

RUNDELL ERNSTBERGER ASSOCIATES, INC.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this ____ day of _____, 2020, by and between Rundell Ernstberger Associates, Inc., with its principal place of business at 618 E. Market Street, Indianapolis, IN 46202 (hereinafter “REA”) and the Town of Spencer, Indiana, 766 E. North St., Spencer, IN 47460 (hereinafter “Client”).

Client and REA, for the consideration hereinafter set forth, hereby agree as follows:

1. Services of REA

(a) REA agrees to provide the professional services described in Exhibit A (hereinafter the “Services”) attached hereto and incorporated herein with respect to the **Town of Spencer MYPa th Main Street Project** (hereinafter the “Project”).

(b) Any activities or Services not included within the scope of the Services will be considered “Extra Services” and will require additional compensation. REA shall not be obligated to perform Extra Services unless and until an Extra Services Authorization has been signed and fully executed by both parties.

(c) REA is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports, and other services furnished by REA under this Agreement. REA shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its design, drawings, specifications, reports and other services, unless such corrective action is directly attributable to deficiencies in Client-furnished information.

2. Schedule of Services

REA shall use reasonable diligence and expediency consistent with sound professional practices to complete the Services in a timely fashion so as to meet Client’s requirements. If Client requests significant modifications or changes in the scope or requests Extra Services, the time for performance shall be correspondingly adjusted. If the parties have agreed to a specific Project schedule and specific milestone dates, such information shall be set forth in Exhibit B attached hereto.

3. Responsibilities of Client

(a) Client shall furnish or make available to any and all of its records, maps, or other data which are pertinent to REA’s work. REA shall be entitled to use and rely upon, without reverification, the accuracy, reliability and completeness of said records, maps and all other data provided by Client or its employees, agents, officers, or consultants in conjunction with REA’s performance of the Services. Client shall authorize and assist REA in obtaining any such pertinent information from other public and private sources. When requested by REA, the Client shall furnish all reasonable assistance necessary for REA to perform appropriate site investigations.

(b) Client shall provide all criteria and full information as to the Client’s requirements for the Project; designate a person to act with authority on the Client’s behalf in respect to all aspects of the Project; examine and respond promptly to REA’s submittals; and give prompt written notice to REA whenever the Client observes or otherwise becomes aware of any defect in the work.

(c) Client shall notify REA promptly of all known or suspected Hazardous Material at the site, of any contamination of the site by Hazardous Materials, and of any other conditions requiring special care, and provide REA with any available documents describing the nature, location and extent of such materials, contamination or conditions.

4. Compensation

(a) As compensation for the performance of the Services, Client shall pay REA a total fixed, lump sum fee of \$20,500 (Twenty Thousand Five Hundred Dollars) in accordance with Exhibit C.

(b) The aforementioned fees will cover all of REA's normal expenses. Unusual expenses shall be approved by Client and shall be reimbursed at the next payment point.

(c) In the event that Client disputes any portion of an invoice submitted by REA, Client shall notify REA within fourteen (14) days of the invoice date, identify the cause of the disagreement, and timely pay any amounts not in dispute. The parties agree to use their best efforts to resolve the dispute within thirty (30) days of Client's notice to REA. Client's failure to dispute an invoice within fourteen (14) days of the invoice date shall be deemed a waiver of all claims pertaining to that invoice.

5. Termination

(a) This Agreement may be terminated by either party upon not less than seven (7) days written notice should the other party substantially fail to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Client's failure to make payments when due for Services and expenses shall be deemed a material failure permitting REA to terminate this Agreement.

(b) In the event of termination of this Agreement not caused by the fault of REA, REA shall be compensated for Services performed and expenses incurred prior to the date of termination along with all reasonable and necessary expenses attributable to such termination.

(c) Notwithstanding the foregoing, this Agreement shall not terminate for cause if the party in default begins to correct its substantial failure to perform within seven (7) days of receipt of written notice of said substantial failure. Following commencement of the cure, the party in default shall diligently continue to cure within thirty (30) days of the receipt of written notice.

6. Suspension

If REA fails to receive payment when due for Services and expenses, REA may, upon seven (7) days written notice to Client, suspend performance of the services without further notice. Upon a suspension of Services, REA shall have no liability to the Client for delay or damage caused by such suspension.

7. Estimates of Costs and Schedules

REA's estimate of probable construction costs and schedules are for budget and planning assistance purposes only. Cost and schedule estimates are based on REA's professional judgment of the requirements known at the time of the Agreement. Accordingly, REA does not guarantee that proposals, bids or actual costs will not vary from opinions, evaluation or studies submitted by REA to Client.

8. Relationship of Parties

REA is, and shall at all times during the term of this Agreement be, an independent contractor of Client. This Agreement and the relationship of the parties shall not be deemed to create or be one of employment, agency, partnership, joint venture or any other association.

9. Use of Documents

All documents produced by REA pursuant to this Agreement are instruments of service and shall remain both the Client's and REA's property. REA shall provide the Client with reproducible copies of Schematic Design, Design Development and final Bidding Drawings, and copies of reports, cost estimates, specifications, and other final documents that Client may request. Documents or computerized materials provided to Client are for Client's use only, for the purposes disclosed to REA, and Client shall not transfer them to others or use them or permit them to be used for an extension of Services or any other project or purpose for which they were not prepared, without REA's express written consent. Client and REA agree to indemnify and defend one another for any unauthorized use of any document or computerized materials.

