INDIANA DEPARTMENT OF TRANSPORTATION

Driving Indiana's Economic Growth

LPA – Consultant Contract Review Checklist

Vers. 1/30/13

Local Public Agency: Town of Yorktown

Project Name: River Road Trail Des No.: 0900596

Consultant Name: Butler, Fairman & Seufert, Inc.

1. Review the contract document.
   a. ☒ Verify that draft contract is consistent with the latest INDOT boilerplate.

   b. ☒ Verify that the contract description, Des number and scope of work is within the parameters described in the RFP advertisement and in SPMS.

   c. ☒ Verify that the maximum compensation amount shown on page one matches the amount shown in Appendix D.

   d. ☒ Verify that Section 22 of the draft contract includes proper addresses for the LPA and for the consultant.

   e. ☒ Verify that the signature page contains the names and titles for either the Board of County Commissioners, City Board of Public Works and Safety or the Town Board, as appropriate

2. NA☐ Verify Appendix "C" of construction inspection contracts indicates the Final Construction Record is to be submitted within 45 days of the contractors last day of work.

3. ☒ Verify the Appendix "D" compensation mechanism is appropriate for the scope of work.

   a. Construction inspection services should be paid for on a negotiated hourly billing rate basis.
   b. Other types of services may be paid for on a lump sum basis, cost plus fixed fee basis, unit price basis or negotiated billing rate basis.
   c. Cost plus percent of cost compensation is not allowed on any consultant contracts.
   d. See the INDOT Professional Services Contract Administration Manual for more information on the compensation methods. The manual is available from the INDOT Consulting Services Section intranet page \\indotweb\content\CA\NewSite\ca_contracts.html .

4. ☒ Verify the LPA has provided a copy of the lead consultant's prequalification letter showing their approved overhead rate.

5. Verify the consultant has provided a fee proposal and the fee proposal includes the following:
   a. ☒ Itemization of task elements with estimated hours by employee classification.

   b. ☐ Cost calculations show the overhead rate and profit rate has been applied.

6. Analyze the Consultant Fee Proposal.
   a. ☒ Confirm the task elements are relevant to the scope of work.

   b. ☒ Confirm that the profit rate does not exceed 15%. INDOT's profit rate guidelines are available at http://www.in.gov/indot/2730.htm . LPA's are not required to follow INDOT's practice; however, use of rates above 15% is not acceptable.

   c. ☒ Confirm that the proposal does not include unreasonable escalation. INDOT uses the Bureau of Labor and Statistics Employment Cost Index (ECI) to determine appropriate escalation values. INDOT's guidelines are available at http://www.in.gov/indot/2730.htm . LPA's are not required to follow INDOT's practice, however, use of escalation rates substantially higher than the ECI may be cause for question.

   d. ☒ Confirm that the overhead rate used in the fee proposal is consistent with or lower than the rate shown in the consultant's prequalification letter.

   e. ☒ Confirm, to the extent possible, major task element and overall cost totals are not excessive.

ERC signature _____Date_____

Pete Olson, Yorktown Town Manager/ERC

LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of _____, 20_____ ("Effective Date") by and between TOWN OF YORKTOWN acting by and through its proper officials ("LPA"), and BUTLER, FAIRMAN, and SEUFRT, INC.("the CONSULTANT"),a corporation organized under the laws of the State of Indiana.

Designation No.: 0900596

Project Description: River Road Trail from Nebo Road to Morrison Road in Yorktown, Indiana

RECITALS

WHEREAS, the LPA has entered into an agreement to utilize federal monies with the Indiana Department of Transportation ("INDOT") for a transportation or transportation enhancement project ("the Project"), which Project Coordination Contract is herein attached as Attachment 1 and incorporated as reference; and

WHEREAS, the LPA wishes to hire the CONSULTANT to provide services toward the Project completion more fully described in Appendix "A" attached hereto ("Services");

WHEREAS, the CONSULTANT has extensive experience, knowledge and expertise relating to these Services; and

WHEREAS, the CONSULTANT has expressed a willingness to furnish the Services in connection therewith.

NOW, THEREFORE, in consideration of the following mutual covenants, the parties hereto mutually covenant and agree as follows:

The "Recitals" above are hereby made an integral part and specifically incorporated into this Contract.

SECTION I **SERVICES BY CONSULTANT**. The CONSULTANT will provide the Services and deliverables described in Appendix "A" which is herein attached to and made an integral part of this Contract.

SECTION II **INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA.** The information and services to be furnished by the LPA are set out in Appendix "B" which is herein attached to and made an integral part of this Contract.

SECTION III **TERM**. The term of this Contract shall be from the date of the last signature affixed to this Contract to the completion of the construction contract which is estimated to be December 1, 2016. A schedule for completion of the Services and deliverables is set forth in Appendix "C" which is herein attached to and made an integral part of this Contract.

SECTION IV **COMPENSATION**. The LPA shall pay the CONSULTANT for the Services performed under this Contract as set forth in Appendix "D" which is herein attached to and made an integral part of this Contract. The maximum amount payable under this Contract shall not exceed **$ 168,005.00.**

SECTION V **NOTICE TO PROCEED AND SCHEDULE**. The CONSULTANT shall begin the work to be performed under this Contract only upon receipt of the written notice to proceed from the LPA, and shall deliver the work to the LPA in accordance with the schedule contained in Appendix "C" which is herein attached to and made an integral part of this Contract.

SECTION VI GENERAL PROVISIONS

1. **Access to Records.** The CONSULTANT and any SUB-CONSULTANTS shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by the LPA, INDOT and/or the Federal Highway Administration ("FHWA") or its authorized representative, and copies thereof shall be furnished free of charge, if requested by the LPA, INDOT, and/or FHWA. The CONSULTANT agrees that, upon request by any agency participating in federally-assisted programs with whom the CONSULTANT has contracted or seeks to contract, the CONSULTANT may release or make available to the agency any working papers from an audit performed by the LPA, INDOT and/or FHWA of the CONSULTANT and its SUB-CONSULTANTS in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

2. **Assignment; Successors.**

   A. The CONSULTANT binds its successors and assignees to all the terms and conditions of this Contract. The CONSULTANT shall not assign or subcontract the whole or any part of this Contract without the LPA's prior written consent, except that the CONSULTANT may assign its right to receive payments to such third parties as the CONSULTANT may desire without the prior written consent of the LPA, provided that the CONSULTANT gives written notice (including evidence of such assignment) to the LPA thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

   B. Any substitution of SUB-CONSULTANTS must first be approved and receive written authorization from the LPA. Any substitution or termination of a Disadvantaged Business Enterprise ("DBE") SUB-CONSULTANT must first be approved and receive written authorization from the LPA and INDOT's Economic Opportunity Division Director.

3. **Audit.** The CONSULTANT acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with 48 CFR part 31 and audit guidelines specified by the State and/or in accordance with audit requirements specified elsewhere in this Contract.

