

AN ORDINANCE approving PROFESSIONAL SERVICES AGREEMENT FOR WEST JEFFERSON SIDEWALK CONNECTION – (not to exceed \$499,700.00) between FLEIS & VANDENBRINK ENGINEERING, INC. and the City of Fort Wayne, Indiana, by and through its Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the PROFESSIONAL SERVICES AGREEMENT FOR WEST JEFFERSON SIDEWALK CONNECTION – (not to exceed \$499,700.00) between FLEIS & VANDENBRINK ENGINEERING, INC. and the City of Fort Wayne, Indiana, by and through its Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the DESIGN OF A 5-FOOT CONCRETE SIDEWALK ALONG WEST JEFFERSON BOULEVARD BETWEEN MALLARD COVE LN. AND SOUTH BEND DR. FOR A TOTAL OF 1.5 MILES OF NEW SIDEWALK. ROUTE WILL INCLUDE A PEDESTRIAN BRIDGE AND PEDESTRIAN SIGNAL UPGRADES AT 4 INTERSECTIONS;

involving a total cost of not to exceed FOUR HUNDRED NINETY-NINE THOUSAND SEVEN HUNDRED AND 00/100 DOLLARS - (\$499,700.00). A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Malak Heiny, City Attorney

**PROFESSIONAL SERVICES AGREEMENT
DESIGN SERVICES 2024**

West Jefferson Sidewalk Connection ("PROJECT")
Work Order #0339S

This Agreement is by and between

CITY OF FORT WAYNE ("CITY")

by and through its

Board of Public Works
200 East Berry St, Suite 210
Fort Wayne, IN 46802

and

Fleis & VandenBrink Engineering, Inc. ("ENGINEER")

5331 South Bend Drive
Fort Wayne, IN 46804
260.435.1414

Who agree as follows:

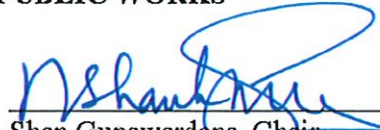
CITY hereby engages ENGINEER to perform the services set forth in Part I - Services ("SERVICES") and ENGINEER agrees to perform the SERVICES for the compensation set forth in Part III - Compensation ("COMPENSATION"). ENGINEER shall be authorized to commence the SERVICES upon execution of this Agreement and written authorization to proceed from CITY. CITY and ENGINEER agree that these signature pages, together with Parts I-IV and attachments referred to therein, constitute the entire Agreement ("AGREEMENT") between them relating to the PROJECT.

APPROVALS

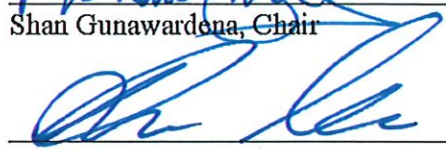
APPROVED FOR CITY

BOARD OF PUBLIC WORKS

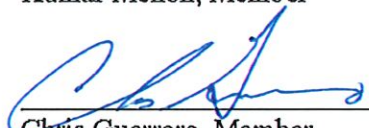
BY:


Shan Gunawardena, Chair

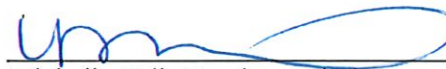
BY:


Kumar Menon, Member

BY:


Chris Guerrero, Member

ATTEST:


Michelle Fulk-Vondran, Clerk

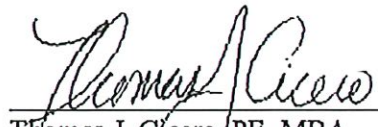
DATE:

6.25.2024

APPROVED as to legality and form

APPROVED FOR ENGINEER

BY:


Thomas J. Cicero, PE, MBA
Regional Manager

ATTEST:


Chad A. Salzbrenner, PE, PS
Senior Engineering Manager

DATE:

May 15, 2024

PART I

SERVICES

A. GENERAL

ENGINEER shall provide the CITY professional engineering services in the design phase of the PROJECT. These services will include serving as CITY'S professional representative for the PROJECT providing professional engineering consultation and advice, and furnishing civil, environmental and other customary design services incidental thereto.

