

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

Between

CITY OF WEST LAFAYETTE, INDIANA

and

GREELEY AND HANSEN LLC

Article I. PARTIES AND PROJECT

This AGREEMENT is made effective on the _____ day of _____ in the year 20__ between the City of West Lafayette, Indiana, hereinafter referred to as CITY, and Greeley and Hansen LLC, an Illinois limited liability company, with its principal office at 100 South Wacker Drive, Chicago, Illinois 60606-4004, and a regional office at 6640 Intech Boulevard, Suite 180, Indianapolis, Indiana 46278, hereinafter referred to as ENGINEER, for professional engineering services in connection with Cumberland Avenue Extension Sanitary Sewer Conceptual Design Study, the PROJECT.

Article II. ENGINEER'S SERVICES

ENGINEER shall provide appropriate professional engineering services as required to complete the scope of services as set forth hereinafter, and shall perform such services in conformance with the ordinary standards of care and skill of the engineering profession.

A. Basic Services

The scope of the basic services for the PROJECT are set forth in Exhibit A attached hereto and made a part of this AGREEMENT. ENGINEER shall not perform services beyond the scope as defined in Exhibit A without the prior written authorization of CITY.

B. Additional Services

ENGINEER may submit proposals for additional professional engineering services in connection with the PROJECT. Each proposal submitted shall detail the: (1) scope of additional services, (2) period of services, and (3) method and amount of compensation.

CITY shall provide written acceptance and authorization to ENGINEER prior to the commencement of work on any proposed additional services. Upon receipt by ENGINEER of written acceptance and authorization by CITY, each proposal for additional services in connection with the PROJECT shall become part of this AGREEMENT and shall be governed by the terms and conditions contained herein.

C. Period of Services

ENGINEER agrees that the basic services as described in Exhibit A will be substantially complete within 90 calendar days.

The period of services will begin upon the date of CITY'S written notice to proceed. ENGINEER shall not, however, be responsible for timely completion of basic services as agreed to herein if completion is delayed by the failure of CITY to furnish the services provided for under Article IV., hereof, in a timely manner, or for other reasons beyond the control of the ENGINEER.

ENGINEER further agrees that additional services will be substantially complete within the period specified in each accepted and authorized proposal for additional services, unless reasons for delay in completion are beyond the control of ENGINEER.

If ENGINEER'S basic services or any accepted and authorized additional services are delayed or suspended in whole or in part by the CITY for more than ninety days beyond the scheduled completion date for said basic or additional services for reasons beyond ENGINEER'S control, compensation for the delayed services, as provided in Article III. hereunder, shall be subject to renegotiation upon the written request of ENGINEER.

However, such request must be submitted by ENGINEER to the CITY prior to the completion of the delayed services.

Article III. ENGINEER'S COMPENSATION

ENGINEER shall perform professional engineering services as provided in Article II. of this AGREEMENT for which CITY shall compensate ENGINEER as follows:

A. Basic Services

1. Personnel Services

ENGINEER shall be compensated for personnel services on the basis of actual annual average hourly rates paid to personnel assigned to the PROJECT for each hour of services rendered times a 3.2 factor to cover overhead and profit. Such rates shall be computed as actual annual base salary, in effect at the time the services are rendered, divided by 1,950 hours. Personnel services rates shall include applicable required overtime premium for covered employees.

2. Subconsultants and Other Professional Associates

CITY shall pay ENGINEER for the services of subconsultants and other professional associates at their invoiced fees to ENGINEER plus 5 percent.

3. Reimbursable Direct Costs

CITY shall pay ENGINEER the actual cost of any direct reimbursable expenses incurred in connection with performing the services.

B. Additional Services

Unless otherwise provided for in any accepted and authorized proposal for additional services, such services shall be compensated for on the same basis as provided for in Paragraph III. A., above, for basic services.

C. Total Compensation

Total compensation to ENGINEER for basic services under this AGREEMENT shall include full reimbursement for personnel services, subconsultants and other professional associates and reimbursable direct costs incurred in performing basic services, as described in

Paragraph III. A. It is agreed that the total compensation to ENGINEER for performing basic services will not exceed \$25,000 as set forth in Exhibit B, without prior approval of CITY.