4. **Authority to Bind Consultant**. The CONSULTANT warrants that it has the necessary authority to enter into this Contract. The signatory for the CONSULTANT represents that he/she has been duly authorized to execute this Contract on behalf of the CONSULTANT and has obtained all necessary or applicable approval to make this Contract fully binding upon the CONSULTANT when his/her signature is affixed hereto.

5. **Certification for Federal-Aid Contracts Lobbying Activities**.

   A. The CONSULTANT certifies, by signing and submitting this Contract, to the best of its knowledge and belief after diligent inquiry, and other than as disclosed in writing to the LPA prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT, the CONSULTANT has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

      i. No federal appropriated funds have been paid, or will be paid, by or on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contracts, the making of any federal grant, the making of any federal loan, the

entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. The CONSULTANT also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000, and that all such sub-recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

6. **Changes in Work.** The CONSULTANT shall not commence any additional work or change the scope of the work until authorized in writing by the LPA. The CONSULTANT shall make no claim for additional compensation or time in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may be amended, supplemented or modified only by a written document executed in the same manner as this Contract. The CONSULTANT acknowledges that no claim for additional compensation or time may be made by implication, oral agreements, actions, inaction, or course of conduct.

7. **Compliance with Laws.**

A. The CONSULTANT shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. If the CONSULTANT violates such rules, laws, regulations and ordinances, the CONSULTANT shall assume full responsibility for such violations and shall bear any and all costs attributable to the original performance of any correction of such acts. The enactment of any state or federal statute, or the promulgation of regulations thereunder, after execution of this Contract shall be reviewed by the LPA and the CONSULTANT to determine whether formal modifications are required to the provisions of this Contract.

B. The CONSULTANT represents to the LPA that, to the best of the CONSULTANT'S knowledge and belief after diligent inquiry and other than as disclosed in writing to the LPA prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT:

i. *State of Indiana Actions.* The CONSULTANT has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending and agrees that it will immediately notify the LPA of any such actions. During the term of such actions, CONSULTANT agrees that the LPA may delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.

ii. *Professional Licensing Standards.* The CONSULTANT, its employees and SUBCONSULTANTS have complied with and shall continue to comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the CONSULTANT pursuant to this Contract.

iii. *Work Specific Standards.* The CONSULTANT and its SUB-CONSULTANTS, if any, have obtained, will obtain and/or will maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the LPA.

iv. *Secretary of State Registration.* If the CONSULTANT is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

v. *Debarment and Suspension of CONSULTANT.* Neither the CONSULTANT nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State and will immediately notify the LPA of any such actions. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CONSULTANT or who has managerial or supervisory responsibilities for the Services.

vi. *Debarment and Suspension of any SUB-CONSULTANTS.* The CONSULTANT's SUB-CONSULTANTS are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The CONSULTANT shall be solely responsible for any recoupment, penalties or costs that might arise from the use of a suspended or debarred SUBCONSULTANT. The CONSULTANT shall immediately notify the LPA and INDOT if any SUB-CONSULTANT becomes debarred or suspended, and shall, at the LPA's request, take all steps required by the LPA to terminate its contractual relationship with the SUB-CONSULTANT for work to be performed under this Contract.

C. *Violations.* In addition to any other remedies at law or in equity, upon CONSULTANT'S violation of any of Section 7(A) through 7(B), the LPA may, at its sole discretion, do any one or more of the following:

i. terminate this Contract; or

ii. delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.

D. *Disputes.* If a dispute exists as to the CONSULTANT's liability or guilt in any action initiated by the LPA, and the LPA decides to delay, withhold, or deny work to the CONSULTANT, the CONSULTANT may request that it be allowed to continue, or receive work, without delay. The CONSULTANT must submit, in writing, a request for review to the LPA. A determination by the LPA under this Section 7.D shall be final and binding on the parties and not subject to administrative review. Any payments the LPA may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

8. **Condition of Payment.** The CONSULTANT must perform all Services under this Contract to the LPA's reasonable satisfaction, as determined at the discretion of the LPA and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The LPA will not pay for work not performed to the LPA's reasonable satisfaction, inconsistent with this Contract or performed in violation of federal, state, or local law (collectively, "deficiencies") until all deficiencies are remedied in a timely manner.

9. Confidentiality of LPA Information.

A. The CONSULTANT understands and agrees that data, materials, and information disclosed to the CONSULTANT may contain confidential and protected information. Therefore, the CONSULTANT covenants that data, material, and information gathered, based upon or disclosed to the CONSULTANT for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the LPA's prior written consent.

B. The parties acknowledge that the Services to be performed by the CONSULTANT for the LPA under this Contract may require or allow access to data, materials, and information containing Social Security numbers and maintained by the LPA in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the CONSULTANT and the LPA agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by the CONSULTANT, the CONSULTANT agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Contract.

10. Delays and Extensions. The CONSULTANT agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the Services specified in this Contract. Such delays, if any, shall be compensated for by an extension of time for such period as may be determined by the LPA subject to the CONSULTANT's approval, it being understood, however, 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 LPA of any of its rights herein. In the event of substantial delays or extensions, or change of any kind, not caused by the CONSULTANT, which causes a material change in scope, character or complexity of work the CONSULTANT is to perform under this Contract, the LPA at its sole discretion shall determine any adjustments in compensation and in the schedule for completion of the Services. CONSULTANT must notify the LPA in writing of a material change in the work immediately after the CONSULTANT first recognizes the material change.

11. DBE Requirements.

A. Notice is hereby given to the CONSULTANT and any SUB-CONSULTANT, and both agree, that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification and failure to promptly cure such breach, may result in termination of this Contract or such remedy as INDOT deems appropriate. The referenced section requires the following assurance to be included in all subsequent contracts between the CONSULTANT and any SUB-CONSULTANT:

> The CONSULTANT, sub recipient or SUB-CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT 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 INDOT, as the recipient, deems appropriate.

B. The CONSULTANT shall make good faith efforts to achieve the DBE percentage goal that may be included as part of this Contract with the approved DBE SUB-CONSULTANTS identified on its Affirmative Action Certification submitted with its Letter of Interest, or with approved amendments. Any changes to a DBE firm listed in the Affirmative Action Certification must be requested in writing and receive prior approval by the LPA and INDOT's Economic Opportunity Division Director. After this Contract is completed and if a DBE SUB-CONSULTANT has performed services thereon, the CONSULTANT must complete, and return, a Disadvantaged Business Enterprise Utilization Affidavit ("DBE-3 Form") to INDOT's

Economic Opportunity Division Director. The DBE-3 Form requires certification by the CONSULTANT AND DBE SUB-CONSULTANT that the committed contract amounts have been paid and received.

12. Non-Discrimination.

A. Pursuant to I.C. 22-9-1-10, the Civil Rights Act of 1964, and the Americans with Disabilities Act, the CONSULTANT shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Contract, 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, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Contract. Acceptance of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

B The CONSULTANT understands that the LPA is a recipient of federal funds. Pursuant to that understanding, the CONSULTANT agrees that if the CONSULTANT employs fifty (50) or more employees and does at least $50,000.00 worth of business with the State and is not exempt, the CONSULTANT will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CONSULTANT shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's Title VI enforcement shall include the following additional grounds: sex, ancestry, age, income status, religion and disability.)

