



Greenfield Engineering & Planning

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November 12, 2024

Board of Public Works and Safety
10 S. State Street
Greenfield, IN 46140

Re: Riley Arts Trail (INDOT Contract R-41318)
Status of fuel tank removal and remediation with 3 Pro Environmental, LLC

Dear Members,

Greenfield is having INDOT construct the Riley Literary Trail (Agreement dated 11/17/2020). On the south side of E. North Street (between State Road 9 and East Street), a tank in the City's right-of-way was uncovered by the contractor. The tank was found to be an abandoned fuel tank that may have served 2 E. Main Street. On October 22, 2024, the Board of Public Works authorized Staff to execute an agreement with 3Pro Environmental, LLC (Tipton, IN) to address this issue. The attached agreement was executed on October 28, 2024.

The tank was found to be about 32 inches in diameter and approximately 29 feet long. The contents of the tank were vacuumed and properly transported and disposed to Southside Landfill (Indianapolis). The top of the tank was removed but the hull of the tank was left in place due to adjacent utilities. 8.5 cubic yards of flowable fill was placed in the hull. Several soil borings were collected on November 5, 2024 down to a depth of 22-feet and no groundwater was encountered. It appears that the west end was leaking and questionable soils are in that area. Analytics have been sent to the lab and IDEM will determine closure pending review of the analytics. IDEM may/may not have additional requirements for the City. It is anticipated that a worst-case scenario would be restrictions over this area- ie no daycare to be constructed over this area. Regardless, a no further action (NFA) is expected in 60-90 days.

It is apparent that previous AT&T and Power/Light projects encountered this tank and should have been addressed at that time.

The unit price costs are expected to total less than \$30,000 and Staff is using Stormwater drainage repair funds (410) to address this issue at no cost to the trail construction.

Suggested motion to acknowledge a signed Master Services Agreement with 3 Pro Environmental, LLC to address a storage tank located at North and Main Street in Greenfield dated October 28, 2024.

A handwritten signature in blue ink that reads "Glen E. Morrow".

Glen E. Morrow, PE
City Engineer

MASTER SERVICES AGREEMENT

This Master Services Agreement (the “**Agreement**”) is entered into between **3 PRO Environmental, LLC**, an Indiana domestic limited liability company located at 7346 W Division Rd Tipton, Indiana 46072 (“**3 PRO**”) and City of Greenfield located at Greenfield Indiana (“**Customer**”). This Agreement shall govern the provision by 3 PRO of certain services described in one or more Statement of Work(s) (each a “**SOW**”).

1. **Scope of Services.** 3 PRO will provide Customer with services as set forth in a SOW (collectively, the “**Services**”), the form of which is set forth in Exhibit A hereto. If the parties define deliverables in a SOW (the “**Deliverables**”), 3 PRO will provide such Deliverables in material conformance with the SOW. 3 PRO shall be responsible for maintaining, at its own expense any necessary equipment and supplies.

2. **Statements of Work.** Each SOW entered into by the parties shall reference this Agreement and shall be incorporated as part of this Agreement; provided, however, the terms of this Agreement shall take precedence in the event of any conflict between the SOW and this Agreement to the extent necessary to resolve any such conflict. Each party will consider and negotiate in good faith any changes to a SOW that are requested in writing by the other party; however, any modification to the scope or any other element of a SOW must be agreed in writing between the parties.

