AGREEMENT BETWEEN
OWNER AND ENGINEER

THIS AGREEMENT is dated as of the _____ day of _____ in the year 2022, by and between

TOWN OF YORKTOWN, INDIANA
9312 W Smith St.
Yorktown, Indiana 47396

hereinafter called the **OWNER** and

BUTLER, FAIRMAN and SEUFERT, INC.
8450 Westfield Boulevard, Suite 300
Indianapolis, Indiana 46240

hereinafter called the **ENGINEER**.

WITNESSETH

WHEREAS the **OWNER** requires professional engineering services in connection with the following described project:

General Engineering Services Agreement

WHEREAS, the **OWNER** wishes to engage the **ENGINEER** to provide certain services pertaining thereto; and

WHEREAS, the **ENGINEER** represents that it has sufficient qualified personnel and equipment and is capable of performing the professional engineering services described herein; is a corporation qualified to do business in the State of Indiana; and the services described herein will be performed under the supervision of an engineer licensed to practice in the State of Indiana.

The **OWNER** and the **ENGINEER**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION I SERVICES BY ENGINEER

The services to be provided by the **ENGINEER** under this Agreement are set out in Appendix "A", attached to this Agreement, and made an integral part hereof.

SECTION II INFORMATION AND SERVICES TO BE FURNISHED BY OWNER

The information and services to be furnished by the **OWNER** are set out in Appendix "B", attached to this Agreement, and made an integral part hereof.

SECTION III NOTICE TO PROCEED AND SCHEDULE

The **ENGINEER** shall begin the work to be performed under this Agreement upon receipt of the written notice to proceed from the **OWNER**, and shall deliver the work to the **OWNER** in accordance with the schedule contained in Appendix "C", attached to this Agreement, and made an integral part hereof. The **ENGINEER** shall not begin work prior to the date of the notice to proceed.

This Agreement shall be applicable to all assignments authorized by the **OWNER** and accepted by the **ENGINEER** subsequent to the date of execution and shall be effective as to all assignments authorized.

SECTION IV COMPENSATION

The **ENGINEER** shall receive payment for the work performed under this Agreement as set forth in Appendix "D", attached to this Agreement, and made an integral part hereof.

SECTION V MISCELLANEOUS PROVISIONS

Miscellaneous Provisions are set out in Appendix "E", attached to this Agreement, and made an integral part hereof.

SECTION VI GENERAL PROVISIONS

1. Work Office

The **ENGINEER** shall perform the work under this Agreement at the following office:

8450 Westfield Boulevard, Suite 300, Indianapolis, IN 46240

2. Employment

During the period of this Agreement, the **ENGINEER** shall not engage, on a full or part time or other basis, any personnel who remain in the employ of the **OWNER**.

3. Subletting and Assignment

The **ENGINEER** and its subcontractors, if any, shall not assign, sublet, subcontract, or otherwise dispose of the whole or any part of the work under this Agreement without prior written consent of the **OWNER.** Consent for such assignment shall not relieve the **ENGINEER** of any of its duties or responsibilities hereunder.

4. Use and Ownership

All reports, tables, figures, drawings, specifications, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by the **ENGINEER** as instruments of service, shall remain the property of the **ENGINEER**. The **OWNER** shall be entitled to copies or reproducible sets of any of the aforesaid.

The **ENGINEER** will retain all pertinent records relating to the services performed for a period of five (5) years following performance of work, during which period the records will be made available to the **OWNER** at all reasonable times.

The **ENGINEER** agrees that the **OWNER** is not required to use any plan, report, drawing, specifications, advice, map, document or study prepared by the **ENGINEER** and the **ENGINEER** waives all right of redress against the **OWNER** if the **OWNER** does not utilize same. Any modification, amendment, misuse of any of the **ENGINEER's** work by the **OWNER** or actions that disregard the **ENGINEER's** recommendations to the **OWNER** shall release the **ENGINEER** from any and all liability in connection with such work modified, amended or misused thereafter and the **OWNER** shall not use the **ENGINEER's** name thereon without the expressed approval of the **ENGINEER**.