B. PROJECT DESCRIPTION

The West Jefferson Sidewalk Connection project is a locally funded sidewalk project with the following project limits along West Jefferson Boulevard: the south side between Mallard Cove and South Bend Drive, and the north side between Mallard Cove and the existing sidewalk in front of Quintana Plaza strip mall. A sidewalk connection along Getz Road is included between the entrance to Time Corners Shopping Center and West Jefferson Boulevard.

A pedestrian bridge will be required to cross the Maria Flaugh Drain. A pre-engineered structure is preferred. Geotechnical engineering will be required for foundation design.

Stormwater and drainage design elements will comply with City Utility Engineering design standards for water quality and quantity.

Modification of existing traffic signals for added pedestrian signalization is required for both Covington Plaza entrances, the intersection of Getz Road and West Jefferson Boulevard, the intersection of Covington Road and West Jefferson Boulevard, and entrance into Time Corners.

It is anticipated that additional right-of-way will be needed for this project. Right-of-way engineering is included as part of these engineering services. Right-of-way Engineering includes Location Control Route Survey Plat, Appraisal Problem Analysis and staking of Right-of-Way for appraisals. Land acquisition services will be performed by City of Fort Wayne personnel.

C. SCOPE OF WORK

The duty of the ENGINEER is to design approved improvements, develop construction drawings, specifications and special provisions. The final construction documents shall be stamped by a Registered Professional Engineer who is licensed in the state of Indiana and employed by the ENGINEER. The ENGINEER shall develop and provide the following services:

Task 1 - Project Schedule and Review Meetings

- 1.1 Prepare project design schedule.
- 1.2 Keep the minutes of the Review Meetings and distribute these minutes within seven days of the Review Meeting.

Task 2 – Data Collection and Field Survey

- 2.1 Research CITY documents for existing mapping, utility information, as-built drawings, information management system and other pertinent data.
- 2.2 Identify major utilities and their apparent location from Utility maps.
- 2.3 Check conflicts with any other proposed projects in the immediate area.
- 2.4 Contact all utility companies and have the underground utilities field marked along the selected route. (Coordinate with IUPPS 1-800-382-5544)
- 2.5 Complete a field survey.

Task 3 - Preliminary Design

- 3.1 Prepare existing site drawings. (See Transportation Engineering Services, Drafting Standards)
- 3.2 Provide a utility location plan indicating apparent conflict areas.
- 3.3 Address apparent utility conflicts.
- 3.4 Compile additional data as needed.
- 3.5 Advise CITY of need for additional data relative to exploratory digs, pavement cores, soil borings and geotechnical evaluation issues all in accordance with good engineering practices. Provide a plan indicating recommended exploratory digs, pavement corings, soil borings and any areas of special interest prior to performing work. Fee for additional data work proposed shall be approved prior to commencing with the work.
- 3.6 Determine the final location of the proposed improvements, any permanent or temporary right-of-way or easement requirements.
- 3.7 Select construction materials and products to be used on this project.
- 3.8 Prepare preliminary design drawings. Incorporate all design improvements.
- 3.9 Prepare outline of specifications or reference standard specifications to supplement CITY standards.
- 3.10 Prepare estimate of quantities and estimate of construction costs.
- 3.11 Attend preliminary design review meeting.

Task 4 - Final Design

- 4.1 Prepare draft specifications for the improvements, including special provisions and necessary details to supplement CITY standards.
- 4.2 Prepare final design drawings. Incorporate comments received during the review meetings and routings.

- 4.3 Attend up to two public meetings as needed to review and discuss the project.
(Option – separate fee if done)
- 4.4 Update summary of project quantities.
- 4.5 Stake the Right-of-Way for utility relocation(s), if necessary.
- 4.5 Upon approval of Final Design drawings and project specifications, prepare and submit one (1) set of stamped mylars, itemized bid, special provisions and itemized engineers estimate and one (1) electronic version of the project drawings and documents (WORD Version 9.0).

