

CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES
Otter Creek Trunk Sewer Extension - Phase 4

THIS AGREEMENT is made and entered into this 15th day of MAY, 2023, between the City of Ankeny, Iowa, hereinafter referred to as the "Owner", and Civil Design Advantage hereinafter referred to as the "Consultant".

WITNESSETH:

WHEREAS the Owner has decided to proceed with the design of the following project:

Otter Creek Trunk Sewer – Phase 4

Proposed trunk sanitary sewer extension from the existing termini (just north of Costco) to the south right-of-way at NE 54th Street.

WHEREAS the Owner desires to employ the Consultant to provide design engineering and bidding phase services in connection with the project; and

WHEREAS the Consultant is willing to perform such engineering work in accordance with the terms hereinafter provided, and represents that it is in compliance with Iowa statutes relating to the registration of Professional Engineers;

NOW THEREFORE;

The parties hereto, for consideration hereinafter set forth, mutually agree as follows;

I. DEFINITIONS

Whenever in this Contract the following terms or pronouns used in their stead occur, they shall have the meaning here given;

Owner – the City of Ankeny, Iowa, or its authorized representative acting as liaison officer for the Owner for the purpose of coordinating and administering the work under the Contract.

Consultant – the firm of Civil Design Advantage, Urbandale, Iowa

Iowa DOT – Iowa Department of Transportation

IDNR – Iowa Department of Natural Resources

Corps – the United States Army Corps of Engineers

EPA – the Environmental Protection Agency

EDA – the Economic Development Agency

Project Manager – the principal project manager assigned to the project, and employed by and working directly under the authority of the Consultant.

Project Engineer – the design engineer assigned to the project and employed by the Consultant, working directly under the authority of the Project Manager.

Construction Observer – the construction observer assigned to the project and employed by the Consultant, working directly under the authority of the Project Manager or Project Engineer.

II. GENERAL

- A. The Owner has decided to proceed with the design of the Otter Creek Trunk Sewer Extension – Phase 4 project. The project includes a gravity sewer extension from the existing termini (just north of Costco) to the south right-of-way at NE 54th Street. This Contract does not include any construction related services; however, these can be added by addendum.

A description of the necessary tasks to accomplish the above goals is itemized in Section III, Scope of Services.

- B. The work under this Contract shall at all times be subject to the general supervision and direction of the Owner and shall be subject to the approval of the Owner. Design and construction documents shall conform to the Owner's requirements.
- C. Obligations of the Owner to the Consultant: All existing information, including previous construction plans, record drawings, utility information, previous studies, drainage maps, drainage design support, etc. applicable to the project will be made available to the Consultant without cost.
- D. Submittal of documents: During the progress of the project design, various PDF of the preliminary, check and final plans and other documents prepared by the Consultant will be required by the Owner. Unless specified elsewhere in this Contract, five (5) half-size copies of final plans and two (2) bound front-end documents/project manuals shall be provided by the Consultant to the Owner at the final submittal.
- E. This Contract shall be subject to the Standard Fee Schedule billing rates as established in Exhibit A and hereby made a part of this Contract.

III. SCOPE OF SERVICES

- A. General – The Consultant shall provide Basic Design Services and Additional Design Services (if required) for the design of the project in accordance with general engineering principles. The work to be performed under this Contract by the Consultant shall consist of the following Scope of Services. Additional engineering services beyond the Contract Scope of Services shall be authorized in writing by the Owner before the Consultant shall proceed. Additional fees shall be based on the hourly rates by employee classification as established in Exhibit A to this Contract.
- B. Basic Engineering Services

Design Phase Services:

Task 1 – Topographic/Boundary Survey

The Consultant shall acquire survey data to support the preliminary design for the project. The field survey shall include the trunk sewer corridor as depicted within Exhibit B. Surface features, break lines, creek bank top, channel bottom, trees greater than 6" in diameter, utility poles and adjacent streets shall be located for the topographic survey. LIDAR (Light Detection and Ranging) contours shall be utilized for areas outside of the trunk sewer corridor. Elevations on a 50-foot grid will be acquired and contours drawn to 1-foot contour grid. Utility information will be shown from field locates and mapping. The Consultant shall complete boundary work to support the preparation of acquisition plat(s).

Task 2 – Soils Investigation

The Consultant plans to utilize the services of a sub consultant for the soils investigation and analysis for the project design. Soils investigation shall follow the scope as outlined in Exhibit C.

Task 3 – Joint Application Form Preparation

The Consultant shall prepare a Joint Application (Corps/DNR) associated with the trunk sewer construction. The permit application will be prepared and submitted to the appropriate jurisdictional authority.

Task 4 – Wetland Services (if needed)

The Consultant plans to utilize the services of a sub consultant for any wetland services associated with the project. Wetland services shall follow the scope as outlined in Exhibit D.

Task 5 – Existing Utility Information

Where possible, existing utility information shall be furnished by the City. This existing utility information shall be incorporated into the plans, and the effects of the sanitary trunk sewer upon each utility shall be determined.

Task 6 – Construction Drawing Preparation (Final Design)

The Consultant shall prepare construction drawings for approximately 4150 lineal feet (from ex. termini north of Costco to the 54th Street corridor) of 24-inch sanitary trunk sewer main improvements. Preliminary plan sheet layout shall generally consist of the following:

- Title Sheet (1)
- Details and Typical Sections (1)
- Tabulations of Project Quantities and General Notes (1)
- Plan & Profile Sheets (4)
- Survey Reference Information (1)
- Erosion Control/Pollution Prevention Plan (1)

The Consultant shall prepare an “initial” Storm Water Pollution Prevention Plan (SWPPP) for the project, submit the Notice of Intent and General Permit #2 to the Iowa DNR. The City shall be responsible for implementation/monitoring. The Consultant shall also prepare and submit the Iowa DNR sanitary sewer construction permit application on behalf of the City of Ankeny.

The Consultant shall prepare and submit preliminary, check and final plans during design development. A construction cost opinion shall also be prepared at each milestone submittal. The estimates shall be based on engineering judgment and do not represent a guarantee of the actual construction costs.

