



May 11, 2021

Mr. Dennis Carson
City of Lafayette
515 Columbia Street
Lafayette, Indiana 47901

Re: Construction Materials Testing & Inspection
Lafayette Public Safety Building and Parking Garage
Lafayette, Indiana
Patriot Proposal No. P21-0707-06C

Dear Dennis:

We are pleased to submit herewith our proposal to provide construction materials testing and inspection services for the referenced project.

Our scope of services for this project will include soil, footing, concrete, masonry and steel inspection and testing. Patriot proposes to provide all inspection and testing on a unit price basis in accordance with Patriot's terms and conditions and the attached fee schedule. Based off our experience with similar projects we estimate the following testing scope:

- 3 trips for proofroll observations
- 28 full days for footing excavation observations and concrete testing
- 40 full days for foundation wall and column observations and concrete testing
- 13 trips for structural steel and weld inspection
- 10 full days for foundation backfill compaction testing
- 25 half days for parking garage elevated deck post tension inspection
- 50 full days for parking garage elevated deck post tension inspection and concrete testing
- 4 full and 4 half days for slab on grade observations and concrete testing
- 6 full and 6 half days for slab on metal deck observations and concrete testing
- 2 full and 2 half days for elevated deck observations and concrete testing
- 10 trips for floor flatness and levelness testing
- 4 trips for masonry inspection and testing
- 24 half days for site concrete testing
- 4 full and 6 half days for aggregate base compaction testing

Based on these quantities, we recommend establishing a budget of approximately \$115,400.00 for testing services.

Should you elect to utilize our services for this project, please complete the attached Proposal Acceptance Sheet and return one copy of our proposal in its entirety to our office. If we are to be issued a Purchase Order, please reference this proposal along with the Purchase Order.

We appreciate the opportunity to offer our services to you on this project and look forward to working with you.

Respectfully Submitted,
Patriot Engineering and Environmental, Inc.



Adam Kain
Lafayette Division Manager



PATRIOT ENGINEERING & ENVIRONMENTAL, INC
Construction Materials Testing & Inspection
Fee Schedule Effective Through August 2021

Patriot Proposal No. P21-0707-06C

Description	Est. Quantity	Unit Cost	Unit	Extension
<u>FIELD AND LABORATORY SERVICES</u>				
Engineering Technician		\$30.50	Hour	
Sr. Engineering Technician		\$39.75	Hour	
Nuclear Density Machine Rental		\$55.00	Day	
Dynamic Cone Penetrometer Rental		\$55.00	Day	
Standard Proctor (ASTM D698)		\$140.00	Each	
Modified Proctor (ASTM D1557)		\$160.00	Each	
Minus 200 Sieve Analysis (ASTM C117)		\$52.00	Each	
Mechanical Sieve Analysis (ASTM C136)		\$75.00	Each	
Hydrometer Analysis (ASTM D422)		\$100.00	Each	
Atterberg Limits Analysis		\$80.00	Each	
Concrete Cylinder Compression Test		\$10.00	Cyl	
Concrete Cylinder Held in Reserve		\$10.00	Cyl	
Grout Prism Compression Test		\$16.00	Each	
Mortar Cube Compression Test		\$16.00	Each	
Asphalt Extraction/Gradation Analysis		\$120.00	Each	
Asphalt Density of Cores		\$60.00	Each	
Floor Flatness and Levelness Equipement		\$450.00	Day	
Transportation		FREE	Mile	
Testing & Inspection Subtotal				
<u>PROFESSIONAL SERVICES</u>				
Data Processing		\$45.00	Hour	
Certified Weld Inspector (CWI)		\$65.00	Hour	
Project Manager		\$80.00	Hour	
Senior Project Manager		\$100.00	Hour	
Division Manager		\$130.00	Hour	
Professional Engineer, P.E.		\$160.00	Hour	
Principal Engineer		\$160.00	Hour	
Professional Services Subtotal				

Technician time will be charged portal to portal.

Net terms for payment are 30 days.

