

Resolution
of the
City of Easton, Pennsylvania

No. 2022

Date: November 22, 2022

Introduced by: James Edinger

RESOLVED that the Council of the City of Easton approves an Agreement (copy attached hereto) with Barry Isett & Associates for design work for Lehns Court at a cost of \$10,500.

BE IT FURTHER RESOLVED that Council authorizes the Mayor and City Controller to sign said Agreement on behalf of the City and the City Clerk to attest to same.

This is to certify that the above Resolution was adopted by the City Council on the above date.

Attest: _____
City Clerk

Signed: _____
Mayor



MULTI-DISCIPLINE ENGINEERS AND CONSULTANTS

5420 Crackersport Road, Allentown, PA 18104
610.398.0904 610.481.9098
barryisett.com

Date: November 8, 2022
Project #: 1090121.001

Client Name: City of Easton
Attention: Mr. David Hopkins, Director of Public Works
Address: 123 South 3rd Street, Easton, PA 18042
Phone: 610-250-6683
RE: LEHNS COURT RECONSTRUCTION

Description of Work:

A. Design Services

Based upon discussions at the field meeting on 10/14/2022 (between Dave Hopkins and Ryan Kern), the following scope has been established:

- 1. Prepare design plans for the conversion of the Alley (Lehns Court) to a pedestrian pathway.
2. Project limits: Lehns Court from South Sitgreaves Street to the two sidewalk panels in front of the Pearly Baker's business.
3. Isett will prepare one set of plans for construction and anticipate one plan re-submission based upon City comments.

**Note: The design will utilize the Topographic Survey and Base Plan prepared by Isett (dated 1/21/2022). If additional services are requested (such as Bid Administration, Construction Observation, Stormwater Management, E+S approval, etc.), Isett will provide an Authorization for requested Additional Services.

Cost of Services:

A. Design Services \$ 10,500.00

Accepted:

Approved:

Client:

Firm:

Signature

Signature

Salvatore J. Panto, Jr., Mayor

Ryan Kern, PE

Printed Name & Title

Printed Name & Title

Date:

Date: 11/8/2022

\\biaces.com\Work\Projects\2021\1090121.000_COE_Sitgreaves_Lehns\PROPOSAL\Lehns_Court_Reconstruction_authorization\20221107-LehnsCourt-authorization.docx

Authorization for Additional Services

City Clerk

City Controller

STANDARD CONTRACT TERMS AND CONDITIONS

1. DUTIES AND RESPONSIBILITIES

1.1 Engineer agrees to provide those professional services as agreed to in the scope of services.

2. RESTRICTIONS ON USE OF DOCUMENTS

2.1 It is understood that the drawing(s) rendered under this agreement will be prepared in accordance with the agreed scope and will pertain only to the subject project. Use of the drawings, information or data contained therein for other purposes is at user's sole risk and responsibility.

2.2 Client agrees that all documentation including drawings and other work Engineer furnished to Client or Client's agents which Engineer does not receive compensation for under the terms of this agreement shall remain Engineer's property and shall be returned upon demand and shall not be used for any purpose whatsoever.

2.3 Plans, CADD disks, and specifications, as instruments of service, are and shall remain the property of Engineer, whether the project for which they are intended is executed or not. The plans, CADD disks and specifications shall not be used by Client on other projects, for additions to this project, or for completion of this project by others, except by agreement in writing with the appropriate compensation to Engineer, provided Engineer is not in default under this agreement.

3. STANDARD OF CARE

3.1 Services performed by Engineer under the agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession practicing under similar circumstances in the same or similar locality.

4. OBSERVATION SERVICES

4.1 If required under the scope of services Engineer will provide personnel to observe and report on specific aspects or phases of construction in accordance with the agreed scope of services. Engineer's services do not include supervision or direction of the actual work of Contractor, Contractor's employees, agents, or subcontractors. Client agrees to notify Contractor accordingly. Client shall also inform Contractor that neither the presence of Engineer's field representative nor the observation by Engineer shall excuse Contractor for defects or omissions in Contractor's work.

4.2 It is understood that Engineer shall not be held responsible for any errors or omissions on the part of Contractor, including but not limited to Contractor's failure to adhere to the plans and specifications, regardless of whether or not Engineer is performing observation services. This provision shall be included in the contract between Client and Contractor.

4.3 It is understood that Contractor shall be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work, and that these requirements shall apply continuously and not be limited to normal working hours. Any monitoring of Contractor's performance conducted by Engineer excludes review of the adequacy of Contractor's safety measures in, on or near the construction site.

4.4 Engineer shall not be held responsible for Contractor's failure to observe or comply with the Occupational Health and Safety Act of 1970, and regulations or standards promulgated thereunder, or any state, county, or municipal law or regulation of similar import or intent.

4.5 It is understood that if Engineer's scope of services does not include observation services, then Client assumes all responsibility for interpretation of the Contract Documents and for construction observation, and Client waives any claims against Engineer that may in any way be connected thereto. Client agrees to the fullest extent permitted by law to indemnify and hold harmless Engineer, its officers, directors, employees and subconsultants against all damages, liabilities, or costs, including reasonable attorneys' fees and defenses costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustment or changes made to the Contract Documents to reflect changed field or other conditions.