The provisions of this Article III. C. shall also apply to each accepted and authorized proposal for additional services in connection with the PROJECT. However, the term "basic services", as used in this Article III. C., shall mean "additional services" and the terms "Exhibits A" and "Exhibit B" as used in this Article III. C. shall mean "the accepted and authorized proposal for additional services". The estimated compensation for any additional services, and the completion date beyond which these amounts are subject to renegotiation, shall be as specified in each such authorized proposal.

D. Terminated Services

If this AGREEMENT is terminated, ENGINEER shall be paid for services performed to the effective date of termination as follows:

1. For personnel services, the hours of services rendered at the established rates, to the effective date of termination times the factors established herein.
2. For services of subconsultants and other professional associates, their invoiced fees to ENGINEER, for services to the effective date of termination plus 5 percent.
3. For reimbursable direct costs, the actual cost of direct reimbursable expenses incurred to the effective date of termination.

E. Conditions of Payment

1. Progress payments shall be made in proportion to services rendered and expenses incurred as indicated within this AGREEMENT and shall be due and owing within thirty days of ENGINEER'S submittal of his progress payment invoices.
2. If CITY fails to make payments due ENGINEER within forty-five days of the submittal of any progress payment invoice, ENGINEER may, after giving fifteen days written notice to CITY, suspend services under this AGREEMENT.

3. No deduction shall be made from ENGINEER'S compensation on account of penalty, liquidated damages or other sums withheld from payments to construction contractors.
4. If the PROJECT is delayed, or if ENGINEER'S services for the PROJECT are delayed or suspended for more than ninety days for reasons beyond ENGINEER'S control, ENGINEER may, after giving fifteen days written notice to CITY, request renegotiation of compensation under Article II. C. or may terminate this AGREEMENT.

Article IV. CITY'S RESPONSIBILITIES

The CITY shall, as required:

- A. Provide all criteria and full information as to CITY'S requirements for the PROJECT, and furnish copies of all design and construction standards which the CITY will require to be included in the drawings and specifications.
- B. Assist ENGINEER by placing at ENGINEER'S disposal all available information pertinent to the PROJECT including CITY maps and plats, previous reports, drawings, specifications and any other data relative to the design or construction of the PROJECT.
- C. Furnish to ENGINEER property and land use data pertaining to the PROJECT available to the CITY including, but not limited to, property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restrictions; and other related data.
- D. Provide legal, insurance and financial consulting services necessary for the PROJECT, and such accounting and auditing services as the CITY may require.
- E. Furnish permits and approvals from all governmental authorities having jurisdiction over the PROJECT and from others as may be necessary for completion of the PROJECT.

- F. Furnish above record information, property and land use data, and services at CITY'S expense in such manner that ENGINEER may rely upon them in the performance of services under this AGREEMENT.
- G. Pay for any required surveys and geotechnical investigations and reports.
- H. Furnish any laboratory analyses that may be required in connection with the PROJECT.
- I. Guarantee full and free access to ENGINEER to enter upon all public and private property required for the performance of ENGINEER'S services under this AGREEMENT.
- J. Designate in writing a person to act as CITY'S representative with respect to the services to be performed under this AGREEMENT. Such person shall have complete authority to transmit instructions, receive information, interpret and define CITY'S policies and decisions with respect to materials, equipment, elements and systems pertinent to ENGINEER'S services.
- K. Coordinate, consolidate, reconcile and bring congruence to differing views in the CITY'S organization to form single firm responses stating the CITY'S position on matters requiring resolution during performance of ENGINEER'S services. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER. Render such decisions in a consolidated form reconciling differing views into an unambiguous single firm response to each matter requiring resolution.
- L. Provide ENGINEER with prompt written notice of any defect or suspected defect in ENGINEER'S performance of any services rendered pursuant to this AGREEMENT or relating to the PROJECT.

- M. In any agreement entered into between the CITY and other contractors for the PROJECT in which such contractors and their subcontractors agree to indemnify, provide insurance coverage to, and/or name as additional insured, the ENGINEER, its subconsultants, professional associates, and each of their officers, principals, partners and employees to the same extent as to the CITY. Furthermore, the CITY will provide ENGINEER with certificates of insurance from each such contractor or subcontractor.
- N. Give prompt written notice to ENGINEER whenever the CITY observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER'S services, or any defect in the work of construction contractors.
- O. Compensate ENGINEER in accordance with the provisions of Article III.