C. The CONSULTANT shall not discriminate in its selection and retention of contractors, including without limitation, those services retained for, or incidental to, construction, planning, research, engineering, property management, and fee contracts and other commitments with persons for services and expenses incidental to the acquisitions of right-of-way.

D. The CONSULTANT shall not modify the Project in such a manner as to require, on the basis of race, color or national origin, the relocation of any persons. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, income status, religion and disability).

E. The CONSULTANT shall not modify the Project in such a manner as to deny reasonable access to and use thereof to any persons on the basis of race, color or national origin. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, income status, religion and disability.)

F. The CONSULTANT shall neither allow discrimination by contractors in their selection and retention of subcontractors, leasors and/or material suppliers, nor allow discrimination by their subcontractors in their selection of subcontractors, leasors or material suppliers, who participate in construction, right-of-way clearance and related projects.

G. The CONSULTANT shall take appropriate actions to correct any deficiency determined by itself and/or the Federal Highway Administration ("FHWA") within a reasonable time period, not to exceed ninety (90) days, in order to implement Title VI compliance in accordance with INDOT's assurances and guidelines.

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

(1) Compliance with Regulations: The CONSULTANT shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

(2) Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for SUBCONSULTANTS, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential SUBCONSULTANT or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the LPA or INDOT to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the LPA, or INDOT as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions of this contract, the LPA shall impose such contract sanctions as it or INDOT may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the CONSULTANT under the Contract until the CONSULTANT complies, and/or

(b) cancellation, termination or suspension of the Contract, in whole or in part.

(6) Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CONSULTANT shall take such action with respect to any SUBCONSULTANT procurement as the LPA or INDOT may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a SUBCONSULTANT or supplier as a result of such direction, the CONSULTANT may request the LPA to enter into such litigation to protect the interests of the LPA, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

13. Disputes.

A. Should any disputes arise with respect to this Contract, the CONSULTANT and the LPA agree to act promptly and in good faith to resolve such disputes in accordance with this Section 13. Time is of the essence in the resolution of disputes.

B. The CONSULTANT agrees that the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the CONSULTANT fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs (including reasonable attorneys' fees and expenses) incurred by the LPA or the CONSULTANT as a result of such failure to proceed shall be borne by the CONSULTANT.

C. If a party to this Contract is not satisfied with the progress toward resolving a dispute, the party must notify the other party of this dissatisfaction in writing. Upon written notice, the parties have ten (10) business days, unless the parties mutually agree in writing to extend this period, following the written notification to resolve the dispute. If the dispute is not resolved within ten (10) business days, a dissatisfied party may submit the dispute in writing to initiate negotiations to resolve the dispute. The LPA may withhold payments on disputed items pending resolution of the dispute.

14. Drug-Free Workplace Certification.

A. The CONSULTANT hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it will give written notice to the LPA within ten (10) days after receiving actual notice that an employee of the CONSULTANT in the State of Indiana has been convicted of a criminal drug violation occurring in the CONSULTANT's workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Contract payments, termination of this Contract and/or debarment of contracting opportunities with the LPA.

B. The CONSULTANT certifies and agrees that it will provide a drug-free workplace by:

i. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CONSULTANT's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

ii. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CONSULTANT's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

iii. Notifying all employees in the statement required by subparagraph 14.B.i above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the CONSULTANT of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

iv. Notifying in writing the LPA within ten (10) days after receiving notice from an employee under subdivision 14.B.iii(2) above, or otherwise receiving actual notice of such conviction;

v. Within thirty (30) days after receiving notice under subdivision 14.B.iii(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and

vi. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs 14.B.i. through 14.B.v. above.

15. **Employment Eligibility Verification.** The CONSULTANT affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The CONSULTANT shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The CONSULTANT is not required to participate should the E-Verify program cease to exist. Additionally, the CONSULTANT is not required to participate if the CONSULTANT is self-employed and does not employ any employees.

The CONSULTANT shall not knowingly employ or contract with an unauthorized alien. The CONSULTANT shall not retain an employee or contract with a person that the CONSULTANT subsequently learns is an unauthorized alien.

The CONSULTANT shall require his/her/its subcontractors, who perform work under this Contract, to certify to the CONSULTANT that the SUB-CONSULTANT does not knowingly employ or contract with an unauthorized alien and that the SUB-CONSULTANT has enrolled and is participating in the E-Verify program. The CONSULTANT agrees to maintain this certification throughout the duration of the term of a contract with a SUB-CONSULTANT.

The LPA may terminate for default if the CONSULTANT fails to cure a breach of this provision no later than thirty (30) days after being notified by the LPA.

16. **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of fire, natural disaster, acts of God, acts of war, terrorism, civil disorders, decrees of governmental bodies, strikes, lockouts, labor or supply disruptions or similar causes beyond the reasonable control of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give written notice to the other party of the occurrence of the Force Majeure Event (with a description in reasonable detail of the circumstances causing such Event) and shall do everything reasonably possible to resume performance. Upon receipt of such written notice, all obligations under this Contract shall be immediately suspended for as long as such Force Majeure Event continues and provided that the affected party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. If the period of nonperformance exceeds thirty (30) days from the receipt of written notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

17. **Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and the suit, if any, must be brought in the State of Indiana. The CONSULTANT consents to the jurisdiction of and to venue in any court of competent jurisdiction in the State of Indiana.

18. **Liability.** If the CONSULTANT or any of its SUB-CONSULTANTS fail to comply with any federal requirement which results in the LPA's repayment of federal funds to INDOT the CONSULTANT shall be responsible to the LPA, for repayment of such costs to the extent such costs are caused by the CONSULTANT and/or its SUB-CONSULTANTS.

19. **Indemnification.** The CONSULTANT agrees to indemnify the LPA, its officials, and employees, and to hold each of them harmless, from claims and suits including court costs, attorney's fees, and other expenses caused by any negligent act, error or omission of, or by any recklessness or willful misconduct by, the CONSULTANT and/or its SUB-CONSULTANTS, if any, under this Contract. The LPA shall not provide such indemnification to the CONSULTANT.

20. **Independent Contractor.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents or employees of the other party. The CONSULTANT shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.

21. **Insurance - Liability for Damages.**

    A. The CONSULTANT shall be responsible for the accuracy of the Services performed under this Contract and shall promptly make necessary revisions or corrections resulting from its negligence, errors or omissions without any additional compensation from the LPA. Acceptance of the Services by the LPA shall not relieve the CONSULTANT of responsibility for subsequent correction of its negligent act, error or omission or for clarification of ambiguities. The CONSULTANT shall have no liability for the errors or deficiencies in designs, drawings, specifications or other services furnished to the CONSULTANT by the LPA on which the Consultant has reasonably relied, provided that the foregoing shall not relieve the CONSULTANT from any liability from the CONSULTANT'S failure to fulfill its obligations under this Contract, to exercise its professional responsibilities to the LPA, or to notify the LPA of any errors or deficiencies which the CONSULTANT knew or should have known existed.