5. TERMINATION/SUSPENSION

5.1 This agreement may be terminated by either party upon written notice. In the event of termination, Engineer shall be paid for services performed to the termination date plus reasonable termination expenses.

5.2 In the event of termination or suspension for more than three (3) months, prior to completion of all services contemplated by the agreement, Engineer may complete such analysis and records as are necessary to complete the files and may also complete a report on the services performed on the date of notice of termination or suspension. The expenses of termination or suspension shall include all costs of Engineer in reporting, completed data, completing such analysis, records, and reports.

5.3 Client shall make no request of Engineer that, in Engineer's reasonable opinion, would be contrary to Engineer's professional responsibilities to protect the public. Client shall take all actions and render all reports required of Client in a timely manner. Should Client fail to do so, Client agrees Engineer has the right to exercise its professional judgment in reporting to public officials. Client agrees to take no action against or attempt to hold Engineer liable in any way for carrying out what Engineer reasonably believes to be its public responsibility. Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Engineer, its officers, directors, employees and subconsultants against all damages, liabilities or costs arising out of or in any way connected with Engineer's notifying or failing to notify appropriate public officials.

6. INVOICES/PAYMENTS

6.1 Engineer will submit invoices to Client monthly and a final invoice upon completion of services. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. Client agrees to pay a service charge of one and one-half (1-1/2) percent per month (18% per annum) or fraction thereof on past due payments under this agreement. If an invoice remains unpaid for more than sixty (60) days Engineer, reserves the right to pursue all appropriate remedies including stopping work and retaining all drawings without recourse.

6.2 Payment to Engineer is a material consideration of this agreement. Therefore, Engineer has a right to suspend services for non-payment. Engineer shall not be liable, nor in any way be responsible for damages, delays or increased costs that may occur as a result of Engineer's suspension of services. Client shall hold harmless, indemnify, and defend Engineer for claims that arise due to any suspension.

6.3 It is further agreed that in the event a lien or suit is filed to enforce payment under this agreement Engineer shall be reimbursed by Client for all court costs and reasonable attorney's fees in addition to accrued service charges.

7. DISPUTES

7.1 In the event that Client institutes suit or arbitration against Engineer for any alleged error, omission, negligence, or failure to perform, and if such suit or arbitration is dropped or dismissed, or if judgment is rendered for Engineer, Client agrees to reimburse Engineer or pay any and all costs and any and all other expense of defense, immediately following dropping or dismissal of the case or immediately upon judgment being rendered on behalf of Engineer.

8. WARRANTY OF AUTHORITY TO SIGN

8.1 The person signing this contract warrants they have authority to sign as, or on behalf of, Client for whom or for whose benefit that Engineer's services are rendered, and also that, if Client is a corporation, that the person signing this contract shall be personally liable, if necessary, for all monies owed under this agreement. If such person does not have such authority, he agrees that he is personally liable for all breaches of this contract and that in any action against him for breach of such warranty a reasonable attorney fee shall be included in any judgment rendered.

8.2 If a proposal is submitted to Client and Client fails to return a signed copy of the proposal but knowingly allows Engineer to proceed with services, then Client shall be deemed to have accepted the terms of the proposal and these Standard Terms and Conditions.

9. CHOICE OF LAW

9.1 This contract shall be construed in accordance with the laws of the Commonwealth of PA.

10. SEVERABILITY

10.1 In the event that any provisions herein shall be deemed invalid or unenforceable, the other provisions hereof shall remain in the full force and effect, and binding upon the parties hereto.

11. REMEDY

11.1 If the services performed by Engineer are faulty, Client's exclusive remedy shall be for Engineer to re-perform such services to the extent necessary to correct the fault therein without charge to Client or damages limited to those amounts set forth in Warranty, Liability, and Indemnification.

11.2 All claims, disputes, and other matters in question between Engineer and Client, not in excess of \$200,000, arising out of or relating to the contract documents or the breach thereof, shall be resolved as follows:

11.3 A written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, shall be submitted to "Judicate Headquartered in Philadelphia." The mediator's fee shall be shared equally by the parties. If the dispute has not been resolved by mediation, the matter shall then be submitted to arbitration in accordance with paragraph 11.5.

11.4 No mediation, arbitration, arising out of or relating to this agreement, shall include, by consolidation, joinder or in any other manner, any additional person not a party to this agreement except by written consent containing a specific reference to this agreement, and signed by Engineer, Client, and any other person sought to be joined. Any consent to mediation, arbitration involving an additional person or persons shall not constitute consent to mediation, arbitration of any dispute not described herein. This agreement to mediate, arbitrate (and any agreement to mediate, arbitrate) with an additional person or persons duly consented to by the parties to this agreement shall be specifically enforceable under the prevailing mediation, arbitration law.