Overtime rates of 1.5 times the regular rates apply for all time over 8 hours per day, Saturdays, Sundays and Holidays

TERMS AND CONDITIONS

1. SCOPE OF WORK

PATRIOT Engineering and Environmental Inc. (PATRIOT) shall perform the services defined in the attached proposal at the fees stated in the proposal or the attached fee schedule. Any estimate of time and materials shall not be considered as a fixed price, but only an estimate (unless otherwise specifically stated in this contract). PATRIOT will provide additional services at the listed standard fees. This offer will be valid for ninety (90) days unless otherwise stated. Upon acceptance, this proposal and associated terms and conditions shall become the contract.

2. RIGHT OF ENTRY

Client grants to PATRIOT the right of entry to the project site by its employees, agents, and subcontractors; to perform services, post signage, and represents that it has obtained the needed permits and licenses for the proposed work. If Client does not own the site, Client warrants and represents to PATRIOT that it has the authority and permission of the owner and occupant of the site to grant right of entry to PATRIOT.

3. PAYMENT TERMS

PATRIOT will submit invoices to the Client throughout the project and a final invoice upon completion of services. There shall be no retainage of fees due and payable to PATRIOT. Payment is due within fourteen (14) days of invoice receipt, regardless of whether the client has been reimbursed by any other party. Client agrees to pay interest of one and one-half percent (1½%) per month, or the maximum rate allowed by law, on past due accounts. Any attorney's fees, collection fees or other costs incurred in collecting any delinquent amount shall be paid by Client.

4. STANDARD OF CARE

The services shall be performed in accordance with generally accepted industry principles and practices, consistent with a level of care and skill ordinarily practiced by reputable members of the profession currently providing similar services under similar circumstances. Except as set forth herein, PATRIOT makes no other representation, guarantee, or warranty, express or implied, in fact or by law, whether any merchantability, fitness for any particular purpose or otherwise concerning any of the services which may be furnished by PATRIOT to Client. Client agrees to give PATRIOT written notice of any breach or default under this section and to give PATRIOT a reasonable opportunity to cure such breach or default, without the payment of additional fees to PATRIOT, as condition precedent to any claim for damages.

5. INSURANCE AND GENERAL LIABILITY

PATRIOT maintains Workers' Compensation and Employers' Liability Insurance in compliance with the laws of the state having jurisdiction over the individual employee. PATRIOT has insurance coverage under general liability, property damage, and professional liability, which PATRIOT deems to be adequate. Certificates for such policies of insurance shall be provided to Client upon request. PATRIOT may provide additional insurance coverage beyond stated limits at the Client's request and expense.

6. RISK ALLOCATION

Due to the very limited benefit PATRIOT will derive from this project compared to that of other parties involved, including the Client, Client agrees to limit PATRIOT'S liability to Client or any other party using or relying on PATRIOT'S work with respect to any acts or omissions including, but not limited to, breach of this contract, breach of warranty, negligence, alleged defects in PATRIOT'S performance, or other legal theory such that the total aggregate liability of PATRIOT to all those named shall not exceed a maximum limit of \$25,000 or PATRIOT'S project fee for the services rendered on this project, whichever is less.

7. TERMINATION

Either party may suspend performance immediately upon becoming aware of a breach of the terms of this contract by the other party and provide notice of its intention to terminate. In the event PATRIOT determines there may be a significant risk that PATRIOT'S fees may not be paid on a timely basis, PATRIOT may suspend performance and/or retain any reports, work products, or other information until Client provides PATRIOT with adequate assurances of payment. The filing of a voluntary or involuntary bankruptcy petition, appointment of a receiver, assignment for the benefit of creditors or other similar act of insolvency shall constitute a breach. Termination will become effective seven (7) calendar days after receipt of notice by the breaching party unless the event(s) giving rise to the breach are remedied within the timeframe or the party seeking termination revokes its notice. Either party, without cause, may terminate this contract upon providing ten (10) calendar days written notice to the other party.

8. ASSIGNS

This contract may be amended by written instrument, e-mail confirmation, or written confirmation of a verbal agreement, acknowledged or signed by both parties. Client shall not assign this proposal or any reports or information generated as a result of contracted services pursuant to this proposal without written consent of PATRIOT.

9. SAFETY

PATRIOT'S responsibility for safety on site shall be limited to its own personnel, subcontractors, and any individuals who are directly involved with PATRIOT'S work on site. This shall not be construed to relieve the Client or any of its contractors from their responsibilities for maintaining a safe jobsite. Neither the professional activities of PATRIOT, nor the presence of PATRIOT'S employees and its subcontractors shall be construed to imply that PATRIOT has any responsibility for any activities on the site, which are performed by personnel other than PATRIOT'S employees or subcontractors.