3. **Acceptance.**

(a) Environmental hazard cleanup and services that fall under Indiana Department of Environmental Management. When 3 PRO believes it has appropriately completed the SOW, it shall provide a Closure Report to the appropriate party(ies) based on its professional judgment. If the appropriate party is the Indiana Department of Environmental Management (“**IDEM**”), Customer agrees that IDEM’s acceptance of a Closure Report shall satisfy Customer and Customer shall accept. If IDEM does not initially accept and rejects the Closure Report, 3 PRO will promptly address the concerns specified by IDEM. When it believes that it has made the necessary corrections, 3 PRO will again deliver the Closure Report to IDEM and the acceptance/rejection/correction provisions above shall be reapplied until the Deliverable is accepted. Customer may only reject the Deliverable if IDEM does not accept the Closure Report even after 3 PRO completes additional work and 3 PRO provides written statement that it will not do further work to seek such approval.

b. Services that do not fall under IDEM. (a) When 3 PRO believes it has appropriately completed a Deliverable, 3 PRO will notify Customer. Customer will accept or reject the Deliverable within seven (7) days after delivery. Failure to give notice of acceptance or rejection within that period will constitute acceptance. Customer may reject the Deliverable only if the Deliverable objectively fails to meet the requirements stated in the applicable SOW. If Customer rejects the Deliverable, 3 PRO will promptly correct the failures properly specified in the rejection notice. When it believes that it has made the necessary corrections, 3 PRO will again deliver the Deliverable to Customer and the acceptance/rejection/correction provisions above shall be reapplied until the Deliverable is accepted or 3 PRO issues written notice that it will not do further work to seek such approval. Customer shall not unreasonably withhold such approval.

4. **Fees and Payment.**

(a) Fees and Payment. Customer accepts full financial responsibility and shall provide payment to 3 PRO for all fees based upon Services and Deliverables as outlined in a SOW. Such fees shall be invoiced as set forth in the applicable SOW and paid net 30 days from receipt of invoice. Customer acknowledges and agrees that Customer is responsible for full payment irrespective of whether her/his/its insurance company provides coverage or issues full, partial, or no payment.

5. **Ownership and Rights.**

Licenses from Customer to 3 PRO. Customer hereby grants to 3 PRO:

(a) Premises Access. If any part of the Service shall occur on privately-owned property, a temporary license access said property to perform the Services (“**Premises Access License**”) at the site/location as defined in the SOW (“**Site**.”) Customer warrants that it holds, or has properly obtained, the requisite legal rights to grant such license. The Premises Access License shall remain in effect until the SOW has been completed and all of 3 PRO’s equipment has been removed.

(b) Images. 3 PRO, from time to time, photographs or records the location and work performed for business purposes that may include but are not limited to records, continued improvement, training, and/or marketing. Customer hereby grants to 3 PRO permission to photograph, videotape, or otherwise capture the location and any physical objects/structures of the Site in which the SOW is performed ("3 PRO Work Images"). Customer further grants and/or acknowledges that 3 PRO shall hold full rights and ownership to any and all 3 PRO Work Images. Customer agrees that it has no expectation of privacy regarding the location during the term of this Agreement. Customer may request and shall receive at no cost from 3 Pro copies of photos, videotapes, or other methods to capture images of the location, physical objects/ structures, and any in progress or completion depictions.

6. (a) **Warranties; Disclaimers.** 3 PRO warrants that: The Services will be performed in a professional and workmanlike manner,
(b) All of 3 Pro's personnel have authorization to work in the United States.
(c) Disclaimer. TO THE MAXIMUM

EXTENT PERMITTED BY APPLICABLE LAW BUT EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, (1) THE SERVICES AND DELIVERABLES ARE PROVIDED "AS-IS"; (2) 3 PRO MAKES NO ADDITIONAL WARRANTY, CONDITION, REPRESENTATION, UNDERTAKING OR GUARANTY OF ANY KIND TO THE OTHER PARTY, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, (3) EACH PARTY HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS, REPRESENTATIONS, UNDERTAKINGS AND GUARANTIES, INCLUDING, WITHOUT LIMITATION, ANY WITH RESPECT TO TITLE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AND (4) 3 PRO'S LIABILITY UNDER ANY IMPLIED OR STATUTORY WARRANTY, CONDITION, REPRESENTATION, UNDERTAKING OR GUARANTY WHICH CANNOT BE LEGALLY EXCLUDED IS LIMITED IN RESPECT OF THE SERVICES TO SUPPLYING THE SERVICES AGAIN OR PAYING THE COST OF SUPPLYING THE SERVICES AGAIN.