Article V. GENERAL PROVISIONS

A. Ownership of Documents

All reports, schedules, drawings, specifications and other products of services of ENGINEER for this PROJECT are instruments of service for this PROJECT only and shall remain the property of ENGINEER until the CITY has compensated ENGINEER in full for services rendered pursuant to the AGREEMENT. Upon final payment for each phase of Basic Services and for each separately accepted and authorized proposal for additional services, ownership of the products or instruments of service for said phase or additional services authorized shall be vested in the CITY. ENGINEER, however, may retain record copies of all such instruments of service and may use such for ENGINEER'S exclusive purposes. Reuse of any of the instruments of service of ENGINEER by the CITY on extensions of this PROJECT or any other project shall be at the CITY'S sole risk and the CITY agrees to defend, indemnify and hold harmless ENGINEER from all claims, damages, and expenses including attorney's fees arising out of reuse of ENGINEER'S instruments of service by the CITY or by others acting through the CITY.

B. Data on Electronic Media

Data delivered on electronic media are considered part of the ENGINEER'S instruments of service and, therefore, Article V.A. above applies to documents delivered on electronic media.

The form of ENGINEER'S drawings, specifications, reports, data or other information that may be relied upon are those which 1) are set forth on paper (also known as hard copies) and 2) are designated as final. Files in electronic media format of text, data, graphics, or other types are furnished only for convenience, not reliance by the CITY. Any conclusion or information obtained or derived from such electronic files will be at the CITY's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

Because files stored in electronic media format can contain irregularities, deteriorate or be modified inadvertently or otherwise without authorization of the ENGINEER, the transmitted electronic files should be examined by the CITY within 60 calendar days of receipt, after which time the CITY shall be deemed to have accepted the files thus transmitted. Any transmittal deficiencies detected within the 60-day acceptance period will be corrected by ENGINEER. Deficiency corrections requested after the acceptance period will be considered "additional services." ENGINEER is not responsible for irregularities, deterioration or modifications occurring or detected after the 60 calendar-day acceptance period.

ENGINEER 1) makes no representations as to the long-term usability or readability of the electronic files and 2) cannot be depended upon to maintain copies of the electronic files after the 60 calendar-day acceptance period.

The documents will be in the software listed below designed for operation on a PC compatible computer under the associated operating system as listed below:

Type of Document	Software	Operating System
Wordprocessed Text	MS Word 2007	Windows
Spreadsheets	MS Excel 2007	Windows
CADD Drawings	AutoCAD 2011	Windows

The ENGINEER makes no warranty as to the compatibility of electronic files beyond those versions. However, the ENGINEER reserves the right to submit documents in versions newer than those shown above.

ENGINEER makes no representations as to the compatibility, usability, or readability of the electronic files resulting from the use of software application packages, operating systems, or computer hardware (e.g. monitors, graphic cards and plotters) differing from those used by ENGINEER and its subconsultants. Also, the use of software application packages, operating systems and computer hardware different from those used by ENGINEER and its subconsultants may introduce errors and irregularities. Such occurrences are not the responsibility of ENGINEER and its subconsultants.

C. Successors and Assigns

1. The CITY and ENGINEER each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this AGREEMENT and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this AGREEMENT.
2. Neither the CITY nor ENGINEER shall assign or transfer any rights under or interest in this AGREEMENT without the written consent of the other, except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent subconsultants and associates as may be deemed appropriate to assist in the performance of services hereunder.

D. Changes in Scope and Revisions

The general category "additional services", referred to in Article II. B. may include services due to changes in the scope of the PROJECT, including, but not limited to, changes in size, complexity, schedule or character of the services and also may include revisions to instruments of service previously approved by the CITY or other revisions due to causes beyond the control of ENGINEER. All changes in scope and revisions shall require the written acceptance and authorization of the CITY prior to commencement of work, as provided in Article II. B.

This AGREEMENT takes into account the professional engineering and architectural signing and sealing requirements that are applicable as of the date of this AGREEMENT. Any changes to those requirements during the performance of the services associated with this AGREEMENT which cause revisions to the scope of the ENGINEER'S services or to the ENGINEER'S instruments of services shall be considered "additional services".