10. Designated Representative

Both parties shall designate specific individuals to act as their respective representatives for this Project. Such individuals shall have authority to transmit instructions, receive information and render decisions relative to the Project on behalf of each respective party.

11. Standard of Care

The standard of care for all professional engineering and related Services performed or furnished by REA under this Agreement will be the care and skill ordinarily used by the members of REA's profession practicing under similar conditions at the same time and in the same locality. There are no expressed or implied warranties, including the implied warranties of merchantability and fitness for a particular purpose, not specified herein.

12. Federal 3rd Party Provisions

REA agrees to incorporate into this contract the federal and state third-party contract provisions for Community Development Block Grant (CDBG)-assisted non-construction contracts. A copy of those provisions is attached to this contract as Exhibit D.

13. Insurance

(a) REA shall procure and maintain: (a) worker's compensation and employer's liability insurance in accordance with requirements of the state in which the Services are being performed; (b) commercial general liability insurance (including contractual and contractor's protective liability coverage) with combined single limits of \$1,000,000 per occurrence for bodily injury and property damage; (c) automobile liability coverage including owned and hired vehicles with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage; and (d) professional liability insurance in the amount of \$2,000,000 per claim.

(b) Upon reasonable notice, Client shall provide REA with copies of the certificates of insurance necessary to demonstrate that all contractors, subcontractors, independent contractors and others on the site have appropriate insurance coverage, including but not limited to commercial general liability, worker's compensation, disability and, where applicable, professional liability coverage.

14. Indemnification

(a) REA shall indemnify and hold harmless Client, its officers, directors, shareholders, partners, agents and employees from and against those damages and costs (including reasonable attorney's fees) that Client is legally obligated to pay as a result of a third party claim concerning the death or bodily injury to any person or the destruction or damage to any property, but only to the extent caused by the negligent act, error or omission of REA subject to any limitations of liability contained in this Agreement. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by any applicable statute of repose or statute of limitations.

(b) Client shall indemnify and hold harmless REA, its officers, directors, shareholders, partners, agents and employees from and against those damages and costs (including reasonable attorney's fees) that REA is legally obligated to pay as a result of a third party claim concerning the death or bodily injury to any person or the destruction or damage to any property, but only to the extent caused by the negligent act, error or omission of Client.

15. Limitation on Liability

The total liability of REA and its partners, officers, directors, shareholders, employees and agents to Client and any one claiming by, through or under Client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of, or in any way related to, the Services of this Agreement from any cause or causes whatsoever including, but not limited to, negligence, errors, omissions, strict liability or breach of contract shall not exceed the total compensation received by REA under this Agreement or the total amount of \$1,000,000, whichever is greater.

16. Assignment of Rights

This Agreement is binding on the heirs, successors, and assigns of the parties hereto. This Agreement may not be assigned by Client or REA without the prior written consent of the other.

17. Use of Subconsultants

REA may use independent professional associates, consultants or subcontractors in the performance of a portion of the Services.

18. Third Party Beneficiary

The Services to be performed by REA are intended solely for the benefit of Client and no benefit is conferred on, nor any contractual relationship established with any person or entity not a party to this Agreement. No such person or entity shall be entitled to rely on REA's performance of its Services hereunder. No right to assert a claim against, its officers, employees, agents or consultants shall accrue to any third party as a result of this Agreement or the performance or non-performance of REA's Services hereunder.

29. Waiver of Consequential Damages

In no event shall REA be liable to Client or the Client to REA for consequential or indirect damages, including but not limited to, loss of profits or revenue, loss of use of equipment, loss of production, additional expenses incurred in the use of the equipment and facilities and claims of customers of the Client. This disclaimer shall apply to consequential damages based upon any cause of action whatsoever asserted including ones arising out of any breach of contract, warranty, guarantee, products liability, negligence, tort, strict liability, or any other cause pertaining to the performance or non-performance of the contract by Client/REA.

20. Mediation

The parties, as a condition precedent to commencing litigation (other than for the non-payment of REA's fees), shall endeavor to resolve their claims by mediation which shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the contract and with the American Arbitration Association.

21. Electronic Media

Data, words, graphical representations and drawings that are stored on electronic media such as computer disks and magnetic tape, or which are transmitted electronically, may be subject to uncontrollable alteration. Client agrees it may only justifiably rely upon the final hardcopy materials bearing the consultant's original signature and seal.

22. No Waiver

No waiver by REA or Client of any power, right or remedy hereunder or under applicable law with respect to any event or occurrence shall prevent the subsequent exercise of such power, right or remedy with respect to any other or subsequent occurrence.

23. Severability and Reformation

Any provision or part thereof of this Agreement held to be void or unenforceable under any law shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

24. Integration & Amendments

This Agreement, together with the Exhibits identified herein, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters. This Agreement shall not be amended, modified, supplemented or rescinded in any manner except by written agreement executed by the parties.

25. Force Majeure

REA shall not be liable for any failure to perform or delay in the performance of the Services due to circumstances beyond its control, including, but not limited to: (1) strikes, lockouts, work slowdowns or stoppages; (2) Acts of God; or (3) failure of Client to furnish information in a timely manner.

26. Choice of Law/Jurisdiction

This Agreement shall be governed by and construed in accordance with the law of the state where the project is located.

27. No Personal Liability

Notwithstanding any other provision of this Agreement to the contrary, REA's officers, directors, shareholders, partners, employees, or agents shall not be personally liable, regardless of the cause of action asserted including breach of contract, warranty, guarantee, products liability, negligence, tort, strict liability, or any other cause pertaining to REA's performance or non-performance of the Agreement. Client will look solely to REA for its remedy for any claim arising out of or related to this Agreement.