7. **LIMITATION OF LIABILITY.** (a) Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL 3 PRO'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM COMPANY HEREUNDER DURING THE THIRTY

(30) DAYS PRIOR TO THE DATE ON WHICH SUCH CLAIM OR CAUSE OF ACTION AROSE.

(b) Exclusion of Consequential and Related Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL 3 PRO HAVE ANY LIABILITY TO THE OTHER COMPANY OR TO ANY THIRD PARTY FOR ANY LOST PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY OTHER INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. 3 PRO SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY LOSS, DAMAGE OR INCONVENIENCE SUFFERED BY THE OTHER PARTY OR BY ANY THIRD PERSON, TO THE EXTENT THAT SUCH LOSS, DAMAGE OR INCONVENIENCE IS CAUSED BY THE FAILURE OF THE OTHER PARTY TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT.

8. **Indemnification.** Each party shall indemnify, defend and hold each other harmless. 3PRO, its officers, employees and agents, or subcontractors harmless from and against any and all liabilities, costs, losses, damages and expenses (including reasonable attorneys' and experts' fees and expenses) in any and all legal actions brought against Customer arising out of (a) a claim that the Services or Deliverables infringe or misappropriate any property right of a third party; (b) a claim of injury stemming from or related to the accident or event creating the need for Services or the condition of the Site at which Services are to be performed. Customer will reimburse 3 PRO for any fees and expenses as they are incurred; or (c) Customer's breach of this Agreement. This provision shall survive the expiration or earlier termination of this agreement.

9. **Term and Termination.**

(a) **Term.** This Agreement commences on the date of the first SOW between the parties ("**Effective Date**") and, unless terminated earlier pursuant to the terms of this Agreement, shall continue in force until the later to occur of (1) all Statements of Work between the parties being completed or terminated and (2) written notice by 3 PRO of its intent to terminate this Agreement pursuant to Section 8(b).

Termination. 3 Pro or the customer may terminate this agreement with cause at others convenience upon written notice. will pay 3 PRO all fees and expenses related to services performed and/or costs incurred during prior to termination as specified.

10. **3 PRO Personnel.**

(b) **Qualifications.** 3 PRO will provide experienced and qualified personnel to perform the Services. At all times during the term of the Agreement, 3 PRO will maintain suitable resources and competent and knowledgeable personnel to perform the Services and its obligations under this Agreement. All 3 PRO employees and/or contractors who perform work under this Agreement shall have training that meets or exceeds Occupational Safety and Health Administration standards.

(c) **Standards of Conduct.** 3 PRO will notify each of its personnel performing Services of the requirements of this Agreement.

11. **Attorneys' Fees.** In the event a 3 PRO or any of its Affiliates brings any action to enforce or protect any of its rights under this Agreement and prevails, 3 PRO shall be entitled to recover, in addition to its damages, its reasonable attorneys' fees and costs incurred in connection therewith. Customer has the right to recover, in addition, its damages, its reasonable attorney's fees and costs incurred in connection therewith as well.

12. **Governing Law and Jurisdiction.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision or rule (whether of the State of Indiana or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Indiana. Any legal claim, suit, action or proceeding arising out of this Agreement or the matters contemplated hereunder or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of Indiana without giving effect to any choice or conflict of law provision or rule and shall be instituted exclusively in the federal courts of the United States in the State of Indiana in each case located in the city and county of Hancock and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or forum non conveniens. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) and the Uniform Computer Information Transactions Act (UCITA) in any form that it may be adopted are specifically excluded from and will not apply to this Agreement.

13. **General.**

(1.1) **Survival.** The following provisions shall survive termination of this Agreement: Sections titled "Fees and Payment," "Licenses from Customer to 3 PRO," "Warranties; Disclaimers," "Limitation of Liability," "Indemnification," "Attorneys' Fees," "Survival," and "General Provisions."

(a) **Notices.** Notices to be given or submitted by either party to other pursuant to this Agreement shall be in writing and directed to the address in the preamble to this Agreement or otherwise provided to the other party in writing and shall be deemed to have been given (i) when delivered by hand (with written confirmation of receipt), (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested) or by certified or registered mail, return receipt requested, postage prepaid or (iii) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient.

(d) **Complete Agreement.** This Agreement, together with any SOWs, constitutes the sole and entire agreement between the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument. Each party agrees that any terms and conditions of any purchase order or other instrument issued by 3 PRO in connection with the Agreement that are in addition to or inconsistent with the terms and conditions of this Agreement shall be of no force or effect.

(c) **Modification.** This Agreement may only be amended, modified or supplemented by an agreement in writing by non-preprinted agreements clearly understood by both parties to be an amendment and signed by each party hereto.

(d) **No Waiver.** No waiver by either party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further

exercise thereof or the exercise of any other right, remedy, power or privilege.

(e) **Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be illegal, unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable, but shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

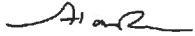
(f) **Assignment and Successors.** 3 PRO may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Customer's consent. This Agreement shall be binding upon and inure to the benefit of each party and their respective successors and permitted assigns.

(g) **Force Majeure.** Except for performance of a payment obligation, neither Party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, epidemics or pandemics, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond its reasonable control. In the event any of the foregoing events results in 3 PRO not being able to provide the Services for a period of more than ninety (90) days, then either Party may terminate the Agreement upon written notice to the other Party.

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of Customer by its duly authorized officer.

3 Pro Environmental, LLC

[insert Customer Name]



By _____

By _____

Alan Perry
Name _____

Name _____

President
Title _____

Title _____

10/16/24
Date _____

Date _____

Attachments

Exhibit A (Statement of Work)

**Exhibit A
STATEMENT OF WORK**

This Statement of Work (“SOW”) is entered into pursuant to and incorporates herein by reference the terms and conditions of the Master Services Agreement, entered into as of the 16 day of October, 2024 (the “Agreement”), by and between **3 PRO Environmental, LLC**, an Indiana domestic limited liability company located at 7346 W Division Rd Tipton, Indiana 46072 (“3 PRO”) and City of Greenfield a Municipality located at Greenfield Indiana (“Customer”). This Agreement shall govern the provision by 3 PRO of certain services described in one or more Statement of Work(s) (each a “SOW”).

1. **Start Date:** 10/16/24 (“Start Date”)
End Date: 1/1/25
2. Address for Site/Location of Services: North and Main street in Greenfield
3. **Deliverables Schedule:** 3 PRO shall achieve the following project milestones and/or deliver the completed Deliverables in accordance with the following schedule:

Phase	Brief Description	*Estimated Time Period
0	AST removal or closure	30 days
1		
2		

*Customer acknowledges and agrees that these are estimates by 3 PRO, and 3 PRO may adjust these estimates in its sole reasonable discretion.

4. **Fees and Payment.** In consideration for delivering the Deliverables and for 3 PRO carrying out its obligations hereunder, Customer shall pay to 3 PRO, in U.S. dollars the amount charged (“Fee”) for the SOW.
5. **Invoicing.** 3 PRO shall invoice Customer for the Fee upon 3 Pro's delivery of the Deliverable. Customer shall pay each such invoice in accordance with the Agreement or within 30 days or be subject to 15% late fee per week

***Special Conditions (if any):**

Any changes or additions to the tasks or deliverables require an amendment to this SOW signed by the Parties or a new SOW signed by the Parties.

Other: _____

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their duly authorized representatives.

3 PRO Environmental, LLC

City of Greenfield

By: Alan Perry

By: Glen E. Morrow

Name: Alan Perry

Name: Glen E. Morrow

Title: President

Title: CITY ENGINEER

Date: 10/16/24

Date: 10/28/2024