5. **Compliance with State and Other Laws**

The **ENGINEER** specifically agrees that in performance of the services herein enumerated by **ENGINEER** or by a subcontractor or anyone acting in behalf of either, that each will comply with all State, Federal, and Local Statutes, Ordinances, and Regulations.

6. **Professional Responsibility**

The **ENGINEER** will exercise reasonable skill, care, and diligence in the performance of services and will carry out all responsibilities in accordance with customarily accepted professional engineering practices. If the **ENGINEER** fails to meet the foregoing standard, the **ENGINEER** will perform at its own cost, and without reimbursement from the **OWNER**, the services necessary to correct errors and omissions which are caused by the **ENGINEER's** failure to comply with above standard, and which are reported to the **ENGINEER** within one (1) year from the completion of the **ENGINEER's** services for the Project.

In addition, the **ENGINEER** will be responsible to the **OWNER** for damages caused by its negligent conduct during **ENGINEER's** activities at the Project site or in the field to the extent covered by the **ENGINEER's** Comprehensive General Liability and Automobile Liability Insurance.

The **ENGINEER** shall not be responsible for errors, omissions or deficiencies in the designs, drawings, specifications, reports or other services of the **OWNER** or other consultants, including, without limitation, surveyors and geotechnical engineers, who have been retained by **OWNER**. The **ENGINEER** shall have no liability for errors or deficiencies in its designs, drawings, specifications and other services that were caused, or contributed to, by errors or deficiencies (unless such errors, omissions or deficiencies were known or should have been known by the **ENGINEER**) in the designs, drawings, specifications and other services furnished by the **OWNER**, or other consultants retained by the **OWNER**.

7. **Status of Claims**

The **ENGINEER** shall be responsible for keeping the **OWNER** currently advised as to the status of any known claims made for damages against the **ENGINEER** resulting from services performed under this Agreement. The **ENGINEER** shall send notice of claims related to work under this Agreement to the **OWNER**.

8. **Insurance**

The **ENGINEER** shall at its own expense maintain in effect during the term of this contract the following insurance with limits as shown or greater:

General Liability (including automobile) - combined single limit of $1,000,000.00;

Worker's Compensation - statutory limit; and

Professional Liability for protection against claims arising out of performance of professional services caused by negligent error, omission, or act in the amount of $1,000,000.00.

The **ENGINEER** shall provide Certificates of Insurance indicating the aforesaid coverage upon request of the **OWNER**.

9. **Status Reports**

The **ENGINEER** shall furnish a monthly Status Report to the **OWNER** by the fifteenth (15th) of each month.

10. **Changes in Work**

In the event that either the **OWNER** or the **ENGINEER** determine that a major change in scope, character or complexity of the work is needed after the work has progressed as directed by the **OWNER**, both parties in the exercise of their reasonable and honest judgment shall negotiate the changes and the **ENGINEER** shall not commence the additional work or the change of the scope of the work until a supplemental agreement is executed and the **ENGINEER** is authorized in writing by the **OWNER** to proceed.

11. **Delays and Extensions**

The **ENGINEER** 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 Agreement. Any such delays shall be compensated for by an extension of time for such period as may be determined by the **OWNER**, subject to the **ENGINEER's** approval. However, it being understood, that the permitting of the **ENGINEER** 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 **OWNER** of any of its rights herein.