Task 7 – Permanent/Temporary Sanitary Sewer Easement Plat

The Consultant shall prepare up to two permanent sanitary sewer easement plats and two temporary construction easement plats for the final design portion of the project (approximately 4000 lineal feet). Easement plats shall be prepared using industry standard procedures and suitable for recording at the County courthouse. The Consultant understands the City will provide a “standard” permanent and temporary easement verbiage document to coincide with each plat document.

Task 8 – Project Manual Preparation

The Consultant shall prepare a project manual that consists of the City of Ankeny front end contract documents modified to support the Trunk Sewer Construction project. The SUDAS technical specifications and Ankeny supplemental specifications shall be referenced for construction and soils information shall be included in the appendix.

Task 9 – Bidding Services/Construction Letting

The Consultant shall advertise the project for the construction letting and handle all plan distribution to potential bidders via Quest CDN. The Consultant shall attend one public letting for the project. Once bids are open, the Consultant will confirm the as-bid prices, prepare a bid tabulation and recommend award of contract to the City, if applicable.

IV. TIME OF BEGINNING AND COMPLETION

Work under this Contract to be performed by the Consultant for the Owner shall commence immediately upon execution of this Agreement by both the Consultant and the Owner. This fully executed Agreement will authorize the Scope of Services in Section III. The intent of the Owner and the Consultant is to complete the final design of the Otter Creek Trunk Sewer Extension – Phase 4 project by Fall/Winter 2023, bid the project in Jan/Feb. 2024, and construct the project during the 2024 or 2025 construction season.

Following is a general timeline for the trunk sewer plans anticipated for the project:

Preliminary Plans	June – July 2023
Check Plans	August – Sept. 2023
Final Plans	Sept – Oct. 2023
Letting	Jan.-Feb. 2024

The schedule is intended to be target dates for tasks identified. Consultant (or their sub-consultants) is not responsible/liable for schedule delays outside of their control, including but not limited to access to project site, unanticipated site conditions, weather, etc.

V. FEES AND PAYMENTS

A. Fees

The Owner shall pay the Consultant for engineering services rendered under this Contract an amount based on the Consultant's labor costs and direct labor cost burden. The Consultant-incurred reimbursable expenses will be passed through directly to the Owner. A definition of each of the above follows:

1. Labor costs – salary and wages paid to all personnel engaged directly on the project including, but not limited to, engineers, project managers, planners, surveyors, designers, CADD technicians, estimators, observers, other technical personnel, typists and administrative staff.
2. Labor cost burden – customary and statutory benefits including, but not limited to, social security and Medicare contributions, unemployment taxes, excise and payroll taxes, workers compensation, health, pension and retirement benefits, sick leave, vacation and holiday pay applicable hereto.
3. Reimbursable Expenses – these costs are in addition to labor cost and labor cost burden, and are those expenses necessary to fulfill the terms of this Contract. They may include transportation and subsistence, reproduction, postage, photography and printing, computer services and miscellaneous costs. The Consultant shall submit with each monthly invoice a detailed listing of reimbursable expenses incurred.

The total engineering fee under this Contract shall be based on an hourly rate. The Owner will be furnished copies of the Consultant's subcontracts. All reimbursable expenses shall be billed as "pass-through" and are part of the maximum not-to-exceed amount (unless specifically noted).

The sum to be paid to the Consultant for tasks (Tasks 1 thru 9 inclusive) in Section III, Scope of Services of this Contract, shall be a maximum not-to-exceed fee of \$ 148,500 (One Hundred Forty-eight thousand five hundred and no/100 dollars).

B. Payments

Payments for the Consultant's engineering services shall be made monthly upon presentation of the Consultant's statement of services rendered on Owner's form.

Upon receipt of the invoice and review/approval by the Owner, the Owner shall promptly pay the Consultant for the engineering services rendered as indicated on the invoice. Invoices are due thirty (30) days from date of invoice.

VI. INSURANCE

The Consultant shall maintain insurance to protect the Consultant from claims under Workmen's Compensation Acts; claims due to personal injury or death of any employee or any other person; claims due to injury or destruction of property; and claims arising out of errors, omissions, or negligent acts for which the Consultant is legally liable. The minimum amounts and extent of such insurance is as follows:

- | | | |
|----|------------------------|--|
| 1. | Professional Liability | \$ 2,000,000 |
| 2. | Vehicle Coverage | \$ 1,000,000 liability
\$ 5,000 medical
\$ 1,000,000 uninsured |
| | Property Damage | \$ 1,000,000 each accident |
| 3. | Workmen's Compensation | \$ 100,000 each accident |
| 4. | General Liability | \$ 1,000,000 each occurrence
\$ 2,000,000 aggregate |

VII. MISCELLANEOUS PROVISIONS

A. Use of Documents

All documents, including drawings, specifications, and electronic media prepared or furnished by the Consultant (and the Consultant's subsidiaries, independent professional associates, and sub consultants) pursuant to this Contract shall be the property of the Owner. Such documents are intended as instruments of service, as such, these documents are not intended or represented to be suitable for use or reuse by the Owner or others to complete the project, or for extensions of the project, or on any other project without written consent of the Consultant. Any use or reuse by the Owner will be at the Owner's sole risk, and without liability or legal exposure to the Consultant or to the Consultant's subsidiaries, independent professional associates, and sub consultants. The Owner agrees to defend, indemnify, and hold harmless the Consultant from any and all costs, expenses (including reasonable litigation costs), fees, losses, claims,

demands, liabilities, suits, actions, and damages whatsoever arising out of such reuse or alteration by the Owner or liaisons acting through the Owner. Upon completion or other termination of this Contract, the Consultant shall deliver to the Owner machine reproducible copies of any and all materials pertaining to this Contract. For calculations, etc. on letter or legal size sheets, the copies shall be of a type possible to reproduce on a Xerox-type copier. For maps, drawings, sketches, plans, etc. not on such letter or legal size sheets, a photographically reproduced print shall be provided as the machine reproducible copy mentioned above. No sheets shall exceed 11"x 17". The Consultant shall also provide CAD file in AutoCAD format upon completion of this Contract. The CAD file must be georeferenced to State-Plane Coordinates (NAD83 / Iowa South) and Sea Level Elevation (NAVD88) and contain the following information:

1. All utility pipe linework and points for structures and appurtenances, including manholes, intakes, cleanouts, aprons, hydrants, hydrant valves, mainline valves, and water shut offs (curb stops).
2. All pavement linework, including back of curb, driveways, sidewalks, trails, and shared use paths.
3. All right-of-way lines, property lines, existing easement lines, and proposed easement lines per original scope of boundary and topographic survey.
4. Streetlight poles, traffic signal poles, controller cabinets, handholes, and street trees, when applicable.