Proposals for services pursuant to changes in scope or revisions shall, upon CITY'S acceptance and authorization, become part of this AGREEMENT and shall be governed by the terms and conditions contained herein.

E. Extent of AGREEMENT

This AGREEMENT represents the entire understanding and agreement between the CITY and ENGINEER for professional engineering services pertaining to the PROJECT as described in Article II. and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended only by written instrument signed by both the CITY and ENGINEER.

F. No Waiver

Failure of the ENGINEER or the CITY to insist upon strict and punctual performance of any terms or conditions of this AGREEMENT shall not be construed to constitute a waiver of, or estoppel against, asserting the rights to require such performance. Neither shall a waiver nor an estoppel in one instance constitute a waiver or an estoppel with respect to a later default, whether similar or dissimilar in nature.

G. Severability

If any part of this AGREEMENT is determined by a court to be in conflict with statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this AGREEMENT shall remain in full force and effect unless the stricken provision leaves the remaining AGREEMENT unenforceable.

H. Governing Law

This AGREEMENT shall be governed by the laws of the State of Indiana.

I. Subconsultants

During the performance of the AGREEMENT, ENGINEER may engage such additional subconsultants or professional associates as may be appropriate for the timely completion of the services or to meet applicable requirements. The engagement of any subconsultants or professional associates shall be subject to the prior approval of the CITY.

J. Insurance

ENGINEER shall acquire and maintain:

1. Statutory worker's compensation insurance coverage.
2. Commercial general liability insurance coverage with a limit of \$1,000,000 or more per occurrence and annual aggregate applicable to bodily injury and property damage claims.
3. Professional liability insurance coverage with an annual aggregate limit of at least \$1,000,000.

K. ENGINEER'S Estimates of Cost and Standard of Care

Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, ENGINEER'S estimates of project and construction costs are to be made on the basis of its experience and qualifications and represent its best judgment as an experienced and qualified professional engineering firm, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual project or construction costs will not vary from ENGINEER'S estimates of cost.

Notwithstanding any other provisions in this AGREEMENT to the contrary, nothing herein contained shall be construed as:

1. Constituting a guarantee, warranty or assurance, either express or implied, that the engineering services will yield or accomplish a perfect outcome for the PROJECT; or
2. Obligating the ENGINEER to exercise professional skill and judgment different from that which can be reasonably expected from other engineers under like circumstances; or
3. An assumption by the ENGINEER of liability greater than or differing from those explicit in this AGREEMENT, or
4. An assumption by the ENGINEER of the liabilities of any other party.

L. Indemnification

CITY and ENGINEER each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and subcontractors, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of CITY and ENGINEER, they shall be born by each party in proportion to its negligence. Notwithstanding the above, neither the CITY nor ENGINEER shall have the right of recourse to the other party for any consequential damages incurred due to the fault of the CITY or the ENGINEER, their employees, agents, or subcontractors, irrespective of any forewarning of potential for such damages arising.

M. Termination

This AGREEMENT may be terminated by the CITY without cause on thirty days written notice. If the PROJECT is delayed, or if ENGINEER'S services for the PROJECT are delayed or suspended for more than ninety days for reasons beyond ENGINEER'S control, ENGINEER may request renegotiation of compensation in accordance with the provisions of Articles II. and III. or, after giving fifteen days written notice, terminate this AGREEMENT with cause. In the event of substantial failure to perform in accordance with the terms of this AGREEMENT, the party not at fault may terminate the AGREEMENT with cause on ten days written notice. If this AGREEMENT is terminated, ENGINEER shall be compensated for services performed to the effective date of termination in accordance with the provisions of Article III. of this AGREEMENT. Within sixty days following the date of receipt of the termination notice, and following receipt of compensation for services to date of termination, ENGINEER shall submit to the CITY copies of all reports, drawings, specifications and other products or instruments of service prepared prior to termination.

N. Remedies

Except as may be otherwise provided in this AGREEMENT, all claims, counter-claims, disputes and other matters in question between the CITY and ENGINEER arising out of or relating to this AGREEMENT or the breach thereof will be decided by arbitration if the PARTIES mutually agree or in an Indiana court of competent jurisdiction.