Task 5 - Bidding

- 5.1 Attend pre-bid meeting.
- 5.2 Respond to questions from bidders and manufacturer representatives during bidding as requested by CITY. Responses requiring additional information or clarification not found within the bid documents shall ONLY be addressed by addendum.
- 5.3 Prepare addenda, as needed to interpret, clarify or expand bid documents. CITY to issue addenda.
- 5.4 Review and tabulate bids and make recommendation regarding construction contract award to the CITY.

D. SCHEDULE

The project will be completed per attached design schedule. This schedule is based on receiving a Notice to Proceed by: July 15, 2024 and receiving prompt review and approvals from CITY.

<u>ACTIVITY</u>	<u>DATE or DAYS</u>
Field Survey	September 2, 2024
Preliminary Design	December 2, 2024
Final Design	October 6, 2025
Bidding	December 1, 2025

PART II

CITY'S RESPONSIBILITIES

City shall, at its expense, do the following in a timely manner so as not to delay the SERVICES:

A. INFORMATION REPORTS/CITY UTILITY MAPS/AERIAL MAPS/CONTOUR MAPS

Make available to ENGINEER reports, studies, regulatory decisions and similar information relating to the SERVICES that ENGINEER may rely upon without independent verification unless specifically identified as requiring such verification.

Provide ENGINEER with a maximum of two copies each of existing CITY utility maps, aerial maps and contour maps that are readily available in the City-County Building.

B. REPRESENTATIVE

Designate a representative for the project who shall have the authority to transmit instructions, receive information, interpret and define CITY'S requirements and make decisions with respect to the SERVICES. The CITY representative for this AGREEMENT will be David Ross, City Engineer.

C. DECISIONS

Provide all criteria and full information as to CITY'S requirements for the SERVICES and make timely decisions on matters relating to the SERVICES.

PART III
COMPENSATION

A. COMPENSATION

Compensation for services performed in accordance with Part I – SERVICES of this Agreement will be based on hours actually spent and expenses actually incurred with a not-to-exceed engineering fee of \$499,700.00 as summarized in attached Attachment 1.

ENGINEER's costs will be based on the hours incurred to complete the project times the hourly rates of the various personnel, per Attachment 2 – Hourly Rate Schedule. All Reimbursable costs incurred for the project will be invoiced at cost plus 10 percent to cover administrative costs.

Payment for outside consulting and/or professional services such as Geotechnical, Registered Land Surveyor for easement preparation, or Legal Services performed by a Subconsultant at actual cost to ENGINEER plus 10 percent for administrative costs. The ENGINEER will obtain written CITY approval before authorizing these services.

B. BILLING AND PAYMENT

1. Timing/Format

- a. ENGINEER shall invoice CITY monthly for SERVICES completed at the time of billing. Such invoices shall be prepared in a form and supported by documentation as CITY may reasonably require.
- b. CITY shall pay ENGINEER within 30 days of receipt of approved invoice.

2. Billing Records

ENGINEER shall maintain accounting records of its costs in accordance with generally accepted accounting practices. Access to such records will be provided during normal business hours with reasonable notice during the term of this Agreement and for three years after completion.

PART IV
STANDARD TERMS AND CONDITIONS

1. **STANDARD OF CARE.** Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the services are performed. No warranty or guarantee, express or implied, are provided, including warranties or guarantees contained in any uniform commercial code.

2. **CHANGE OF SCOPE.** The scope of services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by ENGINEER and CITY. ENGINEER will promptly notify CITY of any perceived changes of scope in writing and the parties shall negotiate modifications to this Agreement.

3. **SAFETY.** ENGINEER shall establish and maintain programs and procedures for the safety of its employees. ENGINEER specifically disclaims any authority or responsibility for general job site safety and safety of persons other than ENGINEER employees.

4. **DELAYS.** If events beyond the control of ENGINEER, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or a public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be extended for a period equal to the delay. In the event such delay exceeds 90 days, ENGINEER will be entitled to an equitable adjustment in compensation.

5. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party in the event of substantial failure by the other party to perform in accordance with its obligations under this Agreement through no fault of the terminating party. CITY shall pay ENGINEER for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination.