The Consultant's reuse of designs under this Contract is prohibited unless authorized by the Owner.

B. Changes in the Scope of Work

When there is a substantial change in the scope, complexity, or character of the work performed, or if the Owner requests the Consultant to alter the completion dates established, the specified fee as listed under Section V of this Contract will be reappraised. If the Consultant believes that he/she has been asked to perform work beyond the Scope of Services covered by this Contract or by a supplemental agreement hereto, he/she shall promptly notify the Owner, in writing, of his/her intention to make claim for such extra compensation. The Consultant shall not proceed with any such work until a supplemental agreement is fully executed, or written intent of said execution is provided.

C. Delays

The Consultant shall notify the Owner in writing of any unusual delay, including the reason therefore, to his/her normal progress in completing the work under this Contract, either actual or prospective, and request an appropriate extension of time. Authorization for the time extension will be

at the discretion of the Owner. If completion of the Consultant's work is delayed by events beyond the control of the Consultant, the established engineering fees and schedules of completion will be subject to review upon request by the Consultant to the Owner, accompanied by adequate substantiating data to justify a change.

D. Suspension and Termination of Contract

1. In the event of the death of any member or partner of the Consultant's firm, the surviving members shall complete the work, unless otherwise mutually agreed upon by the Owner and the survivors.
2. The right is reserved by the Owner to terminate this Contract at any time, upon not less than fourteen (14) days written notice to the Consultant. The Consultant may also terminate this Contract on fourteen (14) days written notice.
3. In the event the Contract is terminated by the Owner without fault on the part of the Consultant, the Consultant shall be paid for work performed and delivered up to the date established in the termination notice.
4. The right is reserved by the Owner to suspend this Contract at any time. Such suspension may be affected by the Owner by giving the Consultant written notice, and will be effective as of the date established in the suspension notice. Payment of the Consultant's services will be made by the Owner for services performed to the date established in the suspension notice in accordance with Paragraph 3 above.
5. Should the Owner wish to reinstate the work after notice of suspension, such reinstatement may be accomplished by thirty (30) days written notice within a period of one (1) year after such suspension, unless this period be extended by written consent of the Consultant.

E. Disputes

All claims, disputes, and other matters in question between the parties of this Contract arising out of or relating to this Contract or the breach thereof shall be initiated in the District Court for Polk County, Iowa, if the parties are unable to resolve such claims, disputes, or other matters in question by negotiation.

F. Responsibility for Claims and Liability

The Consultant shall indemnify and hold harmless the Owner from any and all claims and liabilities due solely to any negligent acts, errors, or omissions of the Consultant, its members, employees, or agents.

G. General Compliance With Laws

The Consultant shall comply with federal, state, and local laws and ordinances applicable to the work as defined in Section III.

H. Subletting, Assignment, or Transfer

Subletting, assignment, or transfer of all or part of the interest of the Consultant is prohibited unless written consent is obtained from the Owner.

I. Forbidding the Use of Outside Agents

The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Contract, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the Owner shall have the right to annul this Contract without liability, or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

J. Employment of the Owner's Personnel

The Consultant shall not engage the services of any person or persons then in the employ of the Owner for work covered by this Contract without the written consent of the employers of such persons.

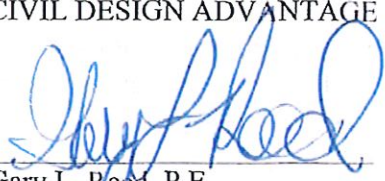
This Contract expresses the entire agreement between the parties, and no representations, promises, or warranties have been made by either of the parties that are not fully expressed herein.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their proper officials thereunto duly authorized as of the dates below indicated:

OWNER
CITY OF ANKENY, IOWA

Mark E. Holm, Mayor

CONSULTANT
CIVIL DESIGN ADVANTAGE



Gary L. Reed, P.E.
President

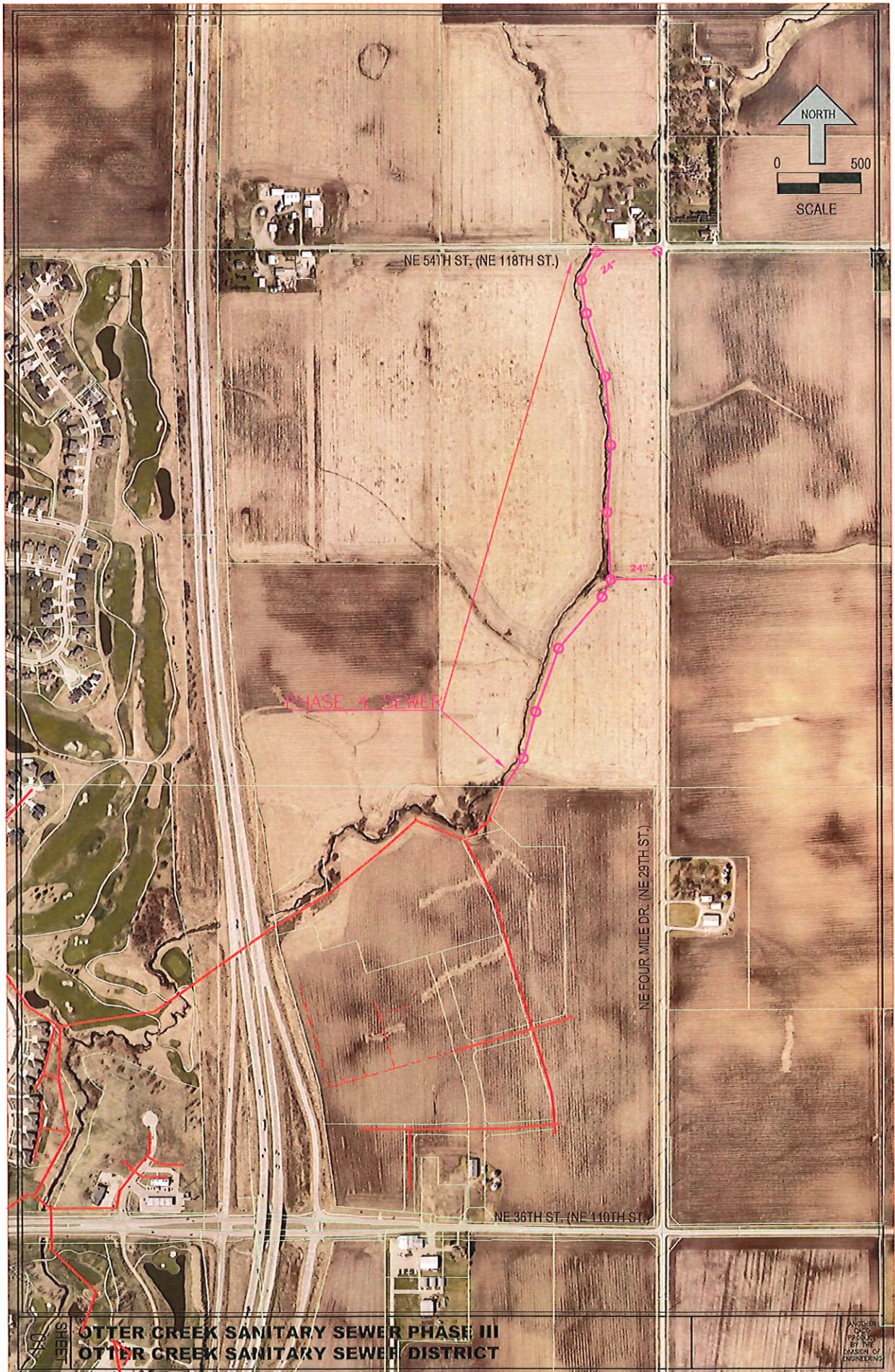
ATTEST:

Michelle Yuska, City Clerk

Exhibit "A"

**Standard Fee Schedule
2022-2023
Civil Design Advantage, LLC**

<u>Classification</u>	<u>Billing Rate</u>	<u>Unit</u>
Principal / Senior Engineer	\$198 /	hour
Principal / Senior Land Surveyor	\$198 /	hour
Senior Engineer	\$189 /	hour
Engineer 8	\$172 /	hour
Engineer 7	\$161 /	hour
Engineer 6	\$149 /	hour
Engineer 5	\$138 /	hour
Engineer 4	\$126 /	hour
Engineer 3	\$114 /	hour
Engineer 2	\$102 /	hour
Engineer 1	\$94 /	hour
Senior Technician	\$147 /	hour
Technician 8	\$134 /	hour
Technician 7	\$124 /	hour
Technician 6	\$113 /	hour
Technician 5	\$104 /	hour
Technician 4	\$93 /	hour
Technician 3	\$81 /	hour
Technician 2	\$70 /	hour
Technician 1	\$58 /	hour
Senior Project Manager	\$184 /	hour
Project Manager 8	\$171 /	hour
Project Manager 7	\$155 /	hour
Project Manager 6	\$147 /	hour
Project Manager 5	\$139 /	hour
Project Manager 4	\$129 /	hour
Administrative 3	\$92 /	hour
Administrative 2	\$71 /	hour
Administrative 1	\$48 /	hour
Mileage	Current IRS Rate /	mile
Plots (Black & White)	\$1.75 /	sheet
Plots (Color)	\$35 /	sheet
Mylar Plots	\$15 /	sheet
Copies (Black & White)	\$0.10 /	page
Copies (Color)	\$0.75 /	page





STANDARD AGREEMENT FOR PROFESSIONAL SERVICES

PROJECT NAME: Otter Creek Sewer Phase III **PN:** 231224
PROJECT ADDRESS: NE 54th Street and NE Four Mile Drive
 Ankeny, Iowa
CLIENT: Civil Design Advantage
ADDRESS: 4121 NW Urbandale Drive
 Urbandale, Iowa

SCOPE: Geotechnical Exploration - Mobilization with all-terrain drilling equipment, utility locations (Iowa One Call), drill and sample 9 soil borings 20 to 25 feet deep (205 feet total), laboratory testing, engineering analysis, and written report.

COMPENSATION TERMS: Total cost for above scope of services will be \$8,750.00. Boring depths can be adjusted at a rate of \$26.00 per lineal foot. If the site is truck accessible and the farmer is not worried about rutting, then \$380.00 per day (2 days max) will be deducted from the above cost. Consultation subsequent to completion of report will be billed at current engineering rates. CDA to stake the boring locations at the site prior to utility locations and drilling, the costs of which are not included in the above fee.

REMARKS: Field exploration could be scheduled to be conducted within one to two weeks of receiving authorization, weather permitting. A verbal report of our findings and recommendations will be available one week after drilling, followed one to two weeks later with the written report. Location of private utilities and service lines (if any) are the owner's responsibility and should be properly marked prior to the drill crew arriving at the site. The City would be responsible to reimburse the farmer for any crop damage that may occur if the crops are planted prior to drilling.

Services covered by the Agreement will be performed in accordance with the GENERAL CONDITIONS stated on the following page and any attachments or schedules. This Agreement supersedes all prior agreements and understandings and may only be changed by written amendment executed by both parties.

PROPOSED BY ABE INC.

ACCEPTED FOR CLIENT

By: _____
 Stacy G. Brocka, P.E.
 Title: Principal Engineer
 Date: April 26, 2023

By: _____

 Title: _____
 Date: _____
 Printed Name

PLEASE SIGN AND RETURN ACCEPTANCE AGREEMENT TO OUR OFFICE, THANK YOU!

1. PARTIES AND SCOPE OF WORK: Allender Butzke Engineers (hereinafter referred to as "ABE") shall perform the work as set forth in ABE's proposal, the client's acceptance thereof if accepted by ABE and these General Conditions. "Client" refers to the person or business entity ordering the work to be done by ABE. If the client is ordering the work on behalf of another, the client represents and warrants that the client is the duly authorized agent of said party for the purpose of ordering and directing said work. Unless otherwise stated in writing, the client assumes sole responsibility for determining whether the quantity and the nature of the work ordered by the client is adequate and sufficient for the client's intended purpose. Client shall communicate these General Conditions to each and every third party to whom the client transmits any part of ABE's work. ABE shall have no duty or obligation to any third party greater than that set forth in ABE's proposal, client's acceptance thereof and these General Conditions. ABE may issue a third party reliance letter to a party the client identifies in writing provided ABE solely determines that the report is still reliable and that the third party, its successors, assigns, and agents agree in writing to these General Conditions and agree to pay ABE the greater of either 10 percent of the contract amount or \$250.00 for issuing the reliance letter. The ordering of work from ABE shall constitute acceptance of the terms of ABE's proposal and these General Conditions.