O. Non-Discrimination and Equal Employment

ENGINEER acknowledges that it is in compliance with the prohibitions against discrimination in employment and with the provisions for equal employment opportunities as provided by CITY'S ordinances, and that the ENGINEER does not, on the grounds of race, color, national origin, religion, sex, age, handicap or marital status, discriminate in any form or manner against the ENGINEER'S employees or applicants for employment. Any violation of this paragraph shall be grounds for termination of this agreement.

P. Notices

Any notices required hereunder or by law may be directed to the parties at the following addresses:

To ENGINEER:

Mr. Paul J. Vogel
Executive Vice President
Greeley and Hansen LLC
100 South Wacker Drive, Suite 1400
Chicago, IL 60606-4004

To CITY:

Mr. David S. Henderson
Wastewater Treatment Utility Director
City of West Lafayette
500 South River Road
West Lafayette, IN 47906

All notices shall also be given to:

Mr. Eric H. Burns
Withered Burns & Persin, LLP
8 North Third Street, Suite 401
P.O. Box 499
Lafayette, Indiana 47902

All notices shall be deemed to be given when deposited with the United States Postal Service for first class mail delivery.

Article VI. APPROVAL

In WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized officers and partners and is made effective the day and year first above written.

GREELEY AND HANSEN LLC



Paul J. Vogel

Executive Vice President

CITY OF WEST LAFAYETTE, INDIANA
BOARD OF PUBLIC WORKS AND SAFETY

John R. Dennis

President

ATTEST:



Joseph M. Teusch

Associate

Sana G. Booker

Member

Bradley W. Marley

Member

Elizabeth M. Stull

Member

Jonathan C. Speaker

Member

ATTEST:

Judith C. Rhodes

Clerk-Treasurer

EXHIBIT A

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
between
CITY OF WEST LAFAYETTE
and
GREELEY AND HANSEN LLC

CUMBERLAND AVENUE EXTENSION SANITARY SEWER CONCEPTUAL DESIGN STUDY

Scope of Services

ENGINEER shall provide professional engineering services for conceptual design of sanitary sewer system improvements in connection with the proposed Cumberland Avenue extension. A new gravity sanitary sewer, lift station and force main are needed to provide wastewater service to this newly developing area.

ENGINEER's scope of services will consist of the following tasks:

TASK 1.0 - GENERAL

1.1 Progress Meetings. Attend up to three (3) progress meetings to review technical aspects of the study and to obtain input by City staff on the approach and results of the study. Prepare meeting notes for distribution.

1.2 Gather and Summarize Basic Data. Collect relevant information including reports, drawings, and other information related to the Cumberland Avenue extension and information related to the City's long-term plans for sewer service area.

TASK 2.0 – CONCEPTUAL DESIGN

2.1 Wastewater Flows. Estimate wastewater flow rates based upon City's planned service area.

2.2 Gravity Sewer. Review up to two alternate routes and profiles for the gravity sewer and present recommended route to City for approval.

2.3 Lift Station and Force Main. Review up to two lift station sites and force main routes and present recommended lift station location and force main route to City for approval. Analyze existing sewer capacity to receive flows from proposed lift station.

2.4 Construction Cost Opinion. Prepare a planning-level opinion of probable construction cost for the recommended conceptual design.

2.5 Conceptual Design Memorandum. Prepare a conceptual design memorandum summarizing the general design criteria and arrangement for proposed gravity sewer and lift station improvements.

EXHIBIT B

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
between
CITY OF WEST LAFAYETTE
and
GREELEY AND HANSEN

CUMBERLAND AVENUE EXTENSION
SANITARY SEWER CONCEPTUAL DESIGN STUDY

Estimated Level of Effort

Task Description	Estimated Workhours				Totals
	Principal	Project Manager	Engineer	Technician / CAD Oper	
1.0 GENERAL					
1.1 Progress Meetings	0	24	24	0	48
1.2 Gather and Summarize Basic Data	0	0	4	4	8
Subtotal - General	0	24	28	4	56
2.0 CONCEPTUAL DESIGN					
2.1 Wastewater Flows	0	2	4	0	6
2.2 Gravity Sewer	0	8	20	16	44
2.3 Lift Station and Force Main	0	8	20	12	40
2.4 Construction Cost Opinion	0	2	8	0	10
2.5 Conceptual Design Memorandum	2	10	32	0	44
Subtotal - Conceptual Design	2	30	84	28	144
Total	2	54	112	32	200