    B. During construction or any phase of work performed by others based on Services provided by the CONSULTANT, the CONSULTANT shall confer with the LPA when necessary for the purpose of interpreting the information, and/or to correct any negligent act, error or omission. The CONSULTANT shall prepare any plans or data needed to correct the negligent act, error or omission without additional compensation, even though final payment may have been received by the CONSULTANT. The CONSULTANT shall give immediate attention to these changes for a minimum of delay to the project.

    C. The CONSULTANT shall be responsible for damages including but not limited to direct and indirect damages incurred by the LPA as a result of any negligent act, error or omission of the CONSULTANT, and for the LPA's losses or costs to repair or remedy construction. Acceptance of the Services by the LPA shall not relieve the CONSULTANT of responsibility for subsequent correction.

D. The CONSULTANT shall be required to maintain in full force and effect, insurance as described below from the date of the first authorization to proceed until the LPA's acceptance of the work product. The CONSULTANT shall list both the LPA and INDOT as insureds on any policies. The CONSULTANT must obtain insurance written by insurance companies authorized to transact business in the State of Indiana and licensed by the Department of Insurance as either admitted or non-admitted insurers.

E. The LPA, its officers and employees assume no responsibility for the adequacy of limits and coverage in the event of any claims against the CONSULTANT, its officers, employees, sub-consultants or any agent of any of them, and the obligations of indemnification in Section 19 herein shall survive the exhaustion of limits of coverage and discontinuance of coverage beyond the term specified, to the fullest extent of the law.

F. The CONSULTANT shall furnish a certificate of insurance and all endorsements to the LPA prior to the commencement of this Contract. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the CONSULTANT. Failure to provide insurance as required in this Contract is a material breach of Contract entitling the LPA to immediately terminate this Contract.

I. Professional Liability Insurance

The CONSULTANT must obtain and carry professional liability insurance as follows: For INDOT Prequalification **Work Types** 1.1, 12.2-12.6 the CONSULTANTS shall provide not less than $250,000.00 professional liability insurance per claim and $250.000.00 aggregate for all claims for negligent performance. For **Work Types** 2.2, 3.1, 3.2, 4.1, 4.2, 5.5, 5.8, 5.11, 6.1, 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 – 10.4, 11.1, 13.1, 14.1 – 14.5, the CONSULTANTS shall carry professional liability insurance in an amount not less than $1,000,000.00 per claim and $1,000,000.00 aggregate for all claims for negligent performance. The CONSULTANT shall maintain the coverage for a period ending two (2) years after substantial completion of construction.

II. Commercial General Liability Insurance

The CONSULTANT must obtain and carry Commercial / General liability insurance as follows: For INDOT Prequalification **Work Types** 2.1, 6.1, 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 - 10.4, 11.1, 13.1, 14.1 - 14.5, the CONSULTANT shall carry $1,000,000.00 per occurrence, $2,000,000.00 general aggregate. Coverage shall be on an occurrence form, and include contractual liability. The policy shall be amended to include the following extensions of coverage:

1. Exclusions relating to the use of explosives, collapse, and underground damage to property shall be removed.

2. The policy shall provide thirty (30) days notice of cancellation to LPA.

3. The CONSULTANT shall name the LPA as an additional insured.

III. Automobile Liability

The CONSULTANT shall obtain automobile liability insurance covering all owned, leased, borrowed, rented, or non-owned autos used by employees or others on behalf of the CONSULTANT for the conduct of the CONSULTANT's business, for an amount not less than $1,000,000.00 Combined Single Limit for Bodily Injury and Property Damage. The term "automobile" shall include private passenger autos, trucks, and similar type vehicles licensed for use on public highways. The policy shall be amended to include the following extensions of coverage:

1. Contractual Liability coverage shall be included.

2. The policy shall provide thirty (30) days notice of cancellation to the LPA.

3. The CONSULTANT shall name the LPA as an additional insured.

IV. Watercraft Liability (When Applicable)

1. When necessary to use watercraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT, or any SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the watercraft shall carry watercraft liability insurance in the amount of $1,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Protection & Indemnity where applicable. Coverage shall apply to owned, non-owned, and hired watercraft.

2. If the maritime laws apply to any work to be performed by the CONSULTANT under the terms of the agreement, the following coverage shall be provided:

   a. United States Longshoremen & Harbor workers

   b. Maritime Coverage - Jones Act

3. The policy shall provide thirty (30) days notice of cancellation to the LPA.

4. The CONSULTANT or SUB-CONSULTANT shall name the LPA as an additional insured.

V. Aircraft Liability (When Applicable)

1. When necessary to use aircraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT or SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the aircraft shall carry aircraft liability insurance in the amount of $5,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Passenger Liability. Coverage shall apply to owned, non-owned and hired aircraft.

2. The policy shall provide thirty (30) days notice of cancellation to the LPA.

3. The CONSULTANT or SUB-CONSULTANT shall name the LPA as an additional insured.

22. **Merger and Modification**. This Contract constitutes the entire agreement between the parties. No understandings, agreements or representations, oral or written, not specified within this Contract will be valid provisions of this Contact. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

23. **Notice to Parties**: Any notice, request, consent or communication (collectively a "Notice") under this Agreement shall be effective only if it is in writing and (a) personally delivered; (b) sent by certified or registered mail, return receipt requested, postage prepaid; or (c) sent by a nationally recognized overnight delivery service, with delivery confirmed and costs of delivery being prepaid, addressed as follows:

Notices to the LPA shall be sent to:

Town of Yorktown
PO Box 518
Yorktown, IN 47396-0518

Notices to the CONSULTANT shall be sent to:

Butler, Fairman and Seufert, Inc.
8450 Westfield Blvd., Suite 300
Indianapolis, IN 46240-8302

or to such other address or addresses as shall be furnished in writing by any party to the other party. Unless the sending party has actual knowledge that a Notice was not received by the intended recipient, a Notice shall be deemed to have been given as of the date (i) when personally delivered; (ii) three (3) days after the date deposited with the United States mail properly addressed; or (iii) the next day when delivered during business hours to overnight delivery service, properly addressed and prior to such delivery service's cut off time for next day delivery. The parties acknowledge that notices delivered by facsimile or by email shall not be effective.

24. **Order of Precedence; Incorporation by Reference.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract and attachments, (2) RFP document, (3) the CONSULTANT's response to the RFP document, and (4) attachments prepared by the CONSULTANT. All of the foregoing are incorporated fully by reference.