28. Notices

Any and all notices provided for under this Agreement shall be in writing and shall be deemed to have been sufficiently given if personally delivered or if mailed, postage prepaid, by certified or return receipt requested mail addressed to the parties at the addresses set forth above in the preamble. Notice given by certified mail shall be deemed complete on the third business day after mailing.

29. Representations

Each party represents and warrants to the other that:

- (a) It is duly organized and validly existing in the jurisdiction of its organization and has all the necessary power and authority to execute, deliver and perform this Agreement.
- (b) The execution, delivery and performance of this Agreement has received all necessary partnership, corporate or other approvals, and does not conflict with any law, regulation, order, contract or instrument to which such party is bound.
- (c) The individual signing on its behalf is duly authorized to execute this Agreement to legally bind such party.

30. E-Verify

- (a) REA hereby affirms under penalties of perjury that he/she does not knowingly employ an unauthorized alien. REA shall enroll in and verify the work eligibility status of all of his/her newly hired employees through the E-Verify program as defined in I.C. 22-5-1.7-3. REA is not required to participate should the E-Verify program cease to exist.
- (b) REA shall not knowingly employ or contract with an unauthorized alien.
- (c) REA shall not retain an employee or contract with a person that it subsequently learns is an unauthorized alien.
- (d) REA agrees to maintain this certification throughout the duration of the term of a contract with the Client.

- (e) REA may terminate for default if REA fails to cure a breach of this provision no later than thirty (30) days after being notified by the Client.

31. Non-Discrimination

REA shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. REA shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by REA to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the Client, as the recipient, deems appropriate.

32. Iran

REA does hereby certify that it has never and currently does not contract with the government of Iran for such business and services as defined in Indiana Code 5-22-16.5-1 et seq. Furthermore REA will take the necessary steps to maintain compliance with this statutory provision throughout the term of this Agreement.

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IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date set forth above.

RUNDELL ERNSTBERGER ASSOCIATES

TOWN OF SPENCER, INDIANA

By _____

By _____

Name Cecil Penland, ASLA, PLA

Name _____

Title Principal

Title _____

Date: May 18, 2020

Date: _____

EXHIBIT A SCOPE OF SERVICES

PROJECT UNDERSTANDING

Based on our discussions to date, we have the following understanding of the project.

1. The Town of Spencer wishes to implement an extension of the MYPath project to connect Cooper Commons adjacent to the White River on the south side of the town to downtown on the north.
2. The project will improve the sidewalk along the east side of Main Street between Jefferson Street on the north and Cooper Street on the south.
3. The project will include selective demolition and reconstruction of the eastern sidewalk and the intersection curb ramps and crosswalks on both sides of the street.
4. The project will include the installation of new street trees, street lighting, signage, and amenities on the east side of the street.
5. The project's total construction budget, including contingency, is approximately \$160,000. This does not include engineering and surveying fees.

SCOPE OF WORK

Task 1 – Boundary & Topographic Survey

REA has commissioned Trico Surveying & Mapping, Inc. to perform a topographic survey in accordance with Exhibit A-1 Option 2.

Task 2 – Project Initiation Meeting

REA will conduct a project kick-off meeting with the Client to review the scope of services and project schedule, establish communication protocol, ensure a clear understanding of the desired outcomes of the project, review the project goals, and discuss design considerations and initial impressions regarding opportunities and constraints for project development.

In coordination with the project initiation meeting, REA will conduct a site visit to familiarize ourselves with the site. REA will bring a copy of the completed survey and verify existing conditions and note any discrepancies.

Task 3 – Conceptual/Schematic Design

REA will prepare conceptual schematic design options for the layout of the eastern sidewalk. REA will prepare an option that maintains a sidewalk alignment similar to what exists today, maintains existing trees where possible, but that widens the walk to accommodate bicycle use. REA will prepare a secondary option that adjusts the alignment of the existing sidewalk to provide a more curvilinear experience. REA will provide a preliminary lighting and signage layout. REA will prepare preliminary cost opinions for each option as well as a list of potential advantages and disadvantages of each option.

Task 3 – Construction Documentation

Upon selection of a preferred schematic design, REA will prepare site drawings and specifications. Sitework drawings will include, but not be limited to, site demolition, layout, grading/drainage, erosion control, lighting/electrical, landscape, and site detailing. Work will be reviewed with the Client at 100% completion.

Task 4 – Permitting

Based on the area of impact, the site is anticipated to be less than 1 acre and will not require Rule 5 stormwater permitting. No other permitting is anticipated at this time.

Task 4 – Final Construction Documents

Upon approval of the 100% review set of construction documents, REA will proceed with the preparation of final plans, details, specifications, and cost opinions required for bidding of the project.

Task 5 - Bidding

REA will prepare addenda, clarifications, and answer contractor questions during the bidding period. REA will also attend a pre-bid meeting at the Client's request. REA will bid tabulations, evaluate the bids, and prepare a recommendation of award.

Task 6 – Construction Administration

Once the construction contract has been awarded, REA will attend a pre-construction meeting. REA will observe construction activities once mid-way through construction and once at completion for preparation of a punch list. REA will review shop drawings, submittals, requests for information, and pay requests, and clarify drawings as necessary. REA will prepare proposal requests, change orders, and substantial completion documentation.



TRICO Surveying & Mapping, Inc.