2. TESTS AND INSPECTIONS: Client shall cause all tests and inspections of the site, materials and work performed by ABE or others to be timely and properly performed in accordance with the plans, specifications and contract documents and ABE's recommendations. No claims for loss, damage or injury shall be brought against ABE by client or any third party unless all tests and inspections have been so performed and unless ABE's recommendations have been followed. Client agrees to indemnify, defend and hold ABE, its officers, employees and agents harmless from any and all claims, suits, losses, costs and expenses, including, but not limited to, court costs and reasonable attorney's fees in the event that all such tests and inspections are not so performed or ABE's recommendations are not so followed except to the extent that such failure is the result of the negligence, willful or wanton act or omission of ABE, its officers, agents or employees, subject to the limitation contained in paragraph 9.

3. SCHEDULING OF WORK: The services set forth in ABE's proposal and client's acceptance will be accomplished in a timely, workmanlike and professional manner by ABE personnel at the prices quoted. If ABE is required to delay commencement of the work or if, upon embarking upon its work, ABE is required to stop or interrupt the progress of its work as a result of changes in the scope of the work requested by the client, to fulfill the requirements of third parties, interruptions in the progress of construction, or other causes beyond the direct reasonable control of ABE, additional charges will be applicable and payable by client.

4. ACCESS TO SITE: Client will arrange and provide such access to the site as is necessary for ABE to perform the work. ABE shall take reasonable measures and precautions to minimize damage to the site and any improvements located thereon as the result of its work or the use of its equipment; however, ABE has not included in its fee the cost of restoration of damage which may occur. If client desires or requires ABE to restore the site to its former condition, upon written request ABE will perform such additional work as is necessary to do so and client agrees to pay ABE the cost thereof.

5. CLIENT'S DUTY TO NOTIFY ENGINEER: Client represents and warrants that he has advised ABE of any known or suspected hazardous materials, utility lines and pollutants at any site at which ABE is to do work hereunder, and unless ABE has assumed in writing the responsibility of locating subsurface objects, structures, lines or conduits, client agrees to defend, indemnify and save ABE harmless from all claims, suits, losses, costs and expenses, including reasonable attorney's fees as a result of personal injury, death or property damage occurring with respect to ABE's performance of its work and resulting to or caused by contact with subsurface or latent objects, structures, lines or conduits where the actual or potential presence and location thereof was not revealed to ABE by client.

6. RESPONSIBILITY: ABE's work shall not include determining, supervising or implementing the means, methods, techniques, sequences or procedures of construction. ABE shall not be responsible for evaluating, reporting or affecting job conditions concerning health, safety or welfare. ABE's work or failure to perform same shall not in any way excuse any contractor, subcontractor or supplier from performance of its work in accordance with the contract documents. ABE has no right or duty to stop the contractor's work.

7. SAMPLE DISPOSAL: Unless otherwise agreed, test specimens or samples will be disposed immediately upon completion of the test. All drilling samples or specimens will be disposed thirty (30) days after submission of ABE's report.

8. PAYMENT: Client shall be invoiced as work is completed and reported, either periodically or at end of project. Client agrees to pay each invoice within

thirty (30) days of its receipt. Client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause in writing within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law), until paid. Client agrees to pay ABE's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees. ABE shall not be bound by any provision or agreement requiring or providing for arbitration of disputes or controversies arising out of this agreement, and provision wherein ABE waives any rights to a mechanics' lien, or any provision conditioning ABE's right to receive payment for its work upon payment to client by any third party. These General Conditions are notice, where required, that ABE shall file a lien whenever necessary to collect past due amounts. Failure to make payment within 30 days of invoice shall constitute a release of ABE from any and all claims which client may have, either in tort or contract, and whether known or unknown at the time.

9. STANDARD OF CARE: ABE'S SERVICES WILL BE PERFORMED, ITS FINDINGS OBTAINED AND ITS REPORTS PREPARED IN ACCORDANCE WITH THIS AGREEMENT AND WITH GENERALLY ACCEPTED PRINCIPLES AND PRACTICES. IN PERFORMING ITS PROFESSIONAL SERVICES, ABE WILL USE THAT DEGREE OF CARE AND SKILL ORDINARILY EXERCISED UNDER SIMILAR CIRCUMSTANCES BY MEMBERS OF ITS PROFESSION. STATEMENTS MADE IN ABE REPORTS ARE OPINIONS BASED UPON ENGINEERING JUDGMENT AND ARE NOT TO BE CONSTRUED AS REPRESENTATIONS OF FACT.

10. LIMITATION OF LIABILITY: SHOULD ABE OR ANY OF ITS PROFESSIONAL EMPLOYEES BE FOUND TO HAVE BEEN NEGLIGENT IN THE PERFORMANCE OF ITS WORK, OR TO HAVE MADE AND BREACHED ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION OR CONTRACT, CLIENT, ALL PARTIES CLAIMING THROUGH CLIENT AND ALL PARTIES CLAIMING TO HAVE IN ANY WAY RELIED UPON ABE'S WORK AGREE THAT THE MAXIMUM AGGREGATE AMOUNT OF THE LIABILITY OF ABE, ITS OFFICERS, EMPLOYEES, AND AGENTS SHALL BE LIMITED TO \$50,000.

11. INDEMNITY: Subject to the foregoing limitations, ABE agrees to indemnify and hold client harmless from and against any and all claims, suits, costs and expenses including reasonable attorney's fees and court costs arising out of ABE's negligence to the extent of ABE's negligence. Client shall provide the same protection to the extent of its negligence. In the event that client or client's principal shall bring any suit, cause of action, claim or counterclaim against ABE, the party initiating such action shall pay to ABE the costs and expenses incurred by ABE to investigate, answer and defend it, including reasonable attorney's and witness fees and court costs to the extent that ABE shall prevail in such suit.