12. **Abandonment**

Services may be terminated by the **OWNER** and the **ENGINEER** by thirty (30) days' notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If so abandoned, the **ENGINEER** shall deliver to the **OWNER** copies of all data, reports, drawings, specifications and estimates completed or partially completed along with a summary of the progress of the work completed within twenty (20) days of the abandonment. In the event of the failure by the **ENGINEER** to make such delivery upon demand, then and in that event the **ENGINEER** shall pay to the **OWNER** any damages sustained by reason thereof. The earned value of the work performed shall be based upon an estimate of the portions of the total services as have been rendered by the **ENGINEER** to the date of the abandonment for all services to be paid for on a lump sum basis. The **ENGINEER** shall be compensated for services properly rendered prior to the effective date of abandonment on all services to be paid on a cost basis or a cost plus fixed fee basis. The payment as made to the **ENGINEER** shall be paid as the final payment in full settlement and release for the services hereunder.

13. **Non-Discrimination**

Pursuant to Indiana and Federal Law, the **ENGINEER** and **ENGINEER's** subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this 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.

14. **Employment Eligibility Verification.**

The **ENGINEER** affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien.

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

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

The **ENGINEER** shall require its subconsultants, who perform work under this Contract, to certify to the **ENGINEER** that the subconsultant does not knowingly employ or contract with an unauthorized alien and that the subconsultant has enrolled and is participating in the E-Verify program. The **ENGINEER** agrees to maintain this certification throughout the duration of the term of a contract with a sub-consultant.

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

15. **No Investment in Iran.**

As required by IC 5-22-16.5, the **ENGINEER** certifies that the **ENGINEER** 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.

16. **Successor and Assigns**

The **OWNER** and the **ENGINEER** each binds themselves and successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the **OWNER** and the **ENGINEER** shall assign, sublet or transfer their interest in the Agreement without the written consent of the other.

17. **Supplements**

This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

18. **Governing Laws**

This 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 causes, paragraphs or part of this Agreement, shall nevertheless remain in full force and effect.

This Agreement contains the entire understanding between the parties and no modification or alteration of this Agreement shall be binding unless endorsed in writing by the parties thereto.

This Agreement shall not be binding until executed by all parties.

19. **Independent Engineer**

In all matters relating to this Agreement, the **ENGINEER** shall act as an independent engineer. Neither the **ENGINEER** nor its employees are employees of the **OWNER** under the meaning or application of any Federal or State Laws or Regulations and the **ENGINEER** agrees to assume all liabilities and obligations imposed in the performance of this Agreement. The **ENGINEER** shall not have any authority to assume or create obligations, expressed or implied, on behalf of the **OWNER** and the **ENGINEER** shall have no authority to represent as agent, employee, or in any other capacity than as set forth herein.

20. **Rights and Benefits**

The **ENGINEER's** services will be performed solely for the benefit of the **OWNER** and not for the benefit of any other persons or entities.

21. **Disputes**

All claims or disputes of the **ENGINEER** and the **OWNER** arising out of or relating to the Agreement, or the breach thereof, shall be first 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 a court located within the county and state where the project is located.

22. **Limitation of Liability**

To the maximum extent permitted by law, the **OWNER** agrees to limit the **ENGINEER's** liability for the **ENGINEER's** damages to the sum of $1,000,000.00 limit of Professional Liability insurance. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

IN WITNESS WHEREOF, the **OWNER** and the **ENGINEER** have signed this Agreement in duplicate. One counterpart each has been delivered to the **OWNER** and the **ENGINEER**.

This Agreement will be effective on _____, 2022.

ENGINEER:

BUTLER, FAIRMAN and SEUFERT, INC.

John W. Brand, President

OWNER:

TOWN OF YORKTOWN

_____
Lon Fox, President

_____
Nanci Sears Perry, Vice President

_____
Daniel Flanagan

_____
Marta Guinn

_____
Robert Ratchford

_____
Rick Glaub

_____
Rich Lee

APPENDIX "A"

SERVICES BY ENGINEER

The **ENGINEER** shall provide services as noted below:

1. Provide engineering services as directed by the **OWNER**.

2. Consult with **OWNER** and its agents upon request of the **OWNER**.

3. Consult with any and all governmental agencies reasonably necessary in order to render advice or services requested.

4. Upon request by the **OWNER**, furnish plans and documents necessary for projects in relation to each specific assignment authorized by the **OWNER**.