April 16, 2020

Trico Job Number: JP041620MYPATH

Estimated Cost

Client: RUNDELL ERNSTBERGER ASSOCIATES, Contact: Cecil Penland

Project: MYPATH South Main Street Project, Topographic Survey of the proposed route of a new sidewalk, decorative lighting, alley improvements, and signs. 2 Options.

Location(s): Spencer, Indiana

Description of work: Trico Surveying & Mapping Inc. will perform a Topographic survey of the proposed route as outlined in Option 1 and Option 2. Trico Surveying & Mapping Inc. will be responsible for making a design one call. The field survey will capture all pertinent information, above and below ground to one call locates. The field survey will capture all necessary monumentation, features, utilities, as well as any trees and structures to create a drawing that depicts the Right of way limits of the route. The deliverable will be a proposed route map of option 1 or 2, in CAD and PDF form. The pdf will have a Registered Land Surveyor seal.

*Option 1 - The estimated cost to perform survey field and office work, which includes the deliverable of an Autocad and Certified PDF file will be **\$4,500.00**.*

*Option 2 - The estimated cost to perform survey field and office work, which includes the deliverable of an Autocad and Certified PDF file will be **\$5,500.00**.*

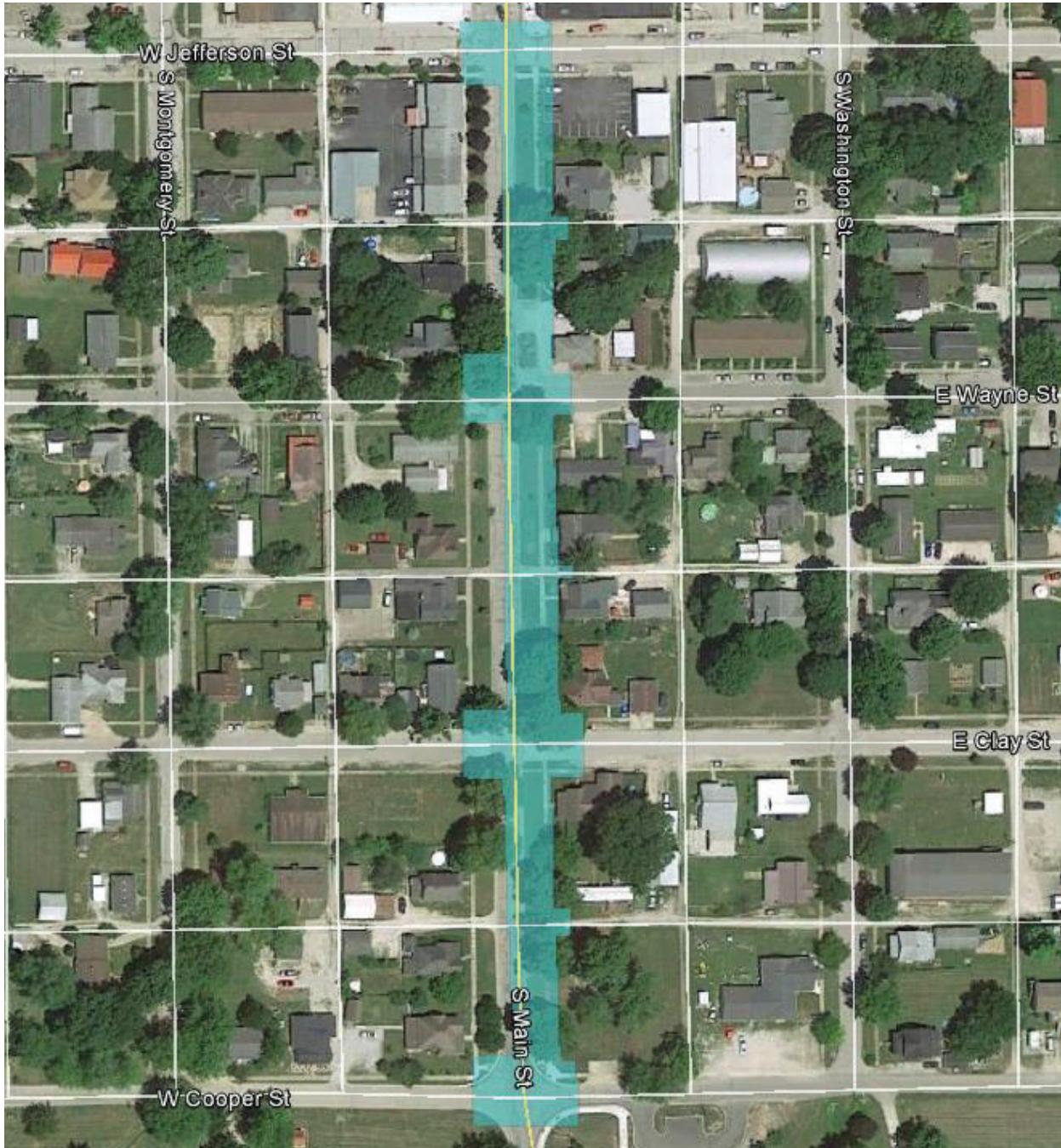
Estimate prepared by: Joseph Palacios/Operations Manager

**Please note: These estimates were calculated under the assumption that there will not be any delays due to unforeseen events, such as adverse weather conditions, or permission to enter properties, etc. Also, this project was estimated without prior knowledge of the amount of above/underground utilities, monumentation, or features, and without this information the timeline could be affected. The price quoted includes all equipment, GPS, materials, per diem, mileage, and supplies.*

