

ENGINEERING SERVICES AGREEMENT

This Engineering Services Agreement (this “Agreement”) is made as of May 28, 2020 (the “Execution Date”), by and between the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Commission”) and the Civil City of South Bend, an Indiana municipal corporation, acting by and through its Department of Public Works (the “Provider”).

RECITALS

A. The Commission exists and operates under the provisions of I.C. 36-7-14, commonly known as the “Redevelopment of Cities and Towns Act of 1953,” as amended from time to time (the “Act”).

B. Pursuant to the Act, the Commission has the power and duty to investigate, study, and survey areas within the corporate boundaries of the City of South Bend (the “City”) that the Commission has determined to be in need of redevelopment within the meaning of the Act and to redevelop said areas in a manner that will promote land use in order to serve the best interests of the City and its inhabitants.

C. Pursuant to the Act, the Commission has adopted resolutions declaring various areas of the City (the “Areas”) to be areas in need of redevelopment within the meaning of the Act and has adopted a development plan (the “Development Plans”) for each of the Areas in order to facilitate redevelopment of the Areas.

D. The Commission desires to undertake certain actions and promote certain activities within the Areas that are necessary to carry out the Development Plans for the Areas and facilitate development of the Areas (the “Projects”).

E. The Commission requires certain engineering services related to the acquisition and redevelopment of property located in the Areas in connection with the Projects, which services the Commission may procure in accordance with the Act, including the provisions of I.C. 36-7-14-12.2(a)(13), I.C. 36-7-14-39(b)(3)(J), and I.C. 36-7-14-25.1(a).

F. The Provider is an Indiana municipal corporation and has an engineering staff with the knowledge, experience, and expertise to provide certain engineering services necessary for carrying out the Projects.

G. The Commission has determined that it is in the best interests of the Commission to retain the Provider to assist the Commission in accomplishing the Projects.

H. The Provider is willing to assist the Commission’s redevelopment efforts by providing the requested engineering services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. **Definitions.** For purposes of this Agreement, the following terms have the meanings referred to in this Section:

Contract Administrator: The term “Contract Administrator” shall mean the Executive Director of the Department of Community Investment or his or her designee.

Requested Services: The term “Requested Services” shall mean the services described in **Exhibit A** attached hereto and incorporated herein.

Taxes: All governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of activities conducted on behalf of the Commission.

SECTION 2. **Retention and Acceptance of Provider.**

The Commission hereby retains the Provider to render to the Commission the Requested Services. The Provider hereby accepts the appointment to render the Requested Services to the Commission and agrees to render the Requested Services in accordance with the terms and conditions of this Agreement and all applicable laws, including, but not limited to, the Act. The Provider hereby certifies that its engineering staff has sufficient experience and expertise to complete the Requested Services in a professional and timely manner.

SECTION 3. **Project Information.**

A. **Information and Communications.** The Commission shall provide all documents, maps, reports, and other data requested by the Provider necessary for the Provider to accomplish the Requested Services. The Commission and the Provider agree that the Commission shall be permitted to obtain at no additional cost and to retain any and all documents prepared or caused to be prepared by the Provider in connection with the services to be provided by the Provider and the Provider agrees to provide the Commission with said documents upon request by the Commission. Said documents may be used by the Commission or others with respect to the Commission’s undertakings with respect to the Projects.

B. **Point of Contact.** The Commission hereby designates the Contract Administrator to serve on behalf of the Commission as the Provider’s principal point of contact for purposes of this Agreement. The Contract Administrator will be responsible for the provision of relevant information to the Provider concerning the Projects and any Requested Services to be rendered by the Provider in connection with the Projects. The parties acknowledge and agree that any

employee of the City of South Bend rendering the Requested Services to the Commission under this Agreement will remain an employee of the City of South Bend and will report to his or her supervisor(s) as determined by the Executive Director of the Department of Public Works.

SECTION 4. Compensation.

A. Fees for Services. The Provider will render the Requested Services to the Commission through the work of the Provider’s employees holding the position titles “Engineer I,” “Engineer II,” and “Assistant City Engineer.” As compensation for the Requested Services, the Commission agrees to pay the Provider a flat fee for each respective calendar year in an amount not to exceed the total amount stated in the table below (the “Annual Fee”).