12. TERMINATION: This Agreement may be terminated by either party upon seven day's prior written notice. In the event of termination, ABE shall be compensated by client for all services performed up to and including the termination date, including reimbursable expenses, and for the completion of such services, records and reports as are necessary to place ABE's files in order and/or protect its professional reputation.

13. WITNESS FEES: ABE's employees shall not be retained as expert witnesses except by separate, written agreement. Client agrees to pay ABE's legal expenses, administrative costs and fees pursuant to ABE's then current fee schedule for ABE to respond to any subpoena.

14. HAZARDOUS MATERIALS: Nothing contained within this agreement shall be construed or interpreted as requiring ABE to assume the status of an owner, operator, generator, storer, transporter, treater or disposal facility as those terms appear within RCRA or within any Federal or State statute or regulation governing the generation, transportation, treatment, storage and disposal of pollutants. Client assumes full responsibility for compliance with the provisions of RCRA and any other Federal or State statute or regulation governing the handling, treatment, storage and disposal of pollutants.

15. PROVISIONS SEVERABLE: In the event any of the provisions of these General Conditions should be found to be unenforceable, it shall be stricken and the remaining provisions shall be enforceable.

16. ENTIRE AGREEMENT: This agreement constitutes the entire understanding of the parties, and there are no representations, warranties or undertakings made other than as set forth herein. This agreement may be amended, modified or terminated only in writing, signed by each of the parties hereto.



EXHIBIT 'D'

PO BOX 227
315 W Cherry St., Ste. 4, North Liberty, IA 52317
515.473.6256 · info@impact7g.com
www.impact7g.com

Professional Services Agreement (PSA)

Project:	Otter Creek Sewer – Phase 4		
Property:	Ankeny, Iowa	Date:	4/26/2023

Client:	Civil Design Advantage		
Contact:	Gary Reed		
Address:	4121 NW Urbandale Drive		
City/State/Zip:	Urbandale, Iowa 50322		
Phone:	515-369-4400		
Email:	GaryR@CDA-eng.com		

AGREEMENT made this twenty-sixth day of April, 2023, by and between the service provider, Impact7G, Inc. ("Impact7G") and Civil Design Advantage ("Client").

WHEREAS, the Client intends to engage the services of Impact7G to: provide professional environmental services.

WHEREAS, Impact7G agrees to provide said services pursuant to the terms of this Agreement.

NOW THEREFORE, the parties agree as follows:

1. **Project**

Impact7G agrees to complete a wetland delineation, threatened and endangered species preliminary survey, and provide wetland permitting and regulatory coordination services for an approximately 4000-foot length of proposed sanitary sewer project within Ankeny, Iowa.

2. **Scope of Services**

Wetland Delineation

A full wetland delineation will be completed during the growing season. A wetland delineation is typically considered valid by U.S. Army Corps of Engineers for a period of 5 years. Impact7G will identify existing wetlands and streams throughout the project area, documenting their vegetation communities, hydrology and soils using the routine onsite determination method defined in the U.S. Army Corps of Engineers Wetland Delineation Manual (Environmental Laboratory, 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region (USACE, 2010). All wetland areas and types will be documented to GIS with map, shapefile, and location information provided in digital formats. If field access allows, we will use a small ATV to navigate the site. The wetland investigation will include:

- Wetland Field Delineation:
 - Determine if the project will impact any of the following:
 - Hydric soils
 - Hydrophytic vegetation
 - Areas with wetland hydrology
 - Wetlands
 - Other Waters of the U.S. and/or the State (Streams, tributaries, ponds, other)
 - Survey wetland boundaries with a handheld GPS unit providing sub-meter accuracy.
 - Add survey information to GIS base map.
- Rapid Stream Assessment
 - Any stream or tributary waterways with potential for regulatory jurisdiction will be documented, including:
 - Stream type
 - Priority waters
 - Existing functional conditions
 - Stream classification indicators such as the Ordinary High Water Mark
- Wetland Delineation Report: The report shall include:
 - A narrative of work done and wetland areas/other waters found.
 - General and detailed maps showing the boundaries of the wetlands in relation to the proposed project.
 - Delineation data sheets.
 - GIS shapefile and/or georeferenced AutoCAD 2018 file of wetland areas and other waters.
 - Report content and format appropriate for regulatory submission and permitting related to Section 404, U.S. Clean Water Act and Section 401, Iowa Water Quality Certification.

Desktop Review for Threatened or Endangered Species

For any federal involvement, including the requirements of Section 404 wetland permitting, coordination is required with the agencies for possible impacts to Threatened and Endangered Species under the U.S. Endangered Species Act of 1973. This desktop review is intended for early identification of known species or habitat that may require additional review prior to permitting and construction.

- A request for Environmental Review for the project area will be submitted to Iowa Department of Natural Resources to ascertain the known presence of any protected species within the project vicinity.
- An official IPaC species list based on project area will be generated from the local U.S. Fish and Wildlife Service office through the USFWS ECOS website.
- A report documenting official lists and correspondence will be provided for use in project planning and environmental permitting.

Wetland Regulatory Coordination & Permitting (Nationwide or Regional General Permit)

- Impact7G will provide regulatory agency coordination and Client consultation regarding permitting impacts to potentially regulated waters of the U.S., if found to be present.
 - Coordination will involve direct communications with regulatory personnel to determine extent of surveys or other information required to move forward expeditiously and ultimately complete the permitting process.
 - Consultation will assist the client in identifying opportunities to avoid and minimize wetland impacts/permitting needs, while maximizing development objectives, and applying for applicable permits. This may include preparation and submittal of a Joint Application to Iowa DNR and U.S. Army Corps of Engineers for wetland mitigation

including a wetland mitigation plan that utilizes wetland mitigation bank credits, if needed, to offset proposed wetland impacts.

- Note: If an Individual Permit (as opposed to a Nationwide Permit or Regional General Permit) is required, Impact7G will provide coordination services on an hourly basis plus expenses beyond the contract amount herein. A max estimated cost will be provided upon client request. Typical services cost range for an individual permit is \$5,000 - \$25,000.