TRICO Surveying & Mapping, Inc.
441 W. Gourley Pike
Bloomington, IN 47404
(812)-330-7030



Option 1





Option 2

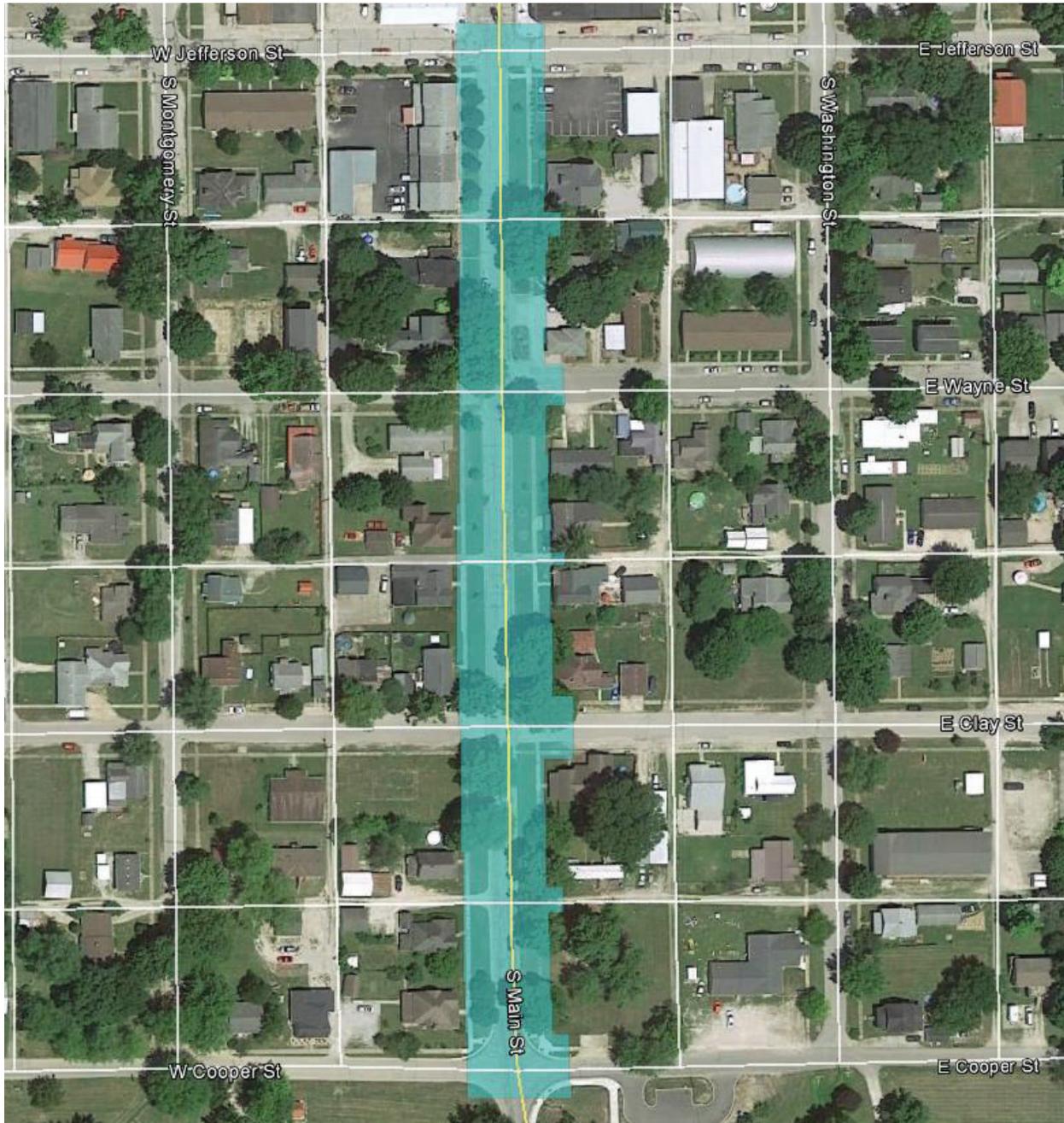


EXHIBIT B
SCHEDULE

This schedule is included as a base reference only. Final dates for milestones and meetings will be discussed with the client early in the process and finalized.

Project Phase

Boundary & Topographic Survey	Anticipated completion 6/1/2020
Project Initiation Meeting	1 week from receipt of Survey
Conceptual/Schematic Design	2 weeks
Construction Documentation	3 weeks
Bidding	3 weeks
Construction Administration	6 – 8 weeks

**EXHIBIT C
COMPENSATION**

Client shall pay REA a total fixed, lump sum fee of \$20,500 (Twenty Thousand Five Hundred Dollars). All services from REA will be paid in accordance with the following:

Boundary & Topographic Survey	\$5,500.00
Project Initiation Meeting	\$1,500.00
Conceptual/Schematic Design	\$3,000.00
Construction Documentation	\$5,500.00
Bidding	\$1,000.00
Construction Administration	\$3,500.00
Reimbursable Expenses	\$500.00

- Services, with the exception of Construction Administration, will be billed monthly on a lump sum, percentage complete basis, plus reimbursable expenses.
- Construction Administration will be billed monthly on an hourly basis, plus reimbursable expenses.
- Fees will not be exceed without prior written approval from the Client.
- Reimbursable expenses will be invoiced according to the attached schedule.



STANDARD FEE AND REIMBURSEMENT SCHEDULE

Indianapolis, IN | Louisville, KY

Effective January 2020

Rates indicated are subject to semi-annual review and revision

PROFESSIONAL AND TECHNICAL STAFF

Principal LA/Planner	\$210.00/hour
Planner 1	\$200.00/hour
Sr. Project Manager	\$184.00/hour
Civil Engineer I	\$163.00/hour
Associate LA/Planner	\$158.00/hour
Professional Staff (Registered LA)	\$137.00/hour
Planner II	\$132.00/hour
Technical Staff (Graduate LA/Planner)	\$110.00/hour
Administrative	\$84.00/hour
Construction Inspection Manager	\$117.00/hour
Construction Inspection Field Technician	\$98.00/hour

A surcharge of fifty percent (50%) will be added to hourly rates for expert witness testimony and/or for participation at hearings, depositions, etc.

REIMBURSABLE EXPENSES

Mileage	Standard mileage rate
Travel, Lodging, and Meals	Cost
Postage, Handling, etc.	Cost
Copies	
Black & White (8 1/2 x 11)	\$0.05/copy
Black & White (11 x 17)	\$0.10/copy
8 1/2 x 11 Inkjet	\$1.00
8 1/2 x 11 Presentation	\$1.50
8 1/2 x 11 Photo Paper	\$2.50
11 x 17 Inkjet	\$2.00
11 x 17 Presentation Paper	\$2.75
11 x 17 Photo Paper	\$3.50
Plots	
Black & White In-House Plots	
Bond	\$1.00 SF
Color In-House Plots	
Heavy bond	\$4.00 SF
Semi-Gloss	\$5.00 SF
High-Gloss	\$6.00 SF
Materials	Cost + 5%
Equipment Rental	Cost + 5%
Subcontract Services	Cost + 5%

INVOICES

Invoicing and payment schedule are detailed in the contract. Balances remaining unpaid after thirty (30) days are subject to a monthly finance charge of 1.5% (18% annually) until paid.

EXHIBIT D
FEDERAL AND THIRD-PARTY CONTRACT PROVISIONS

CDBG-ASSISTED NON-CONSTRUCTION CONTRACTS

(Required by Title 24 of the Code of the Federal Register as well as other selected contract provisions required by the Indiana Office of Community and Rural Affairs for CDBG-assisted grants/activities)

The following Federal Regulations, Contract Provisions and Clauses are incorporated into this agreement in their entirety, and made an integral part hereof.

1. Equal Employment Opportunity (Executive Order 11246 dated 9/24/65, as amended by Executive Order 11375 dated 10/13/67):

The contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for professional services, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the federal government or borrowed on the credit of the federal government pursuant to a grant, contract, loan insurance or guarantee or undertaken pursuant to any federal program involving such grant, contract, loan insurance or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination.

B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex or national origin.

C. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375, and with the rules, regulations and relevant orders of the Secretary of Labor.

E. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965 and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

F. In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order

11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law.

G. The contractor will include the portion of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 14, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

H. The contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrument or subdivision of such government which does not participate in work on or under the contract.

I. The contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

J. The contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate proceedings.

2. Minority and Women Business Enterprise Policy (Indiana Office of Community and Rural Affairs):

The contractor agrees to ensure that disadvantaged business enterprises as defined in 13 CFR 124.103 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 13 CFR 124.103 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract. The contractor shall establish and pursue a 10% goal for participation in the proceeds of this contract.

During the performance of this contract, the contractor agrees to comply with Executive Order 12138 entitled "Women Business Enterprise Policy" which includes, but is not limited to, creating or supporting new programs responsive to the special needs of women business enterprises, establishing incentives to promote business or business-related opportunities of women business enterprises, collecting and

disseminating information in support of women business enterprise in ensuring to women business enterprises knowledge of any ready access to business-related services and resources.

3. Compliance in the Provision of Training, Employment and Business Opportunities:

A. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development through the Indiana Office of Community and Rural Affairs and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC, 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued here under prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

4. Title VI Civil Rights Act of 1964:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

A. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices.

B. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

C. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, their sources of information and its facilities as may be determined by the Indiana Office of Community and Rural Affairs or the United States Department of Housing and Urban Development to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information is required or a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the awarding agency, the Indiana Office of Community and Rural Affairs, or the United States Department of Housing and Urban Development, as appropriate, and shall set forth what efforts it has made to obtain the information.

D. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Indiana Office of Community and Rural Affairs or the United States Department of Housing and Urban

Development shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

- (1) Withholding of payments to the contractor under the contract until the contractor complies; and/or,
- (2) Cancellation, termination or suspension of the contract, in whole or in part.

E. The contractor shall include the provisions of paragraph (A) through (E) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Indiana Office of Community and Rural Affairs or the United States Department of Housing and Urban Development may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Indiana Office of Community and Rural Affairs to enter into such litigation to protect the interests of the State of Indiana, and, in addition, the contractor may request the United States Department of Housing and Urban Development to enter into such litigation to protect the interests of the United States.

5. Title VIII Civil Rights Acts of 1968 (as applicable):

The contractor shall comply with Title VIII Civil Rights Acts of 1968 which prohibits discrimination in the sale or rental of dwellings (as defined), discrimination in the financing or housing, blockbusting, and discriminatory advertising; and makes it unlawful to deny any person access to, or membership or participation in, any multiple listing service or real estate broker organization for discriminatory reasons.

6. Section 109 Housing and Urban Development Act of 1974 (as applicable):

The contractor provides that no person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part under this title.

7. Section 504 Rehabilitation Act of 1973:

A. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all demotion or transfer, recruitment, advertising, layoff or termination rates of pay or other forms of compensation, and selection for training, including apprenticeship.

B. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

C. In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

D. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Indiana Office of Community and Rural Affairs, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

E. The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 504 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

F. The contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 504 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

8. Fair Housing Amendments Act of 1988 (as applicable):

The contractor shall comply with Fair Housing Amendments Act of 1988 which Amends Title VIII of the Civil Rights Act of 1968 that prohibits discrimination on the basis of race, color, religion, sex or national origin in the sale, rental and financing of dwellings. The 1988 Amendments Act extends coverage of the 1968 Act to persons with disabilities and families with children. In addition, the 1988 Amendments establish certain design and construction requirements for new multi-family housing built for first occupancy on or after March 13, 1991.

9. Age Discrimination Act of 1975:

The contractor shall comply with the Age Discrimination Act of 1975 which provides that no person, on the basis of age shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

10. Americans With Disabilities Act of 1990:

The contractor shall comply with the Americans With Disabilities Act of 1990 which provides that no person, on the basis of handicap, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

11. Certification of Nonsegregated Facilities:

The contractor certifies that he/she does not maintain or provide for his/her employees any segregated facility at any of his/her establishments, and those under his/her control. He/she certifies further that he/she will not maintain or provide for employment segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause of the contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or otherwise. He/she further agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certification from proposed subcontractors prior to the awards of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that he/she will retain such certification in his/her files; and that he/she will forward this notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

12. Retention and Access Requirements For Records (24 CFR Part 85.42):

A. The contractor shall comply with Retention and Access Requirements For Records (24 CFR Part 85.42) and State of Indiana records access and retention requirements, to wit:

Financial records, supporting documents, statistical records and all other records pertinent to a grant shall be retained for a period of five (5) years, with the following qualifications:

- (1) If any litigation, claim, negotiation, audits or other action is started before the expiration of the five-year period, the records shall be retained until all litigation, claim or audit findings involving the records have been resolved, or the five-year period, whichever is later.
- (2) Records of nonexpendable property acquired with federal funds shall be retained for five years after final disposition of such property.
- (3) When records are transferred to or maintained by the federal sponsoring agency, the five-year retention required is not applicable to the grantee.

B. The five-year retention period starts from the date of issuance of a "Certification of Completion" respective to the grant by the Indiana Office of Community and Rural Affairs.

C. The Indiana Office of Community and Rural Affairs shall request transfer of certain records to its custody from grantees when it is determined that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, the Indiana Office of Community and Rural Affairs may make arrangements with grantees to retain any records that are continuously needed for joint uses.

D. The Indiana Office of Community and Rural Affairs, the United States Department of Housing and Urban Development, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers and records of grantee and sub-grantees to make audits, examinations, excerpts and transcripts.

E. Unless otherwise required by law, Indiana Office of Community and Rural Affairs shall not place restrictions upon grantees that will limit public access to the records of grantees that are pertinent to a grant except when the agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 USC 552) if the records had belonged to the grantor agency.

13. Conflict of Interest (24 CFR 85.36 and 24 CFR 570.611):

The contractor shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by federal funds. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Persons covered under this section include any person who is:

- (a) An employee, agent, consultant, officer, or elected or appointed official of the grantee, any designated public agency or any subrecipient agency that is receiving CDBG funds from the Indiana Office of Community and Rural Affairs;
- (b) Any member of his/her immediate family;
- (c) His or her partner; or
- (d) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements funded with CDBG funds. To the extent permitted by state or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents or by contractors or their agents.

No persons described in (a) through (d) above who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter.

14. Remedies/Sanctions or Breach of Contract Terms:

Upon written notice, the grantee may withhold payments to the contractor if the contractor shall fail to fulfill in a timely and proper manner its obligations to grantee under this contract, or if the contractor shall violate any of the conditions of this contract. The grantee shall in its written notice to contractor fully describe the nature of failure or violation by contractor, the corrective action required of contractor, and, the grantee shall allow the contractor thirty (30) days from the date of notification to correct such failure and/or violation. If such failure or violation is corrected by the contractor within thirty (30) days from the date of notification, then the grantee shall process payment(s) to the contractor. If such failure or violation is not corrected within thirty (30) days from the date of this notification, then the grantee may proceed to terminate this contract.

15. Termination of Contract for Cause - 24 CFR 85.43 (All Contracts in Excess of \$10,000):

If the contractor shall fail to fulfill in a timely and proper manner his/her obligations under this contract, or if the contractor shall continue to violate any of the covenants, agreements, or stipulations of this contract, following notices by the grantee and allowances for corrective actions specified in Paragraph 14 above, the grantee shall thereupon have the right to terminate this contract by giving written notice to the contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the contractor under this contract shall, at the option of the grantee, become the property of the grantee and the contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. In the event the contractor disputes grantee's election to terminate this contract for cause under this paragraph, contractor may pursue equitable relief or remedy.

16. Termination for Convenience - 24 CFR 85.44 (All Contracts in Excess of \$10,000):

The grantee may terminate this contract for its convenience, at any time, by giving at least thirty (30) days notice in writing to the contractor. If the contract is terminated by the grantee as provided here in, the grantee agrees to pay the contractor, no later than thirty (30) days following the date of the written notice of contract termination by grantee. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the contractor under this contract shall, at the option of the grantee, become the property of the grantee and the contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

17. Changes to Contract:

The terms and conditions of this contract may be changed at any time by mutual agreement of the parties. Such modification shall be effective upon the signing by both parties of an addendum to this contract encompassing those changes. Where the addendum changes the compensation or time of performance, it shall also describe the change in scope, character or complexity of the work that is the basis for the change.

18. Contractor to Furnish Necessary Personnel Resources:

A. The contractor represents that it has, or will secure at its own expense, all personnel required in performing the services specified in this contract. Such personnel shall not be employees of or have, as individuals, any contractual relationship with the grantee.

B. All of the services required hereunder will be performed by the contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.

C. With the exception of the work described as being subcontracted within the contract, if any, none of the work or services covered by this contract shall be subcontracted without the prior approval of the grantee. Any additional work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this contract.

19. Reports and Information:

The contractor, at such times and in such forms as the grantee or the Indiana Office of Community and Rural Affairs may require, shall furnish grantee and/or the Indiana Office of Community and Rural Affairs such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred by grantee in connection therewith, and any other matters covered by this contract.

20. Records and Audits:

The contractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this contract and such other records as may be deemed necessary by the grantee to assure proper accounting for all funds applicable to this contract. These records will be made available for audit purposes to the grantee or any authorized representative, and will be retained for five years after the expiration of this contract unless permission to destroy them is granted.

21. Copyright and Patent Rights:

No reports, maps, or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the contractor. The US Department of Housing and Urban Development, the Indiana Office of Community and Rural Affairs and the grantee shall possess all rights to invention or discovery, as well as rights in data which may arise as a result of the contractor's services.

22. Compliance with State and Local Laws:

The contractor specifically agrees that in performance of the services herein enumerated, contractor and his/her employees/agents will comply with any applicable State, and Local Statutes, ordinances and regulations at the time this agreement is executed.

23. Disclosure Reports (HUD Reform Act of 1989 - 24 CFR Part 4.9):

Section 2 of the HUD Reform Act of 1989 requires that if the grantee receives \$200,000 or more in federal CDBG funds during a federal fiscal year, (October 1 - September 30), a HUD disclosure report must be completed for each contract funded in whole or in part with federal CDBG funds. A copy of all such Disclosure Reports must be submitted by the grantee to the Grant Support Office of the Indiana Office of Community and Rural Affairs within ten (10) days after contract execution. In order for the grantee to comply with this federal requirement, the grantee will provide to the contractor the prescribed format of Part IV to the HUD Disclosure Report, and the contractor agrees to furnish the grantee a completed Part IV to the HUD Disclosure Report within seven (7) days of execution of the agreement between contractor

and grantee. Within such Part IV of the prescribed HUD Disclosure Report, the contractor will provide the grantee with the following minimum information:

- a. The name of all persons who are proprietors, partners, directors or officers of the contractor and thereby have a pecuniary interest in the proceeds of the CDBG-assisted contract;
- b. The social security account number of all proprietors listed in a. above, or the federal identification number of the partnership or corporation which is subject to the CDBG-assisted contract, as applicable;
- c. The type of participation each individual named in a. above will have in the CDBG-assisted contract. Such participation may be listed in the Part IV of the HUD Disclosure Report as "direct", or "passive", whichever applies to such proprietor, partner, director or officer, as applicable; and,
- d. The financial interest of the named individual as set forth in a. above; such interest to be expressed in dollar terms or in terms of percentage of ownership of the proprietorship, partnership, or corporation which is to receive federal CDBG funding under this contract.

24. Compliance with Copeland "Anti-Kick Back" Act:

In carrying out this agreement, the contractor agrees to comply with the requirements of the Copeland "Anti-Kick Back" Act (18 USC 874) as supplemented in US Department of Labor regulations 29 CFR Part 3, respective to all contracts and subgrants for construction or repair services.

25. Compliance with Davis-Bacon Act:

In carrying out this agreement, the contractor agrees to comply with the requirements of the Davis-Bacon Act (40 USC 276a to 276a-7) as supplemented in US Department of Labor regulations 29 CFR Part 5, respective to construction contracts in excess of \$2,000 awarded by grantees and subgrantees.

26. Compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act:

In carrying out this agreement, the contractor agrees to comply with the requirements of the Contract Work Hours and Safety Standards Act (40 USC 327-333) as supplemented in US Department of Labor regulations 29 CFR Part 5, respective to construction contracts in excess of \$2,000 awarded by grantees and subgrantees, and \$2,500 for other contracts which involve the employment of mechanics or laborers.

27. Compliance with Clean Air and Water Acts (applicable to all contracts over \$100,000):

In carrying out this agreement, the contractor agrees to comply with the requirements of the Federal Clean Air Act (42 USC 7401 et seq.), and the Federal Water Pollution Control Act (33 USC 1251 et seq.), as amended. Such statutes and regulations prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the Environmental Protection Agency's List of Violating Facilities. The provision shall require reporting of violations to the grantor agency and to the US Environmental Protection Agency.

28. Conservation:

In carrying out this agreement, the contractor agrees to comply with the requirements of mandatory standards and policies relating to energy efficiency which are contained in the State of Indiana's energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act (PL 94-163, 89 Statutes 871).

29. Drug-Free Workplace Requirements:

In carrying out this agreement, the contractor agrees to comply with the requirements of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701) and to certify that contractor will comply with drug-free workplace requirements in accordance with the Act and with HUD rules found at 24 CFR part 24, subpart F.