25. **Ownership of Documents and Materials**. All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the CONSULTANT prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the CONSULTANT assigns and transfers any ownership claim to the LPA and all such materials ("Work Product) will be the property of the LPA. The CONSULTANT agrees to execute and deliver such assignments or other documents as may be requested by the LPA. Use of these materials, other than related to contract performance by the CONSULTANT, without the LPA's prior written consent, is prohibited. During the performance of this Contract, the CONSULTANT shall be responsible for any loss of or damage to any of the Work Product developed for or supplied by INDOT and used to develop or assist in the Services provided herein while any such Work Product is in the possession or control of the CONSULTANT. Any loss or damage thereto shall be restored at the CONSULTANT's expense. The CONSULTANT shall provide the LPA full, immediate, and unrestricted access to the Work Product during the term of this Contract. The CONSULTANT represents, to the best of its knowledge and belief after diligent inquiry and other than as disclosed in writing prior to or contemporaneously with the execution of this Contract by the CONSULTANT, that the Work Product does not infringe upon or misappropriate the intellectual property or other rights of any third party. The CONSULTANT shall not be liable for the use of its deliverables described in Appendix "A" on other projects without the express written consent of the CONSULTANT or as provided in Appendix "A". The LPA acknowledges that it has no claims to any copyrights not transferred to INDOT under this paragraph.

26. **Payments.** All payments shall be made in arrears and in conformance with the LPA's fiscal policies and procedures.

27. **Penalties, Interest and Attorney's Fees**. The LPA will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, IC 5-17-5, I. C. 34-54-8, and I. C. 34-13-1.

28. **Pollution Control Requirements**. If this Contract is for $100,000 or more, the CONSULTANT:

i. Stipulates that any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;

ii. Agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and

iii. Stipulates that, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the Federal Highway Administration of the receipt of any knowledge indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.

29. **Severability**. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

30. **Status of Claims**. The CONSULTANT shall give prompt written notice to the LPA any claims made for damages against the CONSULTANT resulting from Services performed under this Contract and shall be responsible for keeping the LPA currently advised as to the status of such claims. The CONSULTANT shall send notice of claims related to work under this Contract to:

31. **Sub-consultant Acknowledgement.** The CONSULTANT agrees and represents and warrants to the LPA, that the CONSULTANT will obtain signed Sub-consultant Acknowledgement forms, from all SUB-CONSULTANTS providing Services under this Contract or to be compensated for Services through this Contract. The CONSULTANT agrees to provide signed originals of the Sub-consultant Acknowledgement form(s) to the LPA for approval prior to performance of the Services by any SUB-CONSULTANT.

32. **Substantial Performance**. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification or Amendment thereof.

33. **Taxes**. The LPA will not be responsible for any taxes levied on the CONSULTANT as a result of this Contract.

34. **Termination for Convenience.**

A. The LPA may terminate, in whole or in part, whenever, for any reason, when the LPA determines that such termination is in its best interests. Termination or partial termination of Services shall be effected by delivery to the CONSULTANT of a Termination Notice at least fifteen (15) days prior to the termination effective date, specifying the extent to which performance of Services under such termination becomes effective. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of termination. The LPA will not be liable for Services performed after the effective date of termination.

B. If the LPA terminates or partially terminates this Contract for any reason regardless of whether it is for convenience or for default, then and in such event, all data, reports, drawings, plans, sketches, sections and models, all specifications, estimates, measurements and data pertaining to the project, prepared under the terms or in fulfillment of this Contract, shall be delivered within ten (10) days to the LPA. In the event of the failure by the CONSULTANT to make such delivery upon demand, the CONSULTANT shall pay to the LPA any damage (including costs and reasonable attorneys' fees and expenses) it may sustain by reason thereof.

35. Termination for Default.

A. With the provision of twenty (20) days written notice to the CONSULTANT, the LPA may terminate this Contract in whole or in part if

(i) the CONSULTANT fails to:

1. Correct or cure any breach of this Contract within such time, provided that if such cure is not reasonably achievable in such time, the CONSULTANT shall have up to ninety (90) days from such notice to effect such cure if the CONSULTANT promptly commences and diligently pursues such cure as soon as practicable;

2. Deliver the supplies or perform the Services within the time specified in this Contract or any amendment or extension;

3. Make progress so as to endanger performance of this Contract; or

4. Perform any of the other provisions of this Contract to be performed by the CONSULTANT; or

(ii) if any representation or warranty of the CONSULTANT is untrue or inaccurate in any material respect at the time made or deemed to be made.

B. If the LPA terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the LPA considers appropriate, supplies or services similar to those terminated, and the CONSULTANT will be liable to the LPA for any excess costs for those supplies or services. However, the CONSULTANT shall continue the work not terminated.

C. The LPA shall pay the contract price for completed supplies delivered and Services accepted. The CONSULTANT and the LPA shall agree on the amount of payment for manufactured materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause (see Section 14). The LPA may withhold from the agreed upon price for Services any sum the LPA determine necessary to protect the LPA against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the LPA in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

E. **Default by the LPA.** If the CONSULTANT believes the LPA is in default of this Contract, it shall provide written notice immediately to the LPA describing such default. If the LPA fails to take steps to correct or cure any material breach of this Contract within sixty (60) days after receipt of such written notice, the CONSULTANT may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination, including reasonable attorney fees and expenses, provided that if such cure is not reasonably achievable in such time, the LPA shall have up to one hundred twenty (120) days from such notice to effect such cure if the LPA promptly commences and diligently pursues such cure as soon as practicable. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of such termination. The CONSULTANT agrees that it has no right of termination for non-material breaches by the LPA.

36. **Waiver of Rights.** No rights conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver or excuse is approved in writing and signed by the party claimed to have waived such right. Neither the LPA's review, approval or acceptance of, nor payment for, the Services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CONSULTANT shall be and remain liable to the LPA in accordance with applicable law for all damages to the LPA caused by the CONSULTANT's negligent performance of any of the Services furnished under this Contract.

37. **Work Standards/Conflicts of Interest.** The CONSULTANT shall understand and utilize all relevant INDOT standards including, but not limited to, the most current version of the Indiana Department of Transportation Design Manual, where applicable, and other appropriate materials and shall perform all Services in accordance with the standards of care, skill and diligence required in Appendix "A" or, if not set forth therein, ordinarily exercised by competent professionals doing work of a similar nature.

38. **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the parties hereto. Other than the indemnity rights under this Contract, nothing contained in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto) any rights, benefits or remedies of any kind or character whatsoever.

39. **No Investment in Iran.** As required by IC 5-22-16.5, the CONSULTANT certifies that the CONSULTANT is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Contract and denial of future state contracts, as well as an imposition of a civil penalty.

40. **Assignment of Antitrust Claims.** The CONSULTANT assigns to the State all right, title and interest in and to any claims the CONSULTANT now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

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Non-Collusion.

The undersigned attests, subject to the penalties for perjury, that he/she is the CONSULTANT, or that he/she is the properly authorized representative, agent, member or officer of the CONSULTANT, that he/she has not, nor has any other member, employee, representative, agent or officer of the CONSULTANT, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, the CONSULTANT and the LPA have, through duly authorized representatives, entered into this Contract. The parties having read and understand the forgoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

CONSULTANT
BUTLER, FAIRMAN & SEUFERT, INC.