Assumptions:

- 1) Waters of the U.S. have not been previously impacted as part of the proposed project and the Client is not currently in violation of the Clean Water Act.
- 2) Wetland and T&E Field work is typically completed during the growing season from May 1 – October 1. If work must be completed outside of the growing season, findings may be considered preliminary until an additional site visit (beyond contract scope) can be completed during the growing season for verification of dominant vegetation, per USACE requirements. Additional cost may apply.
- 3) Weather and field conditions will be adequate & appropriate for the completion of the plant and soil survey portion of the wetland delineation.
- 4) Project areas currently in use for agricultural row-crop production cannot be more than 3 feet in height at the time of delineation to be considered appropriate field conditions. The presence of row crops, or any other crops, greater than 3 feet in height may necessitate excessive field times beyond contract scope. Additional cost may apply.
- 5) Within the project area, the ground will be able to be penetrated by a standard shovel and/or 1-inch soil probe. Frost must be less than 1 inch thick and snow cover will be less than 3 inches.
- 6) Any compensatory wetland mitigation would be completed through the purchase of wetland mitigation credits.
- 7) Proposed cost for Regulatory Coordination Services is an estimate based on those typically required for successful application for a U.S. Army Corp of Engineers Nationwide or Regional General Permit, including application, regulatory coordination, and with any compensatory mitigation completed through purchase of wetland mitigation bank credits (credit cost not included). Client understands that the proposed professional services fee herein is an estimate and may need to be changed, upon Client approval, if additional coordination is required by the Client or regulatory agency requests.

Exclusions:

- 1) To minimize cost, no planning, kick-off, or other in-person meetings are budgeted for in this proposal.
- 2) Wetland Mitigation Plan: Mitigation is often required under Section 404 for stream impacts and wetland impacts greater than 1/10th of an acre. The extent of the mitigation required depends upon the type and the amount of wetland proposed to be impacted.
- 3) Development of permittee-responsible (onsite) wetland mitigation options.
- 4) Preparation or submission of the Iowa Joint Application or applications for State or Federal Permits, unless specified above.
- 5) A biological assessment. (BA)
- 6) A conservation/mitigation plan.
- 7) Additional Staking and/or Surveying.
- 8) Additional services related to application for a U.S. Army Corp of Engineers Individual Permit, such as a request for Approved Jurisdictional Determination (additional costs may apply).
- 9) Permittee Responsible Wetland Mitigation Plan or any other wetland mitigation planning not specifically included above: Mitigation is often required under Section 404 for stream impacts and

wetland impacts greater than 1/10th of an acre. The extent of the mitigation required depends upon the type and the amount of wetland proposed to be impacted.

10) Development of permittee-responsible (onsite) wetland mitigation options.

11) Purchase cost of mitigation credits is paid by Permittee to mitigation banks directly and is not a part of this proposal.

3. **Impact7G Responsibilities** Impact7G hereby agrees to:

- (i) Provide the professional services as set forth in this Agreement; and
- (ii) Perform said services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing at the same time and in the same or similar locality.

4. **Client Responsibilities** Client hereby agrees to:

- (i) Provide a knowledgeable representative of the Property, who will be available to coordinate all on-site work; and
- (ii) Provide unrestricted access to the Property for Impact7G to perform the services; and
- (iii) Provide copies of any previously completed reports that may be pertinent to this Project.

5. **Schedule**

The Project will commence immediately upon receipt of the executed Professional Services Agreement (PSA) from the Client. Impact7G anticipates being able to complete the project within approximately four weeks of receiving the PSA.

Tasks	Completion Period
Field Investigations	3 weeks
Wetland & T/E mapping/digital files provided	4 weeks
Wetland & T/E Report	4 weeks

6. **Project Cost, Payment and Termination**

The Client shall pay Impact7G the Lump Sum Cost for completed services for selected task(s) listed below in the performance of this Agreement. Direct costs such as communications, postage, routine printing and copying are not invoiced separately, but are included with the Lump Sum to streamline the accounting process and reduce overhead costs.

Tasks	Cost
Wetland Delineation	\$3,600.00
Desktop Review for Threatened or Endangered Species	\$600.00
Wetland Regulatory Coordination & Permitting (Nationwide or Regional General Permit)	\$1,500.00

Invoices for Impact7G's services will be submitted in monthly increments and/or upon project completion. Invoices shall be due and payable upon receipt. If any invoice is not paid within 30 days, Impact7G may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, suspend or terminate the performance of services.

7. **Work Product** All field notes, laboratory test data, calculations, estimates and other documents including all documents on electronic media prepared by Impact7G as instruments of service and/or used in the preparation of the final project deliverables shall remain the property of Impact7G.

All project documents including, but not limited to, plans and specifications furnished by Impact7G under this project are intended for use on this project only. Any reuse, without specific written verification or adoption by Impact7G, shall be at the Client's sole risk, and Client shall defend, indemnify and hold harmless Impact7G from all claims, damages and expenses including attorney's fees arising out of or resulting therefrom.

Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by Impact7G, and Impact7G makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall Impact7G be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

Because electronic file information can be easily altered, corrupted, or modified by other parties, either intentionally or inadvertently, without notice or indication, Impact7G reserves the right to remove itself from its ownership and/or involvement in the material from each electronic medium not held in its possession. Client shall retain copies of the work performed by Impact7G in electronic form only for information and use by Client for the specific purpose for which Impact7G was engaged. Said material shall not be used by Client or transferred to any other party, for use in other projects, additions to this project, or any other purpose for which the material was not strictly intended by Impact7G without Impact7G's expressed written permission. Any unauthorized use or reuse or modifications of this material shall be at Client's sole risk. Furthermore, the Client agrees to defend, indemnify, and hold Impact7G harmless from all claims, injuries, damages, losses, expenses, and attorney's fees arising out of the modification or reuse of these materials.

8. **Project Site** The Client agrees to use good faith efforts to maintain a safe Project site for Impact7G staff and, as applicable, subcontractors and assigns. Such good faith efforts shall include, but not exhaustive, ensuring that Project site is free and clear of any imminent hazards that pose a direct and immediate danger to any such individual potentially affected.

9. **Claims and Disputes** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or Impact7G. Impact7G's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against Impact7G because of this Agreement or the performance or nonperformance of services hereunder. The Client and Impact7G agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

The Client shall make no claim for professional negligence, either directly or in a third party claim, against Impact7G unless the Client has first provided Impact7G with a written certification executed by an independent professional currently practicing in the same discipline as Impact7G and licensed in the State in which the claim arises.

