

**AGREEMENT BETWEEN  
OWNER AND ENGINEER**

**THIS AGREEMENT** is dated as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2020, by and between

City of Lebanon  
401 South Meridian Street  
Lebanon, IN 46052

hereinafter called the **OWNER** and

BUTLER, FAIRMAN and SEUFERT, INC.  
8450 Westfield Boulevard, Suite 300  
Indianapolis, Indiana 46240

hereinafter called the **ENGINEER**.

**WITNESSETH**

**WHEREAS** the **OWNER** requires professional engineering services in connection with the following described project:

Grant Street Reconstruction Phase 2 (the "Project")

**WHEREAS**, the **OWNER** wishes to engage the **ENGINEER** to provide certain project development services pertaining thereto; and

**WHEREAS**, the **ENGINEER** represents that it has sufficient qualified personnel and equipment and is capable of performing the professional engineering services described herein; is a corporation qualified to do business in the State of Indiana; and the services described herein will be performed under the supervision of a professional engineer licensed to practice in the State of Indiana under IC 25-31, and there are no obligations, commitments, restrictions or impediments of any kind applicable to **ENGINEER** that will limit or prevent performance of the professional engineering services.

The **OWNER** and the **ENGINEER**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**SECTION I    SERVICES BY ENGINEER**

The services to be provided by the **ENGINEER** under this Agreement are set out in Appendix "A", attached to this Agreement, and made an integral part hereof (the "Services").

## **SECTION II INFORMATION AND SERVICES TO BE FURNISHED BY OWNER**

The information and Services to be furnished by the **OWNER** are set out in Appendix "B", attached to this Agreement, and made an integral part hereof.

## **SECTION III NOTICE TO PROCEED AND SCHEDULE**

The **ENGINEER** shall begin the work to be performed under this Agreement upon receipt of the written notice to proceed from the **OWNER**, and shall deliver the work to the **OWNER** in accordance with the schedule contained in Appendix "C", attached to this Agreement, and made an integral part hereof. The **ENGINEER** shall not begin work prior to the date of the notice to proceed.

This Agreement shall be applicable to all assignments authorized by the **OWNER** and accepted by the **ENGINEER** subsequent to the date of execution and shall be effective as to all assignments authorized.

## **SECTION IV COMPENSATION**

The **ENGINEER** shall receive payment for the work performed under this Agreement as set forth in Appendix "D", attached to this Agreement, and made an integral part hereof.

## **SECTION V MISCELLANEOUS PROVISIONS**

Miscellaneous Provisions are set out in Appendix "E", attached to this Agreement, and made an integral part hereof.

## **SECTION VI GENERAL PROVISIONS**

### **1. Work Office**

The **ENGINEER** shall perform the work under this Agreement at the following office(s):

8450 Westfield Boulevard, Suite 300

### **2. Employment**

During the period of this Agreement, the **ENGINEER** shall not engage, on a full or part time or other basis, any personnel who remain in the employ of the **OWNER**.

### **3. Term and Termination**

This Agreement will commence as of the date executed by the **OWNER** and will thereafter continue in effect until terminated. **OWNER** may, at any time, terminate this Agreement for its convenience. Upon receipt of written notice of termination, **ENGINEER** shall cease operations as directed by **OWNER** in the notice. Provided **ENGINEER** is not in default under this Agreement, if this Agreement is terminated, **ENGINEER** shall receive, as full compensation, its actual, necessary, and reasonable costs for all Services performed on **OWNER's** behalf up to the date of such notification of termination.

4. **Subletting and Assignment**

The **ENGINEER** and its subcontractors, if any, shall not assign, sublet, subcontract, or otherwise dispose of the whole or any part of the work under this Agreement without prior written consent of the **OWNER**. Consent for such assignment shall not relieve the **ENGINEER** of any of its duties or responsibilities hereunder.

5. **Use and Ownership**

All reports, tables, figures, drawings, specifications, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by the **ENGINEER** as instruments of service (the "Project Documents") shall be delivered to **OWNER** for the use of **OWNER**. **ENGINEER** shall have the right to retain originals of all Project Documents and drawings for its files. All Project Documents resulting from the Services provided under this Agreement shall be and become the sole property of **OWNER**, and **OWNER** is vested with all rights of ownership therein, including, without limitation, all copyrights (both statutory and common law), all of which are hereby assigned by **ENGINEER** to **OWNER** in consideration of the compensation paid by **OWNER** to **ENGINEER** hereunder. All of **OWNER's** rights hereunder shall survive completion of the Services provided under this Agreement and any cancellation, termination or expiration of this Agreement.

The **ENGINEER** will retain all pertinent records relating to the Services performed for a period of five (5) years following performance of work, during which period the records will be made available to the **OWNER** at all reasonable times.

The **ENGINEER** agrees that the **OWNER** is not required to use any plan, report, drawing, specifications, advice, map, document or study prepared by the **ENGINEER** and the **ENGINEER** waives all right of redress against the **OWNER** if the **OWNER** does not utilize same. Any modification, amendment, misuse of any of the **ENGINEER's** work by the **OWNER** or actions that disregard the **ENGINEER's** recommendations to the **OWNER** shall release the **ENGINEER** from any and all liability in connection with such work modified, amended or misused thereafter and the **OWNER** shall not use the **ENGINEER's** name thereon without the expressed approval of the **ENGINEER**.

6. **Confidential and Proprietary Information**

**OWNER** may have a proprietary or confidential interest in technical information which it discloses to **ENGINEER** in connection with the Services provided under this Agreement. **ENGINEER** shall not, without **OWNER's** prior written consent, during the term of this Agreement or thereafter, disclose to any third party or persons outside its organization or use, other than as provided herein, any such information provided by **OWNER** which is identified in writing by **OWNER** as confidential at the time of disclosure by **OWNER** to **ENGINEER**. Upon completion of the Services or termination of this Agreement, all confidential information (including but not limited to written or electronic materials) furnished by **OWNER** shall be returned to **OWNER** intact. Each party shall handle information provided by the other party in accordance with good business ethics. The obligations of **ENGINEER** concerning confidentiality, as provided under this paragraph, shall survive completion of the Services provided under this Agreement and any cancellation, termination or expiration of this Agreement.

7. **Compliance with State and Other Laws**

The **ENGINEER** specifically agrees that in performance of the Services herein enumerated by **ENGINEER** or by a subcontractor or anyone acting on behalf of either, that each will comply with all State, federal, and local statutes, ordinances, rules, regulations, codes and orders applicable to the Services to be rendered by the **ENGINEER**.

8. **Professional Responsibility**

The **ENGINEER** shall perform the Services on behalf of itself and **OWNER** in a manner consistent with professional and ethical standards of care, diligence, skill and best and highest standards exercised by professionals providing similar services, and in full compliance with all applicable governmental and professional laws, permits and regulations, and shall avoid any activity that could give even the appearance of impropriety. Notwithstanding the foregoing, if such professional standard, as applied to **ENGINEER's** performance of the Services, permits a lower or less stringent standard of care, prudence and skill than that applicable to the reasonably prudent person, such professional standard shall be raised to that required of the reasonably prudent person. In addition to, but not in limitation of, the foregoing, **ENGINEER's** Services shall be free from negligence. **ENGINEER** shall furnish efficient business administration and superintendence and perform the Services with reasonable diligence and expediency consistent with sound professional practices.

**ENGINEER** shall, at its own cost, correct and make good any errors or omissions in its Services as soon as **ENGINEER** becomes or is made aware of any such errors or omissions. Should **ENGINEER** refuse or neglect to correct or make good any such errors or omissions within a reasonable time after receiving notice thereof, then **OWNER** shall be entitled to have such errors or omissions corrected at the expense of **ENGINEER**. This obligation of **ENGINEER** is in addition to, and not in substitution for, any other liability of **ENGINEER** for errors and omissions in the Services and any other remedy of **OWNER** therefor hereunder and at law or in equity.

In addition, the **ENGINEER** will be responsible to the **OWNER** for damages caused by its negligent conduct during **ENGINEER's** activities at the Project site or in the field.

The **ENGINEER** shall not be responsible for errors, omissions or deficiencies in the designs, drawings, specifications, reports or other Services of the **OWNER** or other consultants, including, without limitation, surveyors and geotechnical engineers, who have been retained by **OWNER**. The **ENGINEER** shall have no liability for errors or deficiencies in its designs, drawings, specifications and other Services that were caused, or contributed to, by errors or deficiencies (unless such errors, omissions or deficiencies were known or should have been known by the **ENGINEER**) in the designs, drawings, specifications and other Services furnished by the **OWNER**, or other consultants retained by the **OWNER**.

9. **Status of Claims**

The **ENGINEER** shall be responsible for keeping the **OWNER** currently advised as to the status of any known claims made for damages against the **ENGINEER** resulting from Services performed under this Agreement. The **ENGINEER** shall send notice of claims related to work under this Agreement to the **OWNER**.

10. **Insurance**

The **ENGINEER** shall provide at its own expense and maintain during the term of this Agreement insurance, from recognized and responsible insurers satisfactory to **OWNER**, covering **ENGINEER's** Services and activities under and in connection with this Agreement. Such insurance shall provide coverage of not less than the following:

(a) **General Liability (including automobile):** A comprehensive general liability policy providing bodily injury coverage, including death, for not less than \$1,000,000 coverage as to each occurrence and \$2,000,000 aggregate and \$1,000,000 property damage, with contractual liability recognizing the indemnities contained in this Agreement and completed operations for at least two (2) years.

(b) **Worker's Compensation:** Worker's Compensation and Occupational Disease insurance and such other employee benefit insurance as required by the laws of the State of Indiana.

(c) **Professional Liability:** Professional liability insurance covering claims, including, without limitation, bodily injury and property damage, arising out of errors and omissions by **ENGINEER** in rendering the Services under this Agreement, in the amount of \$1,000,000 each occurrence and \$1,000,000 aggregate, with a deductible amount of not more than \$20,000, with all coverage retroactive to the earlier of the date of this Agreement or commencement of the Services with respect to this Agreement, which coverage shall be maintained for a period of at least three (3) years after the date of final payment to **ENGINEER** for the Services under this Agreement.