10. CONFLICTS

Should any element of the Terms and Conditions be deemed in conflict with any element of the proposal/contract, unless the proposal/contract clearly voids the conflicting element in the Terms and Conditions, wording of the Terms and Conditions shall govern. Any element of this agreement

later held to violate a law or regulation shall be deemed void, but all remaining provisions shall continue in force. The Terms and Conditions set forth herein shall survive the termination of this contract. No action, legal or otherwise, may be brought against *PATRIOT* arising from its performance of services under this contract, whether for breach of contract, tort, or otherwise, unless *PATRIOT* shall have received within two (2) years after completion of services under this contract a written notice specifying the alleged defects in *PATRIOT'S* performance or other breach.

11. CONSEQUENTIAL DAMAGES

In no event shall either party be liable to the other party for any consequential, incidental, or indirect damages including, though not limited to, loss of income, loss of profits, loss or restriction of use of property, or any other business losses regardless as to whether such damages are caused by breach of contract or warranty, negligent acts or omissions, or other wrongful acts.

12. DELAYS IN WORK

PATRIOT will charge the Client at standard fees for stand-by or non-productive time for delays in *PATRIOT'S* work caused by the Client or Client's contractors unless otherwise specifically provided for in the contract.

13. SAMPLING OR TEST LOCATION(S)

Unless otherwise stated, the fees in this proposal do not include costs associated with surveying of the site for accurate horizontal and vertical locations of tests or samples which, when referenced in *PATRIOT'S* report, are based on information furnished by others and/or estimates made by *PATRIOT'S* personnel and are only considered approximations, unless otherwise stated. *PATRIOT* may deviate a reasonable distance from any test or sampling location as specified by the Client. If, in order to complete a given soil boring to its designated depth, relocating the soil sampling location and associated sampling method is necessitated by encountering impenetrable subsurface objects, all work, including the original work performed, will be charged for at the appropriate rates in the fee schedule. Client recognizes that project site conditions may vary from those encountered at the locations where the borings, surveys, sampling, monitoring, or explorations are made by *PATRIOT* and its subcontractors, and that the data interpretations and recommendations of *PATRIOT'S* and its subcontractors are based solely on the information available to them. *PATRIOT* will only be responsible for data, interpretations, and recommendations based on information obtained from the locations sampled, monitored, and explored by *PATRIOT* and its subcontractors, but shall not be responsible for the interpretations by others of the information obtained and reported.

14. DISPUTE RESOLUTION

Any claim or dispute made against *PATRIOT* for inadequate, negligent, or improper performance of services by *PATRIOT* pursuant to this contract must be resolved by negotiation or mediation. Any party to this contract may demand that any such disputes be resolved by negotiation or mediation, unless the parties mutually agree otherwise. The Client and *PATRIOT* further agree to include similar dispute resolution provisions in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include similar dispute resolution provisions in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for negotiation or mediation as

the primary method for dispute resolution between the parties to those agreements.

15. FAILURE TO FOLLOW RECOMMENDATIONS

Client will not hold *PATRIOT* or its subcontractors liable for any consequential, incidental, or indirect damages or business losses that may occur based on, or which may result from *PATRIOT'S* or its subcontractors' recommendations that are not followed. Client waives any claim against *PATRIOT* and agrees to defend, indemnify, and hold *PATRIOT* harmless from any claim, liability for injury, or business loss that results from *PATRIOT'S* recommendations that are not followed.

16. FORCE MAJEURE

Neither Client nor *PATRIOT* shall hold the other responsible for damages or delays in performance caused by events beyond the control of the other party and which could not reasonably have been anticipated or prevented, including but not limited to, acts of God, materially different site conditions, wars, riots, rebellions, sabotage, fires, explosions, accidents, floods, strikes or other conceded acts of workers, lockouts, or changes in laws, regulations, or ordinances. The party intending to invoke force majeure shall provide prompt notice to the other party.