ENGINEER or CITY, for purposes of convenience, may at any time by written notice terminate the services under this Agreement. In the event of such termination, ENGINEER shall be paid for all authorized services rendered prior to termination including reasonable profit and expenses relating thereto.

6. **REUSE OF PROJECT DELIVERABLES.** Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by CITY for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by ENGINEER for the specific purpose intended, shall be at CITY's sole risk.

7. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by ENGINEER is supplied for the general guidance of the CITY only. Since ENGINEER has no control over competitive bidding or market conditions, ENGINEER cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CITY.

8. **RELATIONSHIP WITH CONTRACTORS.** ENGINEER shall serve as CITY's professional representative for the Services, and may make recommendations to CITY concerning actions relating to CITY's contractors, but ENGINEER specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CITY's contractors.

9. **MODIFICATION.** This Agreement, upon execution by both parties hereto, can be modified only by a written instrument signed by both parties.

10. **PROPRIETARY INFORMATION.** Information relating to the Project, unless in the public domain, shall be kept confidential by

ENGINEER and shall not be made available to third parties without written consent of CITY.

11. **INSURANCE.** ENGINEER will maintain insurance coverage for Professional, Comprehensive General, Automobile, Worker's Compensation and Employer's Liability in amounts in accordance with legal, and ENGINEER business, requirements. Certificates evidencing such coverage will be provided to CITY upon request. For projects involving construction, CITY agrees to require its construction contractor, if any, to include ENGINEER as an additional insured on its policies relating to the Project. ENGINEER coverages referenced above shall, in such case, be excess over contractor's primary coverage.

12. **INDEMNITIES.** To the fullest extent permitted by law, ENGINEER shall indemnify and save harmless the City from and against loss, liability, and damages sustained by CITY, its agents, employees, and representatives by reason of injury or death to persons or damage to tangible property to the extent caused directly by the negligent errors or omissions of ENGINEER, its agents or employees.

13. **LIMITATIONS OF LIABILITY.** No employee or agent of ENGINEER shall have individual liability to CITY. CITY agrees that, to the fullest extent permitted by law, ENGINEER's total liability to CITY for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, ENGINEER's negligence, error, omissions, strict liability, or breach of contract shall not exceed the total compensation received by ENGINEER under this Agreement except for personal injury or property damage which shall be limited to the extent of ENGINEER insurance coverage (minimum \$700,000 for a single claim and \$5,000,000 for all claims in an occurrence). If CITY desires a limit of liability greater than that provided above, CITY and ENGINEER shall include in this Agreement the amount of such limit and the additional compensation to be paid to ENGINEER for assumption of such additional risk.

14. **ASSIGNMENT.** The rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and insure to the benefit of any permitted assigns.

15. **ACCESS.** CITY shall provide ENGINEER safe access to any premises necessary for ENGINEER to provide the Services.

16. **PREVAILING PARTY LITIGATION COSTS.** In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs from the other party.

17. **NO WAIVER.** No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate another section of this Agreement or operate as a waiver of any future default, whether like or different in character.

18. **SEVERABILITY.** The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

19. **AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the part for whom they are signing.

20. **STATUTE OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims regarding ENGINEER's performance under this Agreement shall expire one year after Project Completion.

DIGEST SHEET

Department: Transportation Engineering

Resolution Number: #0339S

Title of Ordinance: West Jefferson Sidewalk Connection

Amount of Contract:

\$499,700.00 Professional Services Agreement with Fleis & VandenBrink Engineering Inc.

Description of Project (Be Specific): Design of a 5-foot concrete sidewalk along West Jefferson Boulevard between Mallard Cove Ln. and South Bend Dr. for a total of 1.5 miles of new sidewalk. Route will include a pedestrian bridge and pedestrian signal upgrades at 4 intersections.

Project is located in the Southwest Quadrant, District 4 and will provide connectivity to Covington Plaza, Village at Time Corners, Time Corners, Covington Road Trail, and Getz Road sidewalk.

What Are The Implications If Not Approved: Project will not be designed.

If Prior Approval Is Being Requested, Justify: N/A

Additional Comments: