

BRIDGE CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS BRIDGE CONSTRUCTION AND MAINTENANCE AGREEMENT ("Agreement") is entered into by, and between the Boone County Board of Commissioners of Boone County, Indiana (the "County") and the City of Lebanon, Indiana, a municipal corporation existing under the laws of the State of Indiana (the "City").

RECITALS

WHEREAS, the City has a project to construct a bridge (the "Bridge") along Witt Road over the Small Reynolds Ditch (the "Bridge Project"); and

WHEREAS, the County has a Bridge Asset Management Plan (the "Plan"); and

WHEREAS, the County has agreed to amend the Plan to accept maintenance for the Bridge upon completion of the Bridge Project; and

WHEREAS, the County and City believe that the construction of the Bridge will benefit the health, safety, and welfare of the City's and County's taxpayers.

NOW THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. SCOPE OF WORK

The scope of work for the Bridge Project shall include construction of the Bridge, including pedestrian and bicycle amenities and appurtenance along with necessary guardrails and bridge rails as deemed required and appropriated for said Bridge Project, including but not limited to demolition, bridge construction, stream conveyance, channel armoring, guard railing installation, and all grading and seeding repairs necessary to construct the bridge (the "Scope of Work").

2. COST

The City will bear all costs associated with the Scope of Work as depicted in preliminary construction documents prepared by VS Engineering and attached hereto and incorporated herein as Exhibit A.

3. OBLIGATIONS OF THE CITY

a) The City shall be the signatory on any contract with the contractor(s) for the Bridge Project and shall copy the County on all construction documents and construction inspection/oversight as it pertains to the County's future acceptance and maintenance of the Bridge.

b) The City shall be responsible for the cost of all expenses associated with the Bridge Project.

c) The City shall be responsible for the cost of all expenses associated with the construction inspection and oversight of the Bridge Project.

d) The City shall allow the County to inspect the Bridge anytime during construction.

e) The City shall allow the County to take part in the selection of a construction inspection/oversight firm.

f) The City shall design or cause the bridge to be designed in accordance with INDOT and AASHTO design specifications.

g) Prior to final acceptance, the City shall transfer ownership of all right of way under and adjacent to the Bridge to the County.

h) The City shall reimburse the County for performing the initial interim National Bridge Inspection Standards (“NBIS”) bridge inspection required to accept the Bridge into the County’s Plan and NBIS inventory.

4. OBLIGATIONS OF THE COUNTY

a) The County shall be responsible for the cost of all future expenses associated with the County’s regular NBIS inspections of the Bridge.

b) The County shall adopt the completed Bridge into its Plan, NBIS inventory and maintenance operation cycles.

c) The County shall be responsible for maintaining the Bridge after construction completion and acceptance.

d) The County shall be responsible for the cost of all expenses associated with the County’s future maintenance of the completed and accepted Bridge.

5. ENTIRE 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. This Agreement shall not be amended or modified in any manner except by an instrument signed by the authorized representatives of both parties.

6. TERM AND TERMINATION

This Agreement shall commence as of the latest date of any required signature and will thereafter continue in effect for one (1) year (the “Initial Term”). After the expiration of the

Initial Term, or any subsequent term, this Agreement shall automatically renew in one (1) year increments. Either party may terminate this Agreement by providing sixty (60) days written notice of such terminate prior to the expiration of the Initial Term or any subsequent term.

7. ASSUMPTION OF RISK

Each party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other party and the results thereof. Each party, therefore, agrees that it will assume all risk and liability to itself, its agents, and its employees, for the injury to persons or property resulting in any manner from the conduct of its own operations, and the operation of its agents and employees under this Agreement, for any loss, cost, damage, or expense resulting at any time from any and all causes due to any acts or acts of negligence, or the failure to exercise proper precautions, of or by itself or its own agents or its own employees, while occupying or visiting the premises under and pursuant to this Agreement.

8. 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.

9. NOTICE

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 City: 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 County: Boone County Board of Commissioners
116 West Washington Street
Lebanon, IN 46052
Attention: President

- With a copy to: Legal Counsel

116 West Washington Street
Lebanon, IN 46052
Attention: Robert V. Clutter, Esq.

10. COUNTERPARTS

This Agreement may be executed in counterparts, by Electronic Means (as defined below), each of which when so executed and delivered shall be an original, and all of which together shall constitute one and the same instrument, notwithstanding that all the parties have not signed the original or the same counterpart. Any counterpart hereof signed by the party against whom enforcement of this Agreement is sought shall be admissible into evidence as an original hereof to prove the contents hereof. Moreover, the parties hereto further acknowledge and agree that this Agreement may be signed and/or transmitted by e-mail or a .pdf document or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology) ("Electronic Means"), and that such signed electronic record shall be valid and as effective to bind the party so signing as a paper copy bearing such party's handwritten signature. The parties further consent and agree that: (a) to the extent a party signs this Agreement using electronic signature technology, by clicking "SIGN", such party is signing this Agreement electronically; and (b) the electronic signatures appearing on this Agreement shall be treated, for purposes of validity, enforceability and admissibility, the same as handwritten signatures.

11. SEVERABILITY

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.

12. HEADINGS

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

13. GOVERNING LAW

This Agreement will be 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 that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party. Each party

irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

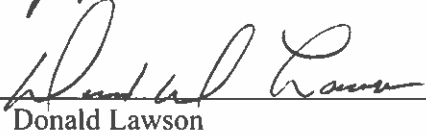
[Signature Page to Follow]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized representatives of each of the parties hereto as of the dates shown below.

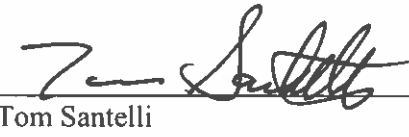
**BOONE COUNTY, INDIANA
BOARD OF COMMISSIONERS**

By: 
Jeff Wolfe, President

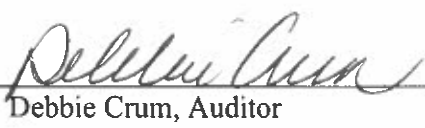
Date: 1/18/22

By: 
Donald Lawson

Date: 1/18/22

By: 
Tom Santelli

Date: 1/18/22

Attest: 
Debbie Crum, Auditor

CITY OF LEBANON, INDIANA

By: _____
Matthew Gentry, Mayor

Date: _____

Attest: _____
Tonya Thayer, Clerk Treasurer

EXHIBIT A

PRELIMINARY CONSTRUCTION DOCUMENTS