APPENDIX "B"

INFORMATION AND SERVICES TO BE FURNISHED BY OWNER

The **OWNER** shall, within a reasonable time, so as not to delay the services of the **ENGINEER**:

1. Provide full information as to **ENGINEER's** requirements for the Project.

2. Assist the **ENGINEER** by placing at **ENGINEER's** disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.

3. Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by **ENGINEER**, obtain advice of an attorney, insurance counselor, and other consultants as **OWNER** deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of **ENGINEER**.

4. Give prompt written notice to the **ENGINEER** whenever the **OWNER** observes or otherwise becomes aware of any defect in the Project.

5. Furnish all existing approvals or permits from all governmental authorities having jurisdiction over the Project. The **ENGINEER** will assist the **OWNER** in identifying and procuring any additional permits associated with this Project.

6. Arrange for access to and make all provisions for the **ENGINEER** to enter upon public and private property as required for the **ENGINEER** to perform services under this Agreement.

7. Obtain necessary easements and right-of-way for construction of the Project, including easement and right-of-way descriptions, property surveys and boundary surveys.

8. Furnish to the **ENGINEER**, as requested by the **ENGINEER** or as required by the Contract Documents, data prepared by or services of others, including exploration and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site.

APPENDIX "C"

SCHEDULE

This **AGREEMENT** shall be applicable to all assignments authorized by the **OWNER** and accepted by the **CONSULTANT** subsequent to the date of each notice and shall be effective as to all assignments authorized.

All work by the **ENGINEER** under this Agreement shall be completed and delivered to the **OWNER** as mutually agreed upon after the Notification to Proceed from the **OWNER**, exclusive of review time required by **OWNER** and other government agencies.

APPENDIX "D"

COMPENSATION

A. General Services

The **OWNER** agrees to compensate the **ENGINEER** for general services on the basis of actual hours of work performed on the project at the hourly billing rates noted in **APPENDIX D-1**. This Hourly Billing Rates include overhead and fixed fee.

In addition to the hourly fees for general services indicated above, the **ENGINEER** shall be compensated for direct project-related expenses such as job-related travel, permit applications, etc.

The **ENGINEER** shall, on behalf of the **OWNER**, cause to be made all borings and subsurface explorations and the analysis thereof; the cost of which shall be paid for by the **OWNER**.

B. Method of Payment

Payment shall be made by the **OWNER** to the **ENGINEER** each month as the work progresses.

APPENDIX "D-1"

SCHEDULE OF COMPENSATION

BUTLER, FAIRMAN and SEUFERT, INC.

2022 HOURLY RATE SCHEDULE

Classification		Hourly Rates
E-V	Engineer V (Principal)	$ 275.00
E-IV	Engineer IV	$ 210.00
E-III	Engineer III	$ 180.00
E-II	Engineer II	$ 140.00
E-I	Engineer I	$ 105.00
FP-V	Field Personnel V – (Project Coordinator)	$ 225.00
FP-IV	Field Personnel IV	$ 195.00
FP-III	Field Personnel III	$ 155.00
FP-II	Field Personnel II	$ 120.00
FP-I	Field Personnel I	$ 95.00
EA-III	Engineer's Assistant III	$ 185.00
EA-II	Engineer's Assistant II	$ 150.00
EA-I	Engineer's Assistant I	$ 105.00
SP-1	Support Personnel I	$ 75.00
C-II	Clerical II	$ 125.00
C-I	Clerical I	$ 80.00
P-III	Planner/Environmental Specialist III	$ 150.00
P-II	Planner/Environmental Specialist II	$ 110.00
P-I	Planner/Environmental Specialist I	$ 95.00

The billing rates are effective January 2022 and may be adjusted annually (beginning January 2023) to reflect changes in the compensation payable to the **ENGINEER**.

APPENDIX "E"

MISCELLANEOUS PROVISIONS

There are no miscellaneous provisions.