(d) **Employer's Liability:** Employer's liability insurance with limits of not less than \$100,000 per accident, \$100,000 per disease and a \$500,000 policy limit on disease.

Notwithstanding any other provision of this Agreement to the contrary, should any policy required by this Agreement be cancelled or otherwise terminated before completion of the Services hereunder, **ENGINEER** shall exert all reasonable efforts to procure and maintain in force similar insurance from insurers satisfactory to **OWNER** and provide certificates of such insurance to **OWNER** upon **OWNERS's** written request. If **ENGINEER** is unable to obtain and maintain the required insurance coverage, then **OWNER** shall have the right to cancel this Agreement as provided for herein.

Before commencing any Services under this Agreement, **ENGINEER** shall deliver to **OWNER** a certificate evidencing all of the required insurance coverage, and providing that no such coverage shall be cancelled without at least thirty (30) days' prior written notice to **OWNER**. Upon request, **ENGINEER** shall cause **OWNER** and any other interested parties designated by **OWNER** to be named as an additional insured party under the aforesaid liability insurance policies.

11. **Status Reports**

The **ENGINEER** shall furnish a monthly Status Report to the **OWNER** by the fifteenth (15th) of each month.

12. **Changes in Work**

In the event that either the **OWNER** or the **ENGINEER** determine that a major change in scope, character or complexity of the work is needed after the work has progressed as directed by the **OWNER**, both parties in the exercise of their reasonable and honest judgment shall negotiate the changes and the **ENGINEER** shall not commence the additional work or the change of the scope of the work until a supplemental agreement is executed and the **ENGINEER** is authorized in writing by the **OWNER** to proceed.

13. **Delays and Extensions**

The **ENGINEER** agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the Services specified in this Agreement. Any such delays shall be compensated for by an extension of time for such period as may be determined by the **OWNER**, subject to the **ENGINEER's** approval. However, it being understood, that the permitting of the **ENGINEER** to proceed to complete any Services, or any part of them after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the **OWNER** of any of its rights herein.

14. **Abandonment**

Services may be terminated by the **OWNER** and the **ENGINEER** by thirty (30) days' notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If so abandoned, the **ENGINEER** shall deliver to the **OWNER** copies of all data, reports, drawings, specifications and estimates completed or partially completed along with a summary of the progress of the work completed within twenty (20) days of the abandonment. In the event of the failure by the **ENGINEER** to make such delivery upon demand, then and in that event the **ENGINEER** shall pay to the **OWNER** any damages sustained by reason thereof. The earned value of the work performed shall be based upon an estimate of the portions of the total Services as have been rendered by the **ENGINEER** to the date of the abandonment for all Services to be paid for on a lump sum basis. The **ENGINEER** shall be compensated for Services properly rendered prior to the effective date of abandonment on all Services to be paid on a cost basis or a cost plus fixed fee basis. The payment as made to the **ENGINEER** shall be paid as the final payment in full settlement and release for the Services hereunder.

15. **Non-Discrimination**

Pursuant to Indiana and federal law, the **ENGINEER** and **ENGINEER's** subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

16. **Employment Eligibility Verification.**

The **ENGINEER** affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien.

The **ENGINEER** 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. The **ENGINEER** is not required to participate should the E-Verify program cease to exist. Additionally, the **ENGINEER** is not required to participate if the **ENGINEER** is self-employed and does not employ any employees.

The **ENGINEER** shall not knowingly employ or contract with an unauthorized alien. The **ENGINEER** shall not retain an employee or contract with a person that the **ENGINEER** subsequently learns is an unauthorized alien.

The **ENGINEER** shall require its subconsultant, who perform work under this Contract, to certify to the **ENGINEER** 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. The **ENGINEER** agrees to maintain this certification throughout the duration of the term of a contract with a sub-consultant.

The **OWNER** may terminate for default if the **ENGINEER** fails to cure a breach of this provision no later than thirty (30) days after being notified by the **OWNER**.

17. **No Investment in Iran.**

As required by IC 5-22-16.5, the **ENGINEER** certifies that the **ENGINEER** is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Agreement and denial of future contracts, as well as an imposition of a civil penalty.

18. **Indemnification**

To the fullest extent permitted by applicable law, **ENGINEER** and its agents, partners, employees and subcontractors (collectively "Indemnitors") shall defend, indemnify and hold harmless **OWNER**, **OWNER's** representatives, agents, employees and contractors (collectively "Indemnitees") from and against all claims, liability, damages, losses, liens, causes of action, suits, judgments and expenses (including, without limitation, reasonable attorney fees) of any nature, kind or description (collectively "Liabilities") arising out of, caused by, or resulting from the negligent performance of the Services by the Indemnitors. The obligations contained in this Section shall survive termination of this Agreement. In the event more than one of the Indemnitors are connected with an accident or occurrence covered by this indemnification, then each of such Indemnitors shall be jointly and severally liable and responsible to the Indemnitees for indemnification and the ultimate responsibility among such Indemnitors for the loss and expense of any such indemnification shall be settled by separate proceedings and without jeopardy to any Indemnitee. The provisions of this Section shall not be construed to eliminate or reduce any other indemnification or right which **OWNER** or any of the Indemnitees has by law against **ENGINEER** or any of the Indemnitors.