10. **Limited Liability** The Client agrees, to the fullest extent permitted by law, to limit the liability of Impact7G and Impact7G's officers, directors, partners, employees, shareholders, owners and subconsultants to the Client for any and all claims, losses, costs, damages of any nature whatsoever

or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of Impact7G and its officers, directors, partners, employees, shareholders, owners and subconsultants to all those named shall not exceed \$50,000. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

11. **Mediation** In an effort to resolve any conflicts that arise during the project or following the completion of the project, the Client and Impact7G agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. The Client and Impact7G further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

12. **Attorney's Fees** If litigation arises for purposes of collecting fees or expenses due under this Agreement, the Court in such litigation shall award reasonable costs and expenses, including attorney fees, to the prevailing party. In awarding attorney fees, the Court shall not be bound by any Court fee schedule, but shall, in the interest of justice, award the full amount of costs, expenses, and attorney fees paid or incurred in good faith.

13. **Controlling Law** This Agreement shall be construed and enforced in accordance with the laws of the state of Iowa.


14. **Assignment** Neither the Agreement nor any of the rights or obligations arising under the Agreement may be assigned without prior written consent.

This agreement is approved and accepted by the Client and Impact7G upon both parties signing and dating the agreement. The effective date of the agreement shall be the last date entered below.

Civil Design Advantage

Impact7G, Inc.

Accepted by: _____

Project Manager:  _____

Printed/
Typed Name: _____

Printed/
Typed Name: Will Downey, PWS

Title: _____

Date: 4/26/2023

Date: _____

Project Location Map

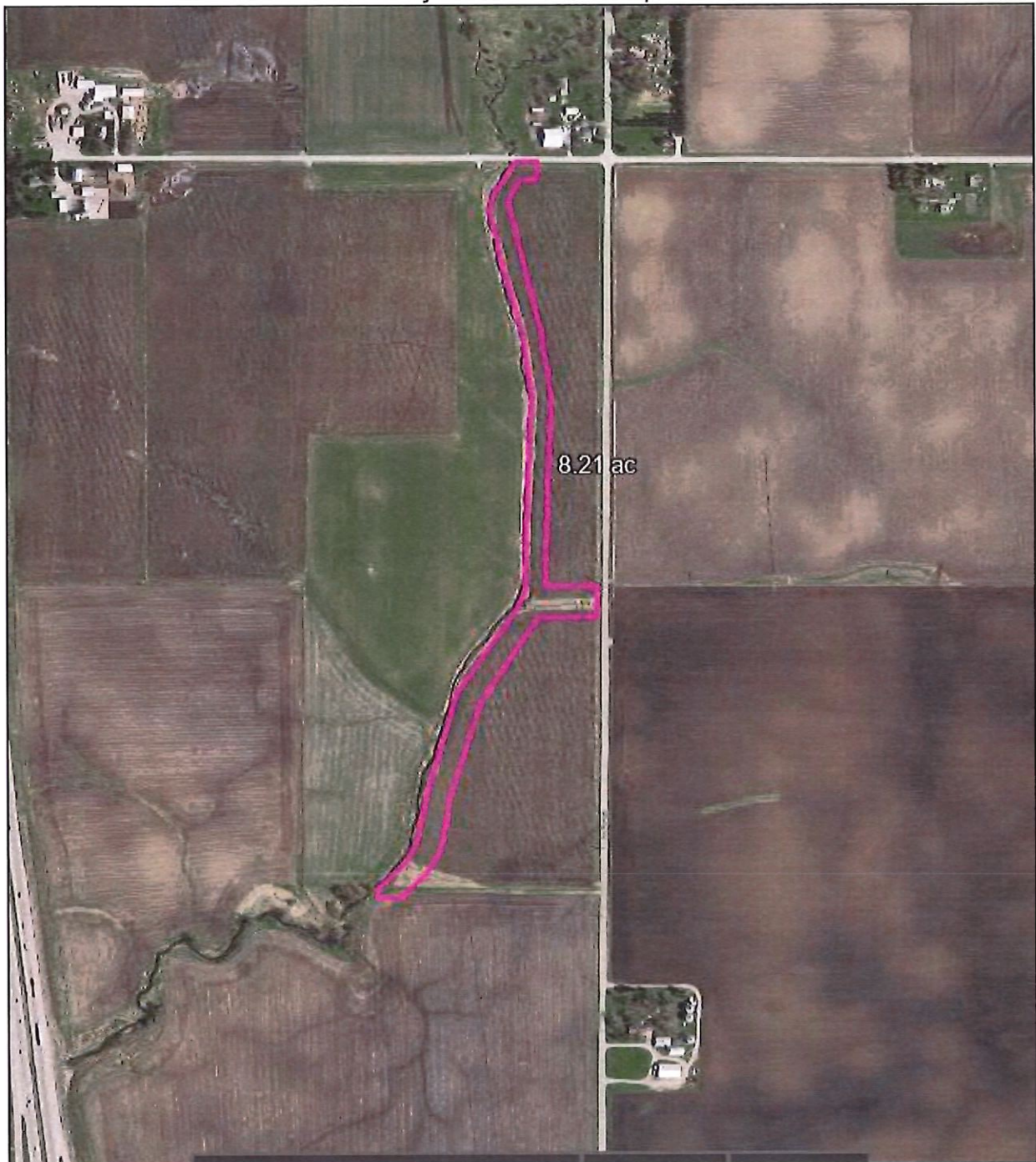


Exhibit “E”

Additional Services

The following is a list of services not included in the current scope of services or compensation. This list is provided to further define the agreement scope. The list includes, but is not limited to:

- Phase I Environmental Site Assessment Services
- Additional Topographic or Boundary Survey other than specified
- Wetland Mitigation Services
- Monitoring of a Storm Water Pollution Prevention Plan (SWPPP)
- Submittal/Permitting Fees
- Subdivision Platting
- Site Plan Preparation
- Traffic Studies
- Structural Engineering
- Lift Station Design
- Significant/Global Slope Stability Design
- Technical Specification Preparation (Refer to SUDAS)
- Franchise Utility Design
- Color Renderings
- Construction Related Services
- Attendance at Pre-Construction Meeting
- Shop Drawing Review
- Construction Staking
- Construction Administration
- Construction Observation
- Extra Service items identified within sub-consultant agreements