Signature: John W. Brand, P.E., President

Attest:

Signature: Brad Watson, P.E.
Executive Vice-President

LOCAL PUBLIC AGENCY
YORKTOWN TOWN COUNCIL

Signature: Robert Ratchford, President

Signature: Laura Vise, Vice-President

Signature: Daniel Flanagan, Member

Signature: Robert Flanagan, Member

Signature: Rick Glaub, Member

Signature: Rich Lee, Member

Signature: Lon Fox, Member

Attest:

Signature: Beth A. Neff, Clerk-Treasurer

APPENDIX "A"

SERVICES TO BE FURNISHED BY CONSULTANT:

In fulfillment of this Contract, the CONSULTANT shall comply with the requirements of the appropriate regulations and requirements of the Indiana Department of Transportation and Federal Highway Administration.

The CONSULTANT shall be responsible for performing the following activities:

A. RIGHT-OF-WAY MANAGEMENT AND SUPERVISION

1. The CONSULTANT shall be responsible for administering, scheduling and coordinating all activities necessary to certify that the right-of-way has been acquired and that the project is clear for construction letting. This responsibility shall include:
   a. Meetings, conferences and communications with property owners, relocatees, attorneys, engineers, appraisers, buyers, LOCAL PUBLIC AGENCY, Indiana Department of Transportation, and Federal Highway Administration.
   b. Revisions to construction plans, right-of-way plans, plats, legal descriptions and right-of-way stake-outs which may be required.
2. These Right-of-Way Services include all reasonable services as required to secure all parcels based on the approved engineering design or to recommend to the LOCAL PUBLIC AGENCY that condemnation proceedings be filed.
3. The CONSULTANT (not the Buyer) shall make arrangements for delivery of payment to each property owner and/or relocate(s).

B. APPRAISING

1. Real Estate Consulting Services, Inc., Attn. Brian C. Reske, 5945 West 700 North, McCordsville, Indiana 46055; is a corporation incorporated in the State of Indiana and will be hereinafter referred to as the Appraiser.
2. Appraiser shall perform the appraisal work covered by this Contract. The Appraiser shall be a licensed real estate appraiser in the State of Indiana, and pre-qualified by the Indiana Department of Transportation.
3. No work by the Appraiser shall be sublet, assigned or otherwise performed by anyone other than the Appraiser.
4. Subsection 14 of Section V shall not apply to the Appraiser. Should the quality and/or progress of the appraisals be deemed unsatisfactory, the LOCAL PUBLIC AGENCY may terminate the services of the Appraiser by giving five (5) days written notice. The earned value of the work performed shall be based upon an estimate of the portion of the services as have been rendered by the Appraiser to the date of termination. All work, completed or partially completed, shall become the property of the LOCAL PUBLIC AGENCY.
5. The Appraiser shall give the owner of each parcel to be appraised the opportunity to accompany the Appraiser during the inspection of the parcel.

7. The appraisals shall meet the standards set out in the most recent addition of the Indiana Department of Transportation's Appraisal Handbook as approved by the Federal Highway Administration. The Appraiser shall follow accepted principles and techniques in evaluation of real property in accordance with State Laws. Any appraisal that does not meet such requirements shall be further documented or re-appraised as the case may be without additional compensation to the Appraiser.
8. The Appraiser agrees to furnish one original and two copies of the appraisal report. The copies should have original colored pictures or pages and one copy must be on green paper.
9. All information contained in the appraisal report and all parts thereof are to be treated as a privileged communication. The Appraiser shall take all necessary steps to ensure that neither he/she nor any member of his/her staff or organization divulges any information concerning the report except to a duly authorized representative of the LOCAL PUBLIC AGENCY, the Indiana Department of Transportation or to officials of the Federal Highway Administration, until authorized in writing by the LOCAL PUBLIC AGENCY to reveal the communication to another designated party.

C. REVIEW APPRAISING

1. Neal Sanders, 4434 Statesmen Drive, Indianapolis, Indiana, 46250, an individual in the State of Indiana, shall hereinafter be referred to as the Review Appraiser.
2. Review Appraiser shall perform the review appraisal work covered by this Contract. The Review Appraiser shall be a licensed real estate appraiser in the State of Indiana, and pre-qualified by the Indiana Department of Transportation.
3. The review appraisals shall not be sublet, assigned or otherwise performed by anyone other than the Review Appraiser.
4. The review appraisals shall comply with the standards set out in the most recent edition of the Indiana Department of Transportation's Appraisal Handbook as approved by the Federal Highway Administration and shall be submitted on forms approved by the LOCAL PUBLIC AGENCY and the Indiana Department of Transportation. The Review Appraiser shall follow accepted principles and techniques in evaluation of real property in accordance with state laws. Any review appraisal that does not meet such requirements shall be further documented without additional compensation to the Review Appraiser.
5. All information contained in the Review Appraisal report and all parts thereof are to be treated as a privileged communication. The Review Appraiser shall take all necessary steps to ensure that neither he/she nor any member of his/her staff or organization divulges any information concerning the report except to a duly authorized representative of the LOCAL PUBLIC AGENCY, the Indiana Department of Transportation or to officials of the Federal Highway Administration, until authorized in writing by the LOCAL PUBLIC AGENCY to reveal the communication to another designated party.
6. Subsection 14 of Section V shall not apply to the Review Appraiser. Should the quality and/or progress of the review appraisals be unsatisfactory, the LOCAL PUBLIC AGENCY may terminate the services of the Review Appraiser by giving five (5) days written notice. The earned value of the work performed shall be based upon an estimate of the portion of the services as have rendered by the Review Appraiser to the date of

termination. All work, completed or partially completed, shall become the property of the LOCAL PUBLIC AGENCY.

D. BUYING

1. The **CONSULTANT** shall perform the buying work covered by this Contract, designation herein as the Buyer. The Buyer shall be a licensed real estate broker in the State of Indiana, and pre-qualified by the Indiana Department of Transportation.
2. No work by the Buyer shall be sublet, assigned or otherwise performed by anyone other than the Buyer.
3. The Buyer shall make every reasonable effort to acquire expeditiously the parcels listed herein.
4. The Buyer shall perform the services under this Agreement in compliance with the most recent edition of the Indiana Department of Transportation's Buyers Procedure Manual.
5. All information contained in the appraisal shall be treated as confidential. The Buyer is to take all steps to ensure that he/she does not divulge any of this information to anyone other than a duly authorized representative of the LOCAL PUBLIC AGENCY, Indiana Department of Transportation, or Federal Highway Administration unless authorized in writing by the LOCAL PUBLIC AGENCY to reveal the information to another designated party.
6. Subsection 14 of Section V shall not apply to the Buyer. Should the quality and/or progress of the buying be unsatisfactory, the LOCAL PUBLIC AGENCY may terminate the services of the Buyer by giving five (5) days written notice. The earned value of the work performed shall be based upon the percentage of work completed at the time of the termination. All records of the Buyer and work completed or partially completed, shall become the property of the LOCAL PUBLIC AGENCY.

APPENDIX "B"

INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA:

The LPA shall furnish the CONSULTANT with the following:

A. Provide individual plats for each parcel.

B. Legal description(s) of the right-of-way to be acquired on each parcel.

C. Final right-of-way plans for the project.

D. Guarantee access to and make all provisions for the CONSULTANT to enter upon public and private lands as required for the CONSULTANT to perform the work under this Agreement.