11.5 Any dispute between the parties that is to be resolved by arbitration shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect. Any such arbitration shall be held and conducted in Trenton, PA. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

12. VALIDITY

12.1 It is understood that this agreement is valid for a period of sixty (60) days after which time, if it is not rejected by Client, Engineer reserves the right to revise or withdraw this agreement.

13. CHANGES IN THE WORK

13.1 The stated total fee constitutes Engineer's estimate of the effort required to complete the project as understood by Engineer. Facts developed after initial planning may dictate a change in direction, additional effort, or suspension of effort, which may alter the scope. If such change, additional effort, or suspension of effort results in an increase or decrease in the cost of or time required for performance of the services, whether or not changed by any order, the fee and schedule shall be equitably adjusted.

13.2 Client acknowledges that no amount of site investigation or design can anticipate every potential cost issue and that changes occur on every project. Accordingly, Client shall include a reasonable contingency in its construction budget for unforeseen conditions, imperfect documents, requirements of authorities having jurisdiction, and Client's own changes. Client further agrees to make no claim by way of direct or third-party action against Engineer or its subconsultants for any increased costs within the contingency because of such changes or because of any Contractor claims relating to such changes.

13.3 Engineer shall not be responsible for the cost or expense of constructing or adding a component or item mistakenly left out of the Construction Documents to the extent such component or item would have been required and included in the original Construction Documents and therefore would have been part of Contractor's bid or proposal. In no event will Engineer be responsible for any cost or expense that provides betterment or upgrades or enhances the Project.

14. WARRANTY, LIABILITY, AND INDEMNIFICATION

14.1 Engineer's liability for damages due to error, omission or professional negligence shall be limited to an amount not to exceed \$50,000 or Engineer's fee, whichever is less. If Client prefers not to limit Engineer's professional liability to this sum, Engineer will waive this limitation upon Client's request if Client agrees to pay an additional consideration for this waiver, prior to commencement of services.

14.2 For any Project related claim, demand, or suit action asserted by any party other than Client related to Engineer's alleged act or error, omission, negligence, carelessness, or breach of duty, contractual or otherwise, Client agrees at Client's sole cost and expense to indemnify, defend and hold harmless Engineer, its subsidiaries, affiliates, officers, employees, and consultants or such other who may have assisted Engineer in rendering its services in connection with the project from and against, all claims, liabilities, costs, and expenses, including but not limited to reasonable attorney's fees and other costs and expenses suffered, sustained or required to be paid by Engineer. In the event Client is required to defend Engineer per this section, Engineer shall have the right to choose its own counsel.

14.3 Client agrees to be entirely liable for providing any/all contractors working on this project with the latest revisions of all plans.

14.4 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Engineer, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both Client and Engineer shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.



	I	II	III	IV
Project Management	\$140	\$160	\$180	\$200
DESIGN				
Professional Engineer	\$140	\$160	\$180	\$200
Staff Engineer/Designer	\$120	\$140	\$160	\$170
CAD Drafter	\$85	\$100		
GIS Specialist/Analyst	\$85	\$110	\$140	\$150
Registered Landscape Architect	\$120	\$140	\$160	\$200
Landscape Design	\$75	\$90	\$110	\$130
FIELD				
Professional Forensic Engineer	\$140	\$160	\$180	\$200
Forensic Staff Engineer/Designer	\$120	\$140	\$160	\$170
Forensic Specialist	\$85	\$100	\$120	\$140
Professional Geotech/Engineer	\$140	\$160	\$180	\$200
Geotechnical Staff	\$120	\$140	\$160	\$170
Professional Geologist/Scientist	\$140	\$160	\$180	\$200
Staff Geologist/Scientist	\$120	\$140	\$160	\$170
Professional Surveyor	\$140	\$160	\$180	\$200
Survey Specialist	\$85	\$100	\$120	\$140
Survey Technician	\$70	\$85	\$100	\$120
Construction Inspector	\$85	\$100	\$140	\$160
CMT Field Technician/Special (ICC) Inspections	\$70		\$110	
Master Code Professional	\$200			
Emergency Response (One-Person)	\$300*			
Grants Specialist	\$110			
Assistant/Clerk	\$70		\$85	

*BILLED IN 4-HOUR INCREMENTS, WHERE NOTED

NOTE: The cost of reimbursable expenses that are in addition to the basic services will be itemized separately. Reimbursable expenses include mileage; priority/express mail and packages; preparation of materials for electronic transfer; hand delivery of materials; reproductions; prints; and any additional insurance coverage or limits (including professional liability insurance) requested in **excess** of that normally carried.

Costs relating to any outside services contracted directly by Isett will be passed on to the client and may have up to a 15% service charge.

When related to a project, the following rates will be charged for reimbursable expenses:

Listed prices are for black and white prints only (additional charge for color prints).

Photocopies	\$0.18 per sheet
Large Format Copies	\$0.35 per square foot
Large Format Plotting (tiff, cal, plt, pdf, jpeg)	\$0.40 per square foot
Large Format Scans	\$0.45 per square foot
Large Format Plotting (dwg's)	\$0.60 per square foot

Above rates are subject to change if conditions warrant. Reimbursables subject to Sales Tax.

Effective 10/1/2022

Fee Schedule