<u>Period</u>	<u>Position</u>	<u>Annual Fee</u>
January 1 to December 31, 2020	Engineer I	\$ 57,000.00
	Engineer II	\$ 62,000.00
	Assistant City Engineer	\$ 70,000.00
	<u>Total for 2020</u>	\$189,000.00
January 1 to December 31, 2021	Engineer I	\$ 58,000.00
	Engineer II	\$ 63,000.00
	Assistant City Engineer	\$ 71,000.00
	<u>Total for 2021</u>	\$192,000.00
January 1 to December 31, 2022	Engineer I	\$ 59,000.00
	Engineer II	\$ 64,000.00
	Assistant City Engineer	\$ 73,000.00
	<u>Total for 2022</u>	\$196,000.00

B. Invoices. On a quarterly basis, the Provider shall submit to the Commission an invoice for a progress payment equal to one-quarter (1/4) of the effective Annual Fee. Each quarterly invoice will identify the name and Area of each Project for which the Provider rendered the Requested Services during such quarter. The Commission agrees to pay each such invoice within thirty (30) days of receipt. In the event this Agreement terminates as provided in Section 6, all non-disputed sums owing and due the Provider for services rendered shall be paid within thirty (30) days of receipt of any invoice.

C. Reimbursable Expenses. The Commission shall not reimburse the Provider for expenses unless such expenses have been approved in writing by the Commission. Expenses which may be reimbursed under this provision shall be reasonable and necessary and shall relate to the Projects of the Commission. All claims for reimbursement of expenses shall be supported by a detailed itemization of the expense including invoices or receipts with the nature of the claim incurred.

D. Subject to Appropriations. Notwithstanding any provision to the contrary, the Commission's payments required under this Agreement are subject to the appropriation of sufficient funds by the Commission in accordance with I.C. 36-7-14.

SECTION 5. Term.

The term of this Agreement (the "Term") shall commence on January 1, 2020, and shall terminate on December 31, 2022, unless earlier terminated in accordance with Section 6 of this Agreement or by the parties' mutual agreement.

SECTION 6. Termination and Default.

A. Termination. The Commission may terminate this Agreement for any reason or no reason. Either party may terminate this Agreement upon an event of Default (as defined below) by the other party. Upon termination of this Agreement, copies of all data, electronic files, documents, procedures, reports, estimates, summaries other work papers, and any other supporting documents, whether completed or in process, accumulated by the Provider or prepared or provided by the Commission or the Provider relating to this Agreement or the Requested Services shall be and remain the property of the Commission and be delivered to the Commission upon request in a usable form within sixty (60) days of the date of termination of this Agreement. The Commission shall retain or be granted by the Provider without restriction all title, ownership, or intellectual property rights, including copyright, patent, trademark, and trade secret rights, in any data gathered or generated by the Provider in performance of the Requested Services under this Agreement.

B. Default. Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party (the "Default Notice"), unless such period is extended by written mutual consent, shall constitute a default (a "Default") under this Agreement. Any Default Notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period.

SECTION 7. Confidentiality.

A. Confidential Information. The Provider acknowledges that information which the Commission regards as confidential or proprietary in nature (the "Information"), may come to the knowledge of the Provider during the Provider's performance of services. The Provider shall treat the Information as strictly confidential and agrees that the Provider will not, at any time or in any manner, either directly or indirectly, (i) use, or allowed to be used, any Information for the Provider's own benefit or the benefit of any director, official, employee or agent or any third party, or (ii) divulge, disclose or communicate in any manner any Information to any third party without the written consent of the Commission. The Provider shall be responsible for maintaining the

confidentially of any Information in its possession, including taking appropriate measures to secure said Information against such uses and dissemination and to inform any person to which it allows to access such information of its confidentiality. Notwithstanding anything to the contrary contained in this Agreement, the parties will adhere to their respective obligations under the Indiana Access to Public Records Act, and nothing herein will be construed to relieve either party of such obligations.

B. Covenants Survive Agreement. The confidentiality provisions of this Agreement remain in full force and effect after, and survive the termination of, the Term of this Agreement.

SECTION 8. Relationship.

A. No Employment. Neither the Provider nor any person rendering the Requested Services to the Commission under this Agreement will constitute or be construed as an employee of the Commission.

B. Tax Obligations. The Provider is solely responsible for compliance with federal, state, and local laws and regulations relating to Taxes and Social Security payments that may be required to be made in connection with the compensation provided under this Agreement. The Commission, however, may file informational returns with the United States Internal Revenue Service or similar state agency regarding payments made to the Provider in accordance with this Agreement under conditions imposed by federal, state, or local laws applicable to such payment.

SECTION 9. Indemnification.

The Provider hereby agrees to defend, indemnify, and hold harmless the Commission, its officials, directors, employees, and agents from any and all claims of any nature which arise from the performance by the Provider under this Agreement and from all costs and attorney fees in connection therewith, excepting for claims arising out of the negligence of the Commission, its officials, directors, employees, and agents. The obligations of the Provider under this Section shall survive the termination of this Agreement.

SECTION 10. Equal Opportunity; Non-Discrimination; Compliance.

The Provider shall comply with all applicable laws and regulations in its hiring and employment practices and policies for any activity covered by this Agreement. The Provider shall comply with all federal, state, and municipal laws, regulations, and standards applicable to its activities pursuant to this Agreement including, but not limited to, the requirements imposed by Ind. Code 22-9-1-10 (non-discrimination), the provisions of Ind. Code 5-22-16.5 (disqualification for dealings with the government of Iran), and the provisions of Ind. Code 22-5-1.7 (requiring E-Verify for new employees and prohibiting employment of unauthorized aliens). Each of the foregoing provisions is incorporated herein as if set forth in full, and the Provider certifies that it is in compliance with each such provision and shall remain in compliance through the term of this Agreement.

SECTION 11. Drug-Free Workplace

The Provider hereby agrees to make a good faith effort to provide and maintain a drug-free workplace. The Provider will give written notice to the Commission within ten (10) days after receiving actual notice that the Provider or an employee of the Provider within the State of Indiana has been convicted of a criminal drug violation occurring in the workplace.

SECTION 12. Entire Agreement.

This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understanding of any and every nature between them.

SECTION 13. Law Governing.

This Agreement shall be construed and interpreted according to the laws of the State of Indiana.

SECTION 14. Assignment.

The Provider's obligations under this Agreement may not be assigned or transferred to any other person or entity without the prior written consent of the Commission.

SECTION 15. Amendment.

This Agreement may be amended only by separate writing signed by authorized representatives of both the Provider and the Commission.

SECTION 16. Notices.

All notices or other communications which are required or permitted under the terms of this Agreement shall be sufficient if delivered personally, by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address and individual set forth below. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

Commission: Department of Community Investment
 1400 S. County-City Building
 South Bend, Indiana 46601
 Attn: Executive Director

Provider: Department of Public Works
1300 N. County-City Building
South Bend, Indiana 46601
Attn: Executive Director

SECTION 17. Counterparts.

This Agreement may be executed in counterparts, all of which shall be deemed originals.

SECTION 18. Authority.

The undersigned persons executing and delivering this Agreement on behalf of the respective parties represent and certify that they are the duly authorized officers or members of the parties with authority to execute this Agreement and that all necessary action has been taken and done to enter into this Agreement.

SECTION 19. No Waiver

No failure or delay on the part of either party in exercising any right under this Agreement will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will have effect unless given in a written document signed by the party waiving such right. No waiver of any right will be deemed a waiver of any other right hereunder.

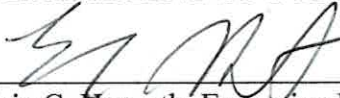
SECTION 20. Severability

All provisions of this Agreement shall be considered as separate terms and conditions, and in the event any one shall be held illegal, invalid or unenforceable, all the other provisions hereof shall remain in full force and effect as if the illegal, invalid, or unenforceable provision were not a part hereof, unless the provision held illegal, invalid or unenforceable is a material provision of this Agreement, in which case the Provider and the City agree to amend this Agreement with replacement provisions containing mutually acceptable terms and conditions.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Engineering Services Agreement to be effective as of the Execution Date stated above.

**CITY OF SOUTH BEND, INDIANA
DEPARTMENT OF PUBLIC WORKS**



Eric C. Horvath, Executive Director

**SOUTH BEND REDEVELOPMENT
COMMISSION**

Marcia I. Jones, President

ATTEST:

Quentin M. Phillips, Secretary

EXHIBIT A

Requested Services

1. Preparation of documents related to the redevelopment of property in the Areas pursuant to the Development Plans and/or Project-related agreements.
2. Review and approval of documents prepared by others related to the redevelopment of property in the Areas pursuant to the Development Plans and/or Project-related agreements.
3. Consultation with relevant departments and employees of the City of South Bend concerning the redevelopment of property in the Areas pursuant to the Development Plans and/or Project-related agreements.
4. Other services related to the Projects, as directed by the Contract Administrator.