E. Title documents.

G. Acquisition instruments which have been prepared or approved by the LOCAL PUBLIC AGENCY's legal counsel for each parcel.

H. Recording of all transfer documents after the parcel is acquired by the buyer.

I. Lease agreements prepared by or approved by the LOCAL PUBLIC AGENCY'S attorney.

J. All payments due the property owner and/or the relocate(s).

K. Copies of the location and/or design study reports, if applicable.

L. Copies of the environmental studies and/or approvals, if applicable.

M. Partial mortgage release fees, cost-to-cure estimate fees, or other direct cost charges.

N. Legal counsel to handle all condemnation proceedings and all other legal matters.

O. The money for all payments due the property owner and/or the relocate(s).

P. Copies of recorded documents and canceled checks.

APPENDIX "C"

SCHEDULE:

No work under this Contract shall be performed by the CONSULTANT until the CONSULTANT receives a written notice to proceed from the LPA.

All work by the CONSULTANT under this Contract shall be completed and delivered to the LPA for review and approval within the approximate time periods shown in the following submission schedule:

All work by the CONSULTANT under this Contract shall be completed and delivered to the LOCAL PUBLIC AGENCY no later than 300 calendar days after notification to proceed from the LOCAL PUBLIC AGENCY.

For the purposes of contract control the work shall be submitted by the CONSULTANT to the LOCAL PUBLIC AGENCY for review and approval within the following approximate time periods:

A. Appraisals and documentation

   Within 120 days after completion and acceptance of the Right-of-Way Engineering.

B. Review Appraisals and documentation

   Within 30 days after receipt of each appraisal from the Appraiser.

C. Buying and documentation

   Within 150 days after receipt of Notice to Proceed with buying on each parcel.

APPENDIX "D"

A. Amount of compensation

1. The CONSULTANT shall receive as payment for the work performed under this Contract for a fee of $168,005.00, unless a SUPPLEMENTAL AGREEMENT is approved in writing by the LOCAL PUBLIC AGENCY and the Indiana Department of Transportation.

2. The CONSULTANT will be paid for the work performed under Section A of this Contract a total lump sum fee of $36,900.00 for Right-of-Way Survey and Management.

3. The CONSULTANT will be paid for the work performed under the applicable Sections A, B, C,D, E and F of Appendix "A" of this Contract, except as provided for in Section 4 of this Appendix, in accordance with the following schedule:

RIGHT-OF-WAY SERVICES

Appraisal Fee:	$48,425.00
Review Appraising Fee:	24,005.00
Buying Fee:	34,675.00
ROW Staking (Lump Sum):	7,000.00
Miscellaneous Expenses (PMR Fees, Recording, etc.):	9,000.00
Right-of-Way Management:	29,900.00
Additional Services/Contingency Fee (Appraisal or Buying Scope Changes)	10,000.00
Additional ROW Services (Hourly not to Exceed)	5,000.00
TOTAL	$168,005.00

4. In consideration for condemnation proceedings described below the LOCAL PUBLIC AGENCY agrees to pay the Right-of-Way Manager, Appraiser, Review Appraiser, Buyer, and Relocation Agent on a daily basis (or on a pro rata basis for less than a day) the following sums:

	Pre-Trial Conference and Preparation	Testimony in Court as Expert Witness
Right-of-Way Manager	$ 800.00 per day	$800.00 per day
Appraiser	800.00 per day	800.00 per day
Review Appraiser	800.00 per day	800.00 per day
Buyer	800.00 per day	800.00 per day

Pro rata basis is $125.00 per hour not to exceed the daily rate of $800.00 per day.

B. Method of Payment

1. The CONSULTANT shall submit invoices to the LOCAL PUBLIC AGENCY not more often than once per month during the progress of the work, for payment on account for the work completed. Minor adjustments in the categories of Appraisal Fee, Review Appraisal Fee, Buying Fee, Right-of-way Management, Relocation Fee, and Miscellaneous Expenses may occur due to scope change on a parcel or unforeseen expenses. The adjustment may not exceed the total fee without a supplemental.

2. For work performed under Section A of Appendix "A" the LOCAL PUBLIC AGENCY agrees to pay the CONSULTANT for rendering such services the percentage of the work completed.

3. For work performed under the applicable Sections A, B, C, D, and E of Appendix "A", and upon completion of the respective work and its acceptance by the LOCAL PUBLIC AGENCY, the LOCAL PUBLIC AGENCY agrees to pay the CONSULTANT the fees established. No partial payments shall be made on a per parcel fee.

4. Additional services will be charged on an hourly basis as set out in Appendix "D-1". Additional services which could include additional hours by buyer, engineer, or project manager involving additional parcels, utility relocations, administrative settlements, as directed by the court in a condemnation suit, or any additional work as directed by the LPA.

Parcel Number	Name on T&E Report	APR Type	Appr. Fee	Review Fee	Buyer Fee	ROW Management (LSum)
0900596						
1	Grace Baptist Church	SF	$2,700	$1,430	$1,625	$1,300
2	Joseph C Whitaker Etal	LF	$3,125	$1,485	$1,625	$1,300
3	Robert D Meece Etux	LF	$3,125	$1,485	$1,475	$1,300
4	David C Sheward Etux	VF	$1,550	$775	$1,575	$1,300
5	Brenda G Anderson Etal	LF	$3,125	$1,485	$1,625	$1,300
6	Bernice E Howard	VF	$1,675	$830	$1,475	$1,300
7	James Delk Etux	LF	$3,000	$1,430	$1,475	$1,300
8	Warren K Estes Etux	VF	$1,550	$775	$1,375	$1,300
9	Bogumlia Kopczynski	VF	$1,675	$830	$1,575	$1,300
10	Jeffery L Crossland Etux	VF	$1,550	$775	$1,475	$1,300
11	Terry A Richardson Etux	VF	$1,550	$775	$1,575	$1,300
12	Bruce A Wolowski Etux	VF	$1,550	$775	$1,375	$1,300
13	Robert A Guillaud Etux	VF	$1,675	$830	$1,475	$1,300
14	Howard E Schroeder Rev Living Trust Etal	SF	$2,475	$1,195	$1,675	$1,300
16	Donald Stetson Etux	VF	$1,550	$1,065	$1,475	$1,300
17	Patrick Murry Etux	VF	$1,550	$775	$1,375	$1,300
18	David Cambell Etux	VF	$1,550	$775	$1,575	$1,300
19	David Edwards Etux	VF	$1,550	$775	$1,475	$1,300
20	Carlotta R Blair	LF	$3,125	$1,485	$1,375	$1,300
21	H Alan Holbrook Etal	VF	$1,550	$775	$1,525	$1,300
22	Florence M Lapin Etal	VF	$1,675	$830	$1,625	$1,300
23	Florence M Lapin	VF	$1,675	$830	$1,375	$1,300
24	Gary Dragoo Etux	LF	$3,875	$1,820	$1,475	$1,300
	Total Parcels = 23		**$48,425**	**$24,005**	**$34,675**	**$29,900**
			$72,430			

Total Appraising	**$48,425**
Total Review Appraising	**$24,005**
Total Buyer Fee (Includes Title Update)	**$34,675**
ROW Management (Lsum)	**$29,900**
Sub - Total	**$137,005**
Contingency for Scope Changes in Appraising or Buying	**$10,000**
Sub-Total	**$147,005**
Miscellaneous Expenses & Fees (Cost-to-Cure, Mortgage Release Fees, e	**$9,000**
	$156,005
Additional ROW Services (Hourly Not to Exceed)	**$5,000**
ROW Survey (Lsum)	**$7,000**
Total '0900596	**$168,005**

Escalated Billing Rate Calculation (Short Version)
BUTLER, FAIRMAN AND SEUFERT, INC.
REGULAR AND OVERTIME BILLING RATES

R/FORMS PROPOSALS 7-22-04

APPENDIX "D-1"

Replace the data in the yellow cells with the appropriate data for the firm and the project, using the actual labor classifications and current paid labor rates, and the proposed average (across the board) annual percentage of increase.

