) BE shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. BE is not required to participate should the E-Verify program cease to exist. Additionally, BE is not required to participate if BE is self-employed and does not employ any employees.
(iii) BE shall not knowingly employ or contract with an unauthorized alien. BE shall not retain an employee or contract with a person that BE subsequently learns is an unauthorized alien.
(iv) BE shall require its subconsultants, who perform work under this Agreement, to certify to BE that the subconsultant does not knowingly employ or contract with an unauthorized alien and that the subconsultant has enrolled and is participating in the E-Verify program. BE agrees to maintain this certification throughout the duration of the term of a contract with a subconsultant.
(v) The Client may terminate the Agreement for default if BE fails to cure a breach of this provision no later than thirty (30) days after being notified by Client.
b. **Non Investment in Iran.** As required by IC 5-22-16.5, BE does hereby certify that it has never and currently does not contract with the government of Iran for such business or services as defined in IC 5-22-16.5-1 et seq. and is not engaged in investment activities in Iran. BE will take the necessary steps to maintain compliance throughout the term of this Agreement.
c. **Non-Discrimination**. BE agrees that it, and its subcontractors, will not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to the employee's hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of the employee's race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of the Agreement.

EXHIBIT C

E-Verify Affidavit

Pursuant to Ind. Code §22-5-1.7-11, the Engineer entering into the Contract with the Client is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify Program. The Engineer is not required to verify the work eligibility status of all its newly hired employees through the E-Verify Program if the E-Verify Program no longer exists.

The undersigned, on behalf of the Engineer, being first duly sworn, deposes and states that the Engineer does not knowingly employ and unauthorized alien. The undersigned further affirms that, prior to entering into its Agreement with Client, the undersigned Engineer will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify Program.

(Engineer) Banning Engineering

By (Written Signature) _____

(Printed Name): Jeff Henson

(Title): Vice President of Operations

Important – Notary Signature and Seal Required in the Space Below

STATE OF Indiana

SS: _____

COUNTY OF Hendricks

Subscribed and sworn to before me this 1st day of February, 20 24

My commission expires: 10/11/24 (Signed): Lora A. Myers

Residing in Hendricks County, State Indiana

LORA A. MYERS
Commission Number 699488
NOTARY SEAL PUBLIC
My Commission Expires 10/11/2024
STATE OF INDIANA

EXHIBIT D

Indiana Non-Iran Investment Certification

I, Jeff Henson, the duly authorized representative of Banning Engineering, P.C. certify under the penalty of perjury that Banning Engineering, P.C. does not engage in investment activities in Iran as defined in IC 5-22-16.5.

BANNING ENGINEERING, P.C.

By: _____

Printed: Jeff Henson

Title: Vice President of Operations