17. RIGHT TO STOP OR DIRECT WORK

Since *PATRIOT'S* duties and services are limited to the scope of work proposed and contracted with the Client to perform, *PATRIOT* shall not under any circumstances give a stop-work order or direct work, either for quality, safety or any other reason, unless directed solely to *PATRIOT* personnel or its subcontractors' personnel. Neither shall *PATRIOT* be responsible for the possible consequences of not issuing a stop-work order. *PATRIOT* will only report to Client regarding the quality of the work *PATRIOT* has performed, or been contracted to observe and monitor.

18. FIELD MONITORING AND CONTROL

PATRIOT shall not, except for its own services and for services it subcontracts, specify project site procedures, manage or supervise project work, implement or be responsible for project site health and safety procedures. *PATRIOT* shall not be responsible for the acts or omissions of other parties on the project site and shall not have control or charge of and not be responsible, without limitation, for project means, methods, techniques, sequences, or procedures. *PATRIOT'S* project services shall not relieve any other parties from their responsibility for performing work in accordance with applicable plans, specifications, safety requirements, laws, and regulations. *PATRIOT'S* proposed and contracted monitoring and testing services are limited to its proposed and contracted scope of work and does not imply or warrant that *PATRIOT* is responsible for observing all activities and personnel at the project site. If *PATRIOT* is not retained to monitor environmental remediation, mitigation, or abatement activities, Client waives any claim against *PATRIOT* and agrees to indemnify, defend, and hold *PATRIOT* harmless for any claim or liability for injury or business loss resulting from remediation, mitigation, or abatement activities

The words "supervision", "inspection", or "control", if used in connection with *PATRIOT'S* work, are only intended to mean periodic observation or monitoring of the project work as outlined in *PATRIOT'S* proposed and contracted scope of work.

19. RETESTING AND RE-MONITORING

PATRIOT is only obligated to monitor and test in accordance with applicable and agreed upon standards and methods. In the event PATRIOT's monitoring and/or testing discloses deficiencies in the project's work, and which consequently will require corrections, PATRIOT will retest or re-monitor the corrected work as required by the plans and specifications or as directed by the Client; however, all such retesting or re-monitoring shall be additional work and shall be paid for by Client at the agreed upon fees in this contract.

20. SITE WORK

PATRIOT will take reasonable precautions to avoid any damage to the project site from the activities of its personnel, subcontractors, or equipment. Any damage caused by PATRIOT'S negligence will be restored at PATRIOT'S expense; however, unavoidable damage caused in the execution of the project work such as tire rutting, cutting and splicing of fences, removal of potential asbestos containing materials (ACM), drilling through pavements, cutting of brush and trees, coring through pavements, etc., will not be restored unless otherwise stated in the contract.

21. UTILITIES

In the execution of any subsurface exploration, PATRIOT will take reasonable precautions to avoid damage to subterranean structures or utilities of which PATRIOT has received notification; however, it is the Client's responsibility to mark or furnish the locations of all underground, manmade obstructions or utilities. Client shall indemnify, defend, and hold harmless PATRIOT from and against any claims, losses, or damages incurred or asserted against PATRIOT related to Client's failure to mark, protect, inform, or advise PATRIOT of underground structures or utilities, unless stated in our contracted scope of services.

22. SAMPLES

PATRIOT and its subcontractors will retain any soil, rock, water, or material samples obtained in the performance of its contracted scope of work for a period not to exceed thirty (30) days after submitting PATRIOT'S report or findings. Further storage or transfer of samples and materials obtained from the contracted scope of PATRIOT'S work can be made at the Client's expense upon written request.

23. AQUIFER CONTAMINATION

Client waives any claim against PATRIOT, and agrees to hold harmless, defend, and indemnify PATRIOT from any claim, business loss, or liability for injury as a result of cross-contamination caused by subsurface drilling and/or sampling unless due to PATRIOT'S negligence or willful acts.

24. HAZARDOUS SUBSTANCES

Client agrees to advise PATRIOT, prior to beginning project work, of any hazardous substances on or near the project site known to Client. In the event that test samples obtained during our work contain substances hazardous to health, safety, or the environment, these samples remain the property of Client which also shall pay for all costs connected with decontamination of PATRIOT'S or its subcontractors' equipment. Furthermore, any equipment of PATRIOT'S or its subcontractors' contaminated during PATRIOT'S services which cannot be reasonably decontaminated shall become the property and responsibility of Client. Such samples and/or equipment will be delivered to Client. Client agrees to pay transportation costs for samples and equipment, and the fair market value of such

contaminated equipment. Client waives any claim against PATRIOT and its subcontractors and agrees to defend, indemnify, and hold harmless PATRIOT from any claims, business loss, or liability for injury arising from PATRIOT'S failure to detect the presence of hazardous materials, including ACM, through techniques and methods agreed upon in the proposed and contracted scope of work, unless the failure to detect hazardous materials, including ACM, was due to PATRIOT'S failure to properly execute the proposed and contracted scope of work set forth in this contract.

25. ENVIRONMENTAL PROBLEMS

PATRIOT and its subcontractors' duties and responsibilities are limited to the proposed and contracted scope of work. Any sampling, testing, or monitoring of site conditions or materials related to environmental concerns including hazardous waste, soil, ground water, surface water, ACM, or air pollutants are not part of PATRIOT'S responsibilities and duties unless specifically identified in its proposed and contracted scope of work. If it becomes apparent during project site work that undisclosed hazardous materials may be present, project site work will be terminated unless specified in PATRIOT'S proposed and contracted scope of project work. Project site work will resume only after renegotiation of the contracted scope of services and fees to cover appropriate environment, health, and safety precautions. PATRIOT shall have no responsibility for detecting or dealing with environmental concerns, hazardous waste, soil, ground water, surface water, ACM, or air contamination, should they occur at the project site unless specifically outline in PATRIOT'S proposed and contracted scope of work. Client waives any claim against PATRIOT and agrees to defend, indemnify, and hold harmless PATRIOT from any claim, business loss, or liability for injury that results from the discovery of onsite environmental concerns, hazardous materials, soils, ground water, surface water, ACM, or air contamination.

26. ENVIRONMENTAL INDEMNITY

Client agrees to the maximum extent permitted by law to defend, indemnify, and hold harmless PATRIOT and its subcontractors from and against any and all claims and liabilities in connection with toxic or hazardous substances or constituents unless caused by PATRIOT'S negligence or willful acts, resulting from Client's violation of any federal, state or local statute, regulation or ordinance relating to the handling, storage or disposal of toxic or hazardous substances or constituents; Client's undertaking of or arranging for the handling, removal, treatment, storage, transportation or disposal of toxic or hazardous substances or constituents found or identified at the site; toxic or hazardous substances or constituents introduced at the site by Client or third persons before or after completion of services herein; allegations that PATRIOT or its subcontractors are the handlers generators, operators, treaters or storers, transporters, or disposers under the Resource Conservation and Recovery Act of 1976, Comprehensive Environmental Response, Compensation and Liability Act, or any other similar federal, state or local regulation or law.

PATRIOT or its subcontractors have no role in generating, treating, storing, or disposing of any hazardous materials which may be present at the project site, and which at no time become the property of PATRIOT or its subcontractors, unless specifically identified in the proposed and contracted scope of work. Client shall evaluate and select proper

disposal site for treatment or disposal of its hazardous materials (to include test samples collected to determine the characteristics of the samples), shall select the method of transportation, and shall be solely responsible therefore. Any arrangements for the treatment, storage, transport, or disposal of any hazardous materials that are made at the direction and expense of Client and to be conducted or completed by PATRIOT shall be construed as being made solely and exclusively on Client's behalf for Client's benefit, and Client shall defend, indemnify, and hold harmless PATRIOT from and against any and all claims, damages, business losses, liability of injury, and expenses, including reasonable attorney's fees, which arise out of any release, threatened release, transportation, or disposal of hazardous materials, unless caused by the negligence or willful acts of PATRIOT during the execution of its proposed and contracted scope of work.

27. OWNERSHIP OF DOCUMENTS

Client agrees that all original documents and drawings produced by PATRIOT in accordance with this agreement, except documents, which are required to be filed with public agencies, shall remain the property of PATRIOT. Client agrees to be liable and responsible for the use of unsigned plans, drawings, or other documents not signed by PATRIOT, and waives liability against PATRIOT for their use. Further, client agrees to waive any claim against PATRIOT and to indemnify, defend, and hold harmless PATRIOT from any and all claims arising out of any use, not authorized in writing by PATRIOT, of these documents by third parties not related to this agreement.

28. PUBLIC RESPONSIBILITY

Client shall be responsible for reporting to appropriate governmental and licensing agencies with respect to any legal or regulatory requirements, code violations, or hazardous substances detected on site. If Client disregards PATRIOT'S and its subcontractors' recommendations for reporting or public health and safety, Client waives any claim against PATRIOT and its subcontracts and agrees to defend, indemnify, and hold harmless PATRIOT and its subcontractors from any claim, business loss, liability for injury, or loss arising from disregarding PATRIOT'S or its subcontractors' recommendations of reporting.

29. NON-SOLICITATION

During the term of this Agreement and for (6) six months after any termination of this Agreement, CLIENT will not directly or indirectly solicit, induce, recruit, divert or hire away, encourage, or otherwise endeavor the cause or attempt to cause any employee or consultant of Patriot to terminate their relationship to Patriot.

Revised July 2017



PATRIOT ENGINEERING AND ENVIRONMENTAL, INC.

PROPOSAL ACCEPTANCE AGREEMENT

Project Name Lafayette Public Safety Building and Parking Garage
Project Location Lafayette, Indiana
Description of Services Construction Materials Testing and Inspection
Patriot Proposal # P21-0707-06C Patriot Project # _____

APPROVAL & PAYMENT OF CHARGES - Invoices will be charged and mailed to the account of:

Firm City of Lafayette
Address 515 Columbia Street
City Lafayette State Indiana Zip 47901
Attention Mr. Dennis Carson E-Mail dcarson@lafayette.in.gov
Telephone 765.807.1093 Fax _____

PAYMENT TERMS: Payable in accordance with attached Terms and Conditions. Invoices for completed work will be issued every month for continuous or extended projects unless otherwise agreed.

PROPERTY OWNER IDENTIFICATION (If other than above)

Name _____
Address _____
City _____ State _____ Zip _____
Telephone _____ Fax _____

SPECIAL PROVISIONS _____

Please note that PATRIOT reserves the right to withhold all reports until such time we receive a signed Proposal Acceptance Agreement or with other written authorization referencing this AGREEMENT in its entirety. This AGREEMENT together with PATRIOT'S proposal, Unit Fee Schedule, and following Terms & Conditions constitute the entire agreement between the client and PATRIOT and supersedes all prior written or oral understandings:

- General Terms and Conditions
- Construction Services Terms and Conditions

PROPOSAL ACCEPTED BY: _____

TITLE: _____

DATE ACCEPTED: _____

CITY OF LAFAYETTE, INDIANA

**STANDARD TERMS AND CONDITIONS
PROFESSIONAL SERVICE CONTRACTS**

1. **Billing**. On hourly, not to exceed, contracts, services may be billed monthly for the hours and costs expended during that period. Services under fixed fee or lump sum contracts may be billed monthly on the estimate of the percentage of work completed.
2. **Employment**. During the term of the Agreement, the Consultant shall not engage on this project on a full or part-time basis any professional or technical personnel who are, or have been at any time during the period of the Agreement, in the employ of the City, except regularly retired employees.
3. **Ownership of Documents**. All reports, tables, figures, drawings, specifications, boring logs, field data, field notes, laboratory test data, calculations, estimated and other documents prepared by Consultant shall remain the property of the Consultant. The City shall be entitled to copies or reproducible sets of any of the aforesaid.
4. **Insurance**. The Consultant shall at its own expense maintain in effect during the term of the Agreement the following insurance with limits as shown or greater:
 - A. General Liability (including automobile) – combined single limit of \$2,000,000. The City shall be named as Additional Insured and be given a 30 day notice of cancellation, non-renewal or significant change of coverage. Consultant’s insurance shall be written on a “primary” basis and the City’s insurance program shall be in excess of all of Consultant’s available coverage.
 - B. Worker’s Compensation – statutory limit. Workers Compensation shall include a Waiver of Subrogation endorsement in favor of the City.
 - C. Professional Liability for protection against claims arising out of the performance of professional services caused by negligent error, omission or act in the amount of \$2,000,000.
 - D. The Consultant shall provide Certificates of Insurances indicating the aforesaid coverage.
5. **Successors and Assigns**. Neither the City nor the Consultant shall assign, sublet or transfer their interest in the Agreement without the written consent of the other.
6. **Termination of Agreement**. The Agreement may be terminated by either party should the other party fail to substantially perform in accordance with the terms through no fault of the other upon fifteen (15) days written notice. The Agreement may be terminated by the City for convenience upon thirty (30) days written notice to Consultant. In the event of termination, due to any reason other than the fault of the Consultant, the Consultant shall be paid for services performed to termination date, including reimbursable.

7. **Dispute Resolution.** All claims or disputes of the Consultant and the City arising out of or relating to the Agreement, or the breach thereof, shall first be submitted to non-binding mediation. If a claim or dispute is not resolved by mediation, the party making the claim or alleging a dispute shall have the right to institute any legal or equitable proceedings in the Tippecanoe Superior or Circuit Court. The prevailing party shall be entitled to recover attorney fees and costs.
8. **Indemnities.** Consultant and City each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives from and against liability for all claims, losses, damages or expenses caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses and damages or expenses are caused by the joint or concurrent negligence of the City and Consultant, they shall be borne by each party in proportion to its negligence.
9. **E-Verify.** Consultant must enroll in and verify the work eligibility status of all newly hired employees of the Consultant through the E-Verify program operated by the United States Department of Homeland Security. If the E-Verify program ceases to exist, the Consultant will not be required to verify the work eligibility status of newly hired employees through the E-Verify program. The Consultant affirms under penalties for perjury that the Consultant does not knowingly employ an unauthorized alien.
10. **Contracting with Iran.** Consultant certifies that under penalties of perjury that it does not engage in investment activities in Iran as more particularly described in Indiana Code 5-22-16.5.
11. **Tobacco Free Policy.** Consultant, subcontractors and suppliers shall comply with the City of Lafayette's Tobacco Free Workplace Policy while on the job-site.
12. **Compliance with Laws.** The Consultant specifically agrees that in the performance of the services herein enumerated by the Consultant or a subcontractor or anyone acting on behalf of either, that each will comply with all State, Federal and Local Statutes, Ordinances and Regulations.
13. **Changes in Work.** In the event that either the City or Consultant determine that a major change in scope, character or complexity of the work is needed after the work has progressed as directed by the City, both parties in the exercise of their reasonable judgment shall negotiate the changes and the Consultant shall not commence the additional work or the change of the scope of work until a supplemental agreed is executed and the City has provided written notice to the Consultant to proceed.
14. **Delays and Extensions.** The Consultant agrees that no change or claim for damages shall be made by if for any minor delays from any cause whatsoever during the progress of any portion of the services specified in the Agreement. Any such delays shall be compensated for by an extension of time for such period as may be determined by the City, subject to the Consultant's approval. However, it being understood, that permitting the Consultant to proceed

to complete any services, or any part of them after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the City or any of its rights herein.

15. **Standard in Practice.** The Consultant will strive to conduct services under the Agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the professional currently practicing in the same locality under similar conditions as of the date of the Agreement.

16. **Waiver of Contract Breach.** The waiver of one party of any breach of the Agreement or the failure of one party to enforce at any time, or for any period of time, any provisions hereof, shall be limited to the particular instances, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for that particular instance.

17. **Entire Understanding of Agreement.** The Agreement represents and incorporated the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenant or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. City and Consultant hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void and without effect to the extent they conflict with the terms of the Agreement.

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

19. **Amendments.** The Agreement may only be amended, supplemented or modified by written documents executed in the same manner as the Agreement.

20. **Governing Law.** The Agreement and all of the terms and provisions shall be interpreted and construed according to the laws of the State of Indiana. Should any clause, paragraph, or other part of this Agreement be held or declared to be void or illegal, for any reason, by any court having competent jurisdiction, all other clause, paragraph or other part of the Agreement, shall remain in full force and effect.

21. **Public Record.** The Consultant acknowledges that the City will not treat the Agreement as containing confidential information and may post this Agreement on the Indiana Transparency Portal as required by IC § 5-14-3.8-3.5.

ADOPTED AND PASSED by the Lafayette Redevelopment Commission this 24th day of June, 2021.

LAFAYETTE REDEVELOPMENT COMMISSION

Jos Holman, President

Shelly Henriott, Vice President

T.J. Thieme, Secretary

Jim Terry

ATTEST:

Dave Moulton

Josh Loggins