100.00%	Direct Labor	
176.32%	Overhead Rate	
276.32%	Labor & Overhead	
15.00%	Profit	41.45%
317.77%		
0.18%	Cost of Money	
317.95%		
$197.73	**MAXIMUM**	

Fill In yellow cells

Classification	Audited Wage Rates 2014	Billing Rate 2014	Escalated Billing Rates					NOTE
Annual Increase Avg.	→→→→	→→→→						
E-V Engineer V (Principal Engineer)	60.24	191.53						
Overtime		191.53						
E-IV Engineer IV	56.32	179.07						
Overtime		179.07						
E-III Engineer III	46.90	149.12						
Overtime		149.12						
E-II Engineer II	35.11	111.63						
Overtime		111.63						
E-I Engineer I	24.78	78.79						
Overtime		91.18						
EA-III Engineer's Assistant III	48.10	152.93						
Overtime		176.98						
EA-II Engineer's Assistant II	36.42	115.80						
Overtime		134.01						
EA-I Engineer's Assistant I	27.59	87.72						
Overtime		101.52						
FP-IV Field Personnel IV	47.61	151.38						
Overtime		175.19						
FP-III Field Personnel III	39.87	126.77						
Overtime		146.71						
FP-II Field Personnel II	30.76	97.80						
Overtime		113.18						
FP-I Field Personnel I	24.43	77.67						
Overtime		89.89						
SP-I Support Personnel I	17.42	55.39						
Overtime		64.10						
C-II Clerical II	31.73	100.88						
Overtime		116.75						
C-I Clerical I	19.21	61.08						
Overtime		70.69						
P-III Planner III	52.82	167.94						
Overtime		194.35						
P-II Planner II	31.85	101.27						
Overtime		117.20						
P-I Planner I	21.75	69.15						
Overtime		80.03						

INDIANA DEPARTMENT OF TRANSPORTATION
Driving Indiana's Economic Growth

100 North Senate Avenue
Room N749
Indianapolis, Indiana 46204

Michael R. Pence, Governor
Karl B. Browning, Commissioner

External Audit http://www.in.gov/indot/2846.htm
Division of Economics, External Audit, and Performance Metrics

January 29, 2014

Re: Report on Review of Financial Prequalification submission **14-15-143**
For Fiscal Year Ending: September 30, 2013

Brad Watson
Butler, Fairman, & Seufert, Inc.
8450 Westfield Blvd.
Indianapolis, IN 46240

Dear Mr. Watson:

External Audit has reviewed the Financial Prequalification submittal by Butler, Fairman, & Seufert, Inc. for the fiscal year ending September 30, 2013. This notice is to report the results of the financial review. For further information regarding the overall Prequalification status of your firm, including technical requirements, please contact the Prequalification Section directly.

We reviewed an Indirect Cost Schedule and associated required documents for Financial Prequalification submitted for the CPA Audited Level.

Per the Somerset CPAs report, the Indirect Cost Schedule was audited in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States and 48 CFR Part 31, with an audited indirect cost rate of 176.32%, facilities capital cost of money rate of 0.18% and expressed the opinion that these rates present fairly, in all material respects, the direct labor, fringe benefits, and general overhead of Butler, Fairman, & Seufert, Inc. for the period ending September 30, 2013.

Indiana Department of Transportation (INDOT) accepts the use of these rates for invoicing of services provided during the firm's fiscal period covered by this report, for contracts with or administered through the agency. Acceptance of these rates for this use does not constitute "establishment of a rate by a cognizant agency" for the purpose of applying the regulations published in Title 23 CFR Sect. 172.7. INDOT also accepts the use of these rates as provisional rates for estimating, negotiating and billing current contracts with or administered through the agency. This provisional rate acceptance expires March 31, 2015. Costs billed to contracts with federal participation are subject to audit for compliance with the cost principles contained in 48 CFR Part 31. With the financial prequalification accepted at the CPA Audited Level, this firm is **not** restricted to total annual billings of less than $250,000.00 for a contract or contracts with or administered through INDOT.

Total wages and salaries (not including bonuses, profit share, company retirement contributions, or other forms of indirect compensation) were submitted as $5,733,146 Direct and $5,481,966 Indirect, for a total of $11,575,112.

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The audited financial submission for this firm documents the separation of direct and unallowable indirect vehicle operating cost, from allowable indirect vehicle operating costs. This firm may bill and be reimbursed for direct miles billed for contracted services in accordance with State statute and policy.

Issues concerning the financial data submitted to the Agency and the allowable indirect cost rates accepted by External Audit are subject to the following procedures. All CPA workpapers used as the basis to establish an audited overhead rate must be made available to INDOT for review at a location of mutual agreement, as determined by INDOT and the consultant firm. The consultant firm named above is solely responsible for all costs billed by the firm's Independent CPA related to the review of the auditor's work papers by the agency. INDOT and American Council of Engineering Companies agreed to the implementation of a Dispute Resolution Procedure effective January 1, 2008. Firms wishing to dispute the indirect cost rates allowed by the agency may request a meeting with Mark Ratliff, Director of Economics, External Audit, and Performance Metrics at (MRatliff@indot.in.gov).

This letter is for internal use only and shall not be used for any other purpose. Occasionally, INDOT receives requests from other state transportation agencies to share the financial data for firms providing financial prequalification submissions to our agency, and we may respond to those requests. Firms offering "engineering and design services", as defined under 23 USC 112(b) (2) (A), who have submitted financial data for Prequalification with INDOT will receive a notification from External Audit summarizing any such data provided and identifying the agency and contact person receiving the information.

If you have any questions or concerns regarding your financial submission or the allowable indirect cost rate for your firm, you may contact External Audit directly.

Sincerely,

William Farley

William Farley, Field Auditor
Phone: 317-232-0112
WFarley@INDOT.IN.GOV

cc: John Brand, Butler, Fairman, Seufert, Inc.
Karen Macdonald, Prequalification Engineer, INDOT
John Leming, Consultant Prequalification Analyst, INDOT
Blaine Hayden, Prequalification Coordinator, INDOT
David E. Brewer, Manager of External Audit, INDOT