19. **Successor and Assigns**

The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. **ENGINEER** may not assign or subcontract any portion of this Agreement or the services to be provided under this Agreement without the prior written approval of **OWNER**. Nothing contained in this Agreement shall create any contractual relationship between **OWNER** and any subcontractor of **ENGINEER**, but **ENGINEER** shall be fully responsible to **OWNER** for all acts and omissions of its subcontractors, their agents and employees, as **ENGINEER** is for the acts and omissions of all persons directly employed by **ENGINEER**.

20. **Supplements**

This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

21. **Governing Laws**

This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without regard to its principles of conflict of laws. All claims, disputes and other matters in controversy arising out of or related to this Agreement, or the performance or breach thereof, shall be decided in the Circuit or Superior Courts of Boone County, Indiana, and that such courts shall have sole and exclusive jurisdiction over the action or proceeding, unless agreed to otherwise, in writing, by the parties. In the event of a successful effort initiated by **OWNER** against **ENGINEER** for breach or default of this Agreement, **ENGINEER** shall be liable to **OWNER** for any and all costs of collection, including but not limited to, reasonable attorneys' and professional fees, court costs, costs of investigation and defense, accrued interest, and any other reasonable expenses incurred by the enforcement of such action.

22. **Severability of Invalid Provisions**

If any provision of this Agreement is held invalid, illegal or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable and binding on all parties. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

23. **Entire Understanding of Agreement**

This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior proposals, oral or written, all previous negotiations and all other communications and understandings with respect to the subject matter hereof.

24. **Independent Engineer**

In all matters relating to this Agreement, the **ENGINEER** shall act as an independent engineer. Neither the **ENGINEER** nor its employees are employees of the **OWNER** under the meaning or application of any federal or state laws or regulations and the **ENGINEER** agrees to assume all liabilities and obligations imposed in the performance of this Agreement. The **ENGINEER** shall not have any authority to assume or create obligations, expressed or implied, on behalf of the **OWNER** and the **ENGINEER** shall have no authority to represent as agent, employee, or in any other capacity than as set forth herein.

25. **Rights and Benefits**

The **ENGINEER's** Services will be performed solely for the benefit of the **OWNER** and not for the benefit of any other persons or entities.

26. **Disputes**

All claims, disputes, and other matters in question between the parties arising out of, or relating to, this Agreement or the breach thereof or the Services rendered by **ENGINEER** ("Dispute"), shall be resolved as follows by first conducting and negotiating each Dispute in good faith amongst **ENGINEER** and **OWNER** during the thirty (30) days after a notice of Dispute is provided to the other party. If negotiations are unsuccessful in resolving the Dispute, then the Dispute shall be submitted to good faith non-binding mediation before a single mediator selected jointly by the parties to the Dispute. The mediation shall be initiated by the aggrieved party making a written demand for non-binding mediation. This written demand shall specify in detail the facts of the Dispute and the relief requested and shall be submitted, within a reasonable time after the basis for the Dispute has arisen, to the party against whom the claim is brought. If the parties cannot agree to the selection of a mediator within thirty (30) days of the date of submission of the demand, the mediator shall be selected by such mediation service as the parties shall otherwise agree to retain, for good faith non-binding mediation. The mediator's fee shall be shared equally by the parties to the Dispute. Any Dispute between the parties that is not fully resolved by such mediation shall be decided by litigation in a court of competent jurisdiction in the State of Indiana, as provided herein.

27. **Headings**

Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

28. **Notices**

All notices required to be given under this Agreement shall be in writing, and shall be mailed by certified mail, return receipt requested, or deposited with a nationally recognized overnight delivery service, properly addressed to the party to be notified, at the address set forth below:

If to **OWNER**: City of Lebanon, Indiana  
401 South Meridian Street  
Lebanon, IN 46052  
Attention: Kevin Krulik, City Engineer

With a copy to: Mayor and Legal Counsel  
City of Lebanon, Indiana  
401 South Meridian Street  
Lebanon, IN 46052

If to **ENGINEER**: BUTLER, FAIRMAN and SEUFERT, INC.  
8450 Westfield Boulevard, Suite 300  
Indianapolis, IN 46240  
Attention: John W. Brand, P.E., President

29. **Force Majeure**

Notwithstanding anything to the contrary set forth herein, no party shall be liable for any failure to perform its obligations to the extent a delay in performing such obligations is due to acts of nature (including fire, flood, earthquake, storm, or other natural disaster, but not including weather conditions which could be reasonably anticipated), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, nationwide declared emergency concerning a pandemic, blockage, embargo, labor dispute, strike, lockout or interruption or failure of power sources; provided, however, no obligation shall be delayed under this Section unless notice of the event giving rise to the delay is provided to the other party within ten (10) days of the event first occurring. In such circumstances, the other party's failure to perform its obligations shall be excused for the period of days that such performance is delayed or prevented due to the Force Majeure event, and the deadlines for such observation, performance and satisfaction of its obligations under this Agreement, as applicable, shall be extended for the same period.

30. **Waiver of Contract Breach**

The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agree-

ment and shall not be construed to be a waiver of any provision, except for the particular instance.

31. **No Third Party Beneficiary**

All of the provisions of this Agreement are solely for the benefit of the parties hereto, and none of the other provisions of this Agreement shall inure to the benefit of any person not a party to the Agreement, and third parties shall have no rights hereunder.

32. **Construction and Interpretation**

The terms “hereof”, “herein” and “hereunder”, and words of similar import, are to be construed to refer to this Agreement as a whole, and not to any particular section, paragraph or provision, unless expressly so stated. All words or terms used in this Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and any other gender as the context may require. This Agreement is to be construed without regard to any presumption or rule requiring construction against the party causing such document to be drafted or prepared. The terms “person” and “persons” used herein shall include natural persons and corporations, partnerships (general and limited), limited liability companies, firms, associations, trusts, estates, bodies politic, political subdivisions and other entities and organizations.

33. **Authorization**

Each undersigned person signing on behalf of a party in a representative capacity certifies that: (i) he/she is fully empowered and duly authorized by any and all necessary action or consent required to execute and deliver this Agreement for and on behalf of said party; (ii) said party has full capacity, power and authority to enter into and carry out its obligations under this Agreement; and (iii) this Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms.

34. **Counterparts**

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

*[Signature Page to Follow]*

**IN WITNESS WHEREOF**, the **OWNER** and the **ENGINEER** have signed this Agreement in duplicate. One counterpart each has been delivered to the **OWNER** and the **ENGINEER**.

**ENGINEER:**  
**BUTLER, FAIRMAN and SEUFERT, INC.**

**OWNER:**  
**CITY OF LEBANON BOARD OF  
WORKS & PUBLIC SAFETY**

\_\_\_\_\_

Signature: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

ATTEST:

\_\_\_\_\_  
Tonya Thayer, Clerk Treasurer

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

## **APPENDIX "A"**

### **SERVICES BY ENGINEER**

#### **PROJECT DESCRIPTION**

The Grant Street Reconstruction Phase 2 involves the reconstruction of Grant Street from S.R. 32 (Indianapolis Avenue) to Washington Street. The work includes new pavement, curb and gutter, storm sewers, sidewalks, lighting, trees, and other incidental improvements.

This project is locally-funded, and will be developed and bid together with the Grant Street Reconstruction Project, Phase1, which is a federal-aid project.

#### **SCOPE OF WORK**

The CONSULTANT shall be responsible for performing the following activities:

##### **A. TOPOGRAPHIC SURVEY**

1. Field survey data shall be in conformance with the requirements of Title 865 IAC 1-12 et sequential and the Indiana Design Manual, Part III, Location Surveys.
2. As a minimum the survey will include locating all visible features necessary for the proper design of the proposed improvements within the existing and proposed future right-of-way. This shall be done to insure the most efficient design can be achieved which will minimize land acquisition and relocation costs. These features will include buildings, paved surfaces, shrubs, signs, poles, utilities, manholes, valves and meters, utility locations marked by others, trees equal to and larger than 12 inches and limits of heavily wooded areas.
3. Before field work commences, an IUPPS ticket will be submitted for utility locates along the project route. Any marks completed by the respective utilities or their locators will be tied into the survey and graphically shown on the finished product.
4. Sufficient elevation shots (Cross sections at 50-foot intervals maximum with any intermediate breaks included) will be taken so that 1-foot contours can be calculated from a created Digital Terrain Model. These contours will be included in the survey submittal.
5. The Field Survey will be integrated with the United States Public Land System and physical monumentation as necessary to acquire Right of Way for this project in accordance with Title 865 IAC 1-12 et sequential.
6. Deed research, property ownership and right of way determination will be completed to show the limits of property ownership on the topographic survey. Research at the Boone County offices or any other entity will be completed to facilitate the determination of these lines.

7. A survey centerline will be established, set and referenced in the field at a maximum interval of 1,300 feet. The design plans will reference this survey centerline so that the survey control can be used to establish the construction centerline.
8. Vertical control points (benchmarks) shall be set at a maximum interval of 1,300 feet.
9. A Location Control Route Survey Plat will be completed for the survey limits, where necessary for Right of Way Acquisition.
10. The survey will include approximately 2,200 feet along Grant St.

#### B. ENVIRONMENTAL SERVICES

All environmental services required for this project are included in the Grant Street Reconstruction Phase 1 design agreement.

#### C. ROADWAY DESIGN AND PLANS

1. The CONSULTANT shall prepare preliminary plans and preliminary estimates of cost, which shall be in accordance with the accepted standards for such work and in accordance with the following documents in effect at the time the plans or reports are submitted: Chapter 7 (Plan Preparation) of the "INDOT LPA Guidance Document for Local Federal-Aid Projects" (latest revision), INDOT 4R Design Standards, American Association of State Highway and Transportation Officials "A Policy on Geometric Design of Highways and Streets", Indiana Department of Transportation's Standard Specifications, Road and Bridge Memoranda and Road and Bridge Design Manuals except as modified by supplemental specifications and special provisions, if any, and shall be completed to the point required to fulfill the requirements for a Public Involvement, no further work shall be done on the plans, unless and until specifically directed by the OWNER.
2. Stage 1 Review Submission: The CONSULTANT shall submit Stage 1 Plans to the OWNER, for review and approval, including OWNER review meeting.
3. The CONSULTANT shall determine the need for Level 1 Design exceptions that will be required during the project development. All necessary documentation to request a formal Level 1 Design Exception shall be completed, plans and design calculations shall be prepared in accordance with the accepted standards for such work and in accordance with the following documents in effect at the time the Field Check Plans are distributed: "Indiana Department of Transportation Design Standards, Indiana Department of Transportation's Standard Specifications, Road and Bridge Memoranda and Road and Bridge Design Manuals except as modified by supplemental specifications and special provisions, if any.
4. Preliminary Field Check Plans and Meeting: The CONSULTANT shall prepare necessary information and conduct a Preliminary Field Check.

5. Stage 2 Review Submission: A Stage 2 submission will not be required for this project.
6. The CONSULTANT shall assist the OWNER in organizing and conducting a public meeting for the purpose of receiving input on design components, right-of-way impacts, and other concerns prior to plan finalization.
7. Stage 3 Submittal and Review: The CONSULTANT shall complete the final review plans (90%), special provisions, cost estimate, and all other necessary documents, reports and calculations. The cost estimate shall be prepared according to the current practices of the INDOT and shall include all items of work required for the complete construction of the work, including all temporary work necessary in connection therewith. The unit prices to be used shall be in accordance with the methods used by the INDOT. The CONSULTANT shall submit Stage 3 Plans to the OWNER for review and approval.
8. Final Tracing Submittal: The CONSULTANT shall submit to INDOT all required documentation for the Final Package Submission.
9. Bid Assistance: The CONSULTANT shall provide contract document and bid assistance to INDOT and the OWNER, including review of INDOT's Contract Information Book and addressing contractor inquiries.

#### D. UTILITY COORDINATION SERVICES

The CONSULTANT shall perform utility coordination which shall include the following in accordance with 105 IAC 13 "Utility Facility Relocation on Construction Contracts" for INDOT and federal-aid local projects:

1. Perform IUPPS 811 Design Ticket and area research to determine utilities in the area of the project.
2. Send out Initial Notice Letters for preliminary contact to all utilities, both public and private, to establish: a point of contact, the location of the utilities facilities within the field survey limits, and documentation of reimbursable property interests if any.
3. Submit Preliminary Field Check Plans and Verification of Existing Facility Letters to the utilities. Attend the preliminary field check meeting and discuss both locations of existing facilities shown on the plans and potential conflicts between the utilities and the proposed project\*.
4. Send out Conflict Analysis Letters to all utilities with revised plans and utility information from discussions at the Preliminary Field Check to verify eliminated or additional conflicts with the proposed improvements for the project.
5. Submit Final Plans to Utilities at the same time plans are submitted to the OWNER and send out Requests for Work Plans Letters and Work Plan Documents to each utility.

6. Review Utility Relocation Work Plans and Relocation Drawings for possible conflicts with the proposed improvements for the project, and for conflicts between additional utilities and their proposed relocations.
7. Coordinate a final utility coordination meeting if necessary to discuss utility relocations with all relevant utilities.
8. The CONSULTANT will issue all approved work plan and notice to proceed letters to the utilities.

\*No subsurface utility engineering (SUE) coordination, survey, or investigation costs are included within this scope.

#### E. UTILITY COORDINATION DURING CONSTRUCTION

The CONSULTANT shall remain active throughout construction as needed assisting to coordinate utility required staking and clearing items, attending field meetings, participating in conference calls, and construction phase Utility Coordination.

#### F. UTILITY RELOCATION INSPECTION

The CONSULTANT shall perform utility relocation inspection which shall include having construction supervision staff onsite as-needed between final design and notice-to-proceed on construction inspection. The construction supervision staff shall coordinate and attend utility relocation field meetings as necessary, coordinate with the utility coordinator, perform inspection and oversight on all utility relocations on as as-needed basis to help ensure utility facilities are relocated according to their approved work plans.

#### G. UTILITY RELOCATION STAKING

The CONSULTANT shall perform staking of the right-of-way, proposed structures, or other design items necessary for utilities to perform their relocation prior to the contract being let on an as needed basis for the hourly not to exceed amount established in Appendix D.

#### H. PROJECT MANAGEMENT

1. The CONSULTANT shall attend all such conferences with the officials of the OWNER and other interested agencies as may be required in connection with the work.
2. The CONSULTANT shall communicate and coordinate with sub-consultants required for the project.

## I. CONSTRUCTION PHASE ASSISTANCE

1. The CONSULTANT shall provide the OWNER services during construction of the work for the pre-construction meeting, shop drawing review, interpretation of the plans where disagreement may arise, and for consultation during construction in the event unforeseen or unusual conditions may arise.

## J. GEOTECHNICAL INVESTIGATION

The CONSULTANT shall add the Phase 2 project limits to the Phase 1 geotechnical investigation.

The geotechnical investigation shall be performed concurrently with the Grant Street Reconstruction Phase 1 investigation, and all information shall be combined in one report.

## K. RIGHT-OF-WAY ENGINEERING

The CONSULTANT shall provide RIGHT-OF-WAY ENGINEERING accordance with the procedures and standards as indicated in the Indiana Department of Transportation, Land Acquisition Division, Right-of-Way Engineering Procedures Manual.

The Grant Street Reconstruction Phase 1 professional services agreement includes RIGHT-OF-WAY ENGINEERING for 6 permanent and 20 temporary parcels. This project actually required RIGHT-OF-WAY ENGINEERING for 9 permanent and 1 temporary parcel. The remaining scope of work not required for the Phase 1 project will remain in the Phase 1 agreement and will be used for Phase 2 parcels.

The CONSULTANT shall provide RIGHT-OF-WAY ENGINEERING for additional permanent and temporary additional parcels including the following:

1. Establish additional Right-of-Way required for acquisition as well as template for documentation; coordinate Right-of-Way efforts with client, design, and subconsultants.
2. Provide a documented 20-year title search (T&E Report) for each parcel prepared by an abstractor as approved by the Indiana Department of Transportation. 14 additional tax parcels are anticipated.
3. Provide legal descriptions and land plats for each parcel. 9 additional permanent and 2 additional temporary are anticipated. The descriptions shall be prepared and certified by an Indiana Professional Surveyor.
4. Prepare Right-of-Way Plans
5. Provide an Appraisal Problem Analysis (APA) for up to 10 additional parcels prepared by an appraiser as approved by the Indiana Department of Transportation (INDOT).

6. Provide parcel staking (1 time only).

#### L. RIGHT-OF-WAY APPRAISING

The **CONSULTANT** shall provide RIGHT-OF-WAY APPRAISING for a maximum of 20 permanent parcels and 6 temporary parcels in accordance with the procedures and standards as indicated in the most recent edition of the Indiana Department of Transportation, Land Acquisition Division Procedures Manual including the following:

1. Coordinate Right-of-Way Services efforts with client, design, and sub-consultants.
2. Provide the Appraising and Review Appraising as required under the Professional Engineering phase of the project.

## APPENDIX "B"

### INFORMATION AND SERVICES TO BE FURNISHED BY OWNER

The **OWNER** shall, within a reasonable time, so as not to delay the Services of the **ENGINEER**:

1. Provide full information as to **ENGINEER's** requirements for the Project.
2. Assist the **ENGINEER** by placing at **ENGINEER's** disposal all available information pertinent to the Services provided under the Agreement including previous reports and any other data relative thereto.
3. Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by **ENGINEER**, obtain advice of an attorney, insurance counselor, and other consultants as **OWNER** deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the Services of **ENGINEER**.
4. Give prompt written notice to the **ENGINEER** whenever the **OWNER** observes or otherwise becomes aware of any defect in the Project.
5. Furnish all existing approvals or permits from all governmental authorities having jurisdiction over the Project. Note that the sole permit anticipated to be required for this Project is a DNR Construction in Floodway Permit. This permit has been obtained.
6. Arrange for access to and make all provisions for the **ENGINEER** to enter upon public and private property as required for the **ENGINEER** to perform Services under this Agreement.

## **APPENDIX “C”**

### **SCHEDULE**

**ENGINEER** will conform to schedule as follows:

Complete Topographical Survey within 60 days from receipt of the Notice to Proceed.

Submit Preliminary Plans to OWNER for review within 75 days from receipt of the Notice to Proceed.

Complete Right-of-Way Engineering services within 60 days after Field Check.

Complete Right-of-Way Appraisal services within 120 calendar days after completion of Right-of-Way Engineering.

Complete the project development in accordance with the milestone dates required by INDOT to meet a July 2022 letting.

**APPENDIX "D"**

**COMPENSATION:**

**A. Amount of Payment**

1. The CONSULTANT shall receive as payment for the services performed under this Agreement the total fee, not to exceed \$ 368,330.00 unless a modification of the Agreement is approved in writing by the LPA.
2. The CONSULTANT will be paid for the work performed under this agreement on a lump sum basis in accordance with the following schedule:

a. Topographical Survey	\$ 31,200.00
b. Roadway Design	\$ 171,000.00
c. Utility Coordination	\$ 10,600.00
d. Project Management	\$ 8,500.00
e. Public Meeting	<u>\$ 4,000.00</u>

**SUBTOTAL           \$ 225,300.00**

3. The CONSULTANT will be paid Unit Rates for the Right-of-Way Engineering services performed under this Agreement in accordance with the following schedule:

	<u>Quantity</u>	<u>Unit Price</u>	<u>Total</u>
a. T&E Reports (Permanent)	12 Tax Parcels	\$480.00	\$5,760.00
b. T&E Reports (Temporary)	2 Tax Parcels	\$230.00	\$460.00
c. Legal Descriptions and Land Plats (Permanent)	9 Parcels	\$2,250.00	\$20,250.00
d. Legal Descriptions (Temporary)	2 Parcels	\$725.00	\$1,450.00
e. Appraisal Problem Analysis	10 Parcels	\$300.00	<u>\$3,000.00</u>

**SUBTOTAL           \$49,020.00**

4. The CONSULTANT will be paid Unit Rates for the Right-of-Way Acquisition services performed under this Agreement in accordance with the following schedule:

	<u>Quantity</u>	<u>Unit Price</u>	<u>Total</u>
a. ROW Services Management	26	\$ 1,200.00	\$31,200.00
b. Appraisal Reports (Long Form)	6	\$ 4,500.00	\$27,000.00
c. Appraisal Reports (Short Form)	20	\$ 675.00	\$13,500.00
d. Appraisal Review	6	\$ 2,150.00	\$12,900.00
e. Direct Expenses (Cost-to-Cure Est)			<u>\$5,000.00</u>
<b>SUBTOTAL</b>			<b>\$89,600.00</b>

5. The LPA agrees to compensate the CONSULTANT for On-Call Additional Services on the basis of actual hours of work performed on the project at the hourly billing rates noted in APPENDIX "D-1". The Hourly Billing Rates include overhead and fixed fee. The CONSULTANT will be paid for the following work under additional services, or on a fixed fee basis, in accordance with the following schedule:

a. Utility Location Confirmation	\$ 2,900.00
b. Utility Relocation Assistance	\$ 2,700.00
c. Utility Relocation Staking	\$ 1,500.00
d. Construction Phase Assistance	<u>\$ 6,000.00</u>
<b>SUBTOTAL</b>	
	<b>\$ 13,100.00</b>

6. The CONSULTANT shall be reimbursed for subconsultant reimbursable expenses at cost with no mark-up. Estimated subconsultant expenses are:

a. Geotechnical Investigation and Report	<u>\$ 12,310.00</u>
<b>SUBTOTAL</b>	
	<b>\$ 12,310.00</b>
<b>TOTAL</b>	
	<b><u>\$ 368,330.00</u></b>

7. The CONSULTANT shall not be paid for any service performed by the LPA or services not required to develop this project. Costs for routine photocopy and paper reproduction, cellular phone costs, pager costs and computer time costs will not be paid as a reimbursable but is to be included in the above fees and overhead costs.

8. The following work is not included in this agreement by the CONSULTANT but will be supplemented or a new agreement will be produced once design and plan work has progressed to a point that these services can be determined and are agreed upon by the LPA.

R/W Buying..... (to be determined)

B. Method of Payment:

1. The CONSULTANT may submit a maximum of one invoice voucher per calendar month for work covered under this Agreement. The invoice voucher shall be submitted to the LPA. The invoice voucher shall represent the value, to the LPA, of the partially completed work as of the date of the invoice voucher. The CONSULTANT shall attach thereto a summary of each pay item in Section A of this Appendix, percentage completed and prior payments in a form acceptable to the LPA.
2. The LPA for and in consideration of the rendering of the engineering services provided for in Appendix "A", agrees to pay the CONSULTANT for rendering such services the fee established above upon completion of the work thereunder, acceptance thereof by the LPA and upon the CONSULTANT submitting an invoice as described above.
3. In the event of a substantial change in the scope, character or complexity of the work on the project, the maximum fee payable and the specified fee shall be adjusted in accordance with Section VI, 6 (changes in work), as set out in this Agreement.

**APPENDIX "D-1"**

**SCHEDULE OF COMPENSATION**

**BUTLER, FAIRMAN and SEUFERT, INC.**

**2020 HOURLY RATE SCHEDULE**

<u>Classification</u>		<u>Hourly Rates</u>
E-V	Engineer V (Principal)	\$ 235.00
E-IV	Engineer IV	\$ 194.00
E-III	Engineer III	\$ 168.00
E-II	Engineer II	\$ 128.00
E-I	Engineer I	\$ 95.00
FP-IV	Field Personnel IV – (Project Coordinator)	\$ 180.00
FP-III	Field Personnel III	\$ 143.00
FP-II	Field Personnel II	\$ 112.00
FP-I	Field Personnel I	\$ 87.00
EA-III	Engineer's Assistant III	\$ 173.00
EA-II	Engineer's Assistant II	\$ 141.00
EA-I	Engineer's Assistant I	\$ 95.00
SP-1	Support Personnel I	\$ 66.00
C-II	Clerical II	\$ 115.00
C-I	Clerical I	\$ 75.00
P-III	Planner/Environmental Specialist III	\$ 140.00
P-II	Planner/Environmental Specialist II	\$ 100.00
P-I	Planner/Environmental Specialist I	\$ 85.00

The billing rates are effective January 2020 and may be adjusted annually (beginning January 2021) to reflect changes in the compensation payable to the **ENGINEER**.