

# **AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement is effective as of 03/15/2021, between Giffels Webster located at 1025 E. Maple Road, Suite 100, Birmingham, MI 48009 and the following person or entity ("Client"):

Client name and address:	City of Lathrup Village 27400 Southfield Road Lathrup Village, MI 48076	
Client contact and phone no:	Dr. Sheryl Mitchell - Theriot City Administrator Phone 248-663-6025	Email: smitchell@lathrupvillage.org Mobile n/a
Project Name:	2021 – 2023 Paving Bond Issue	Project No.: 15850.21
Site Area:	N/A	Location: City Wide – Various Streets

The Client and Giffels Webster enter into this Agreement for certain professional consulting and related services to be provided by Giffels Webster in relation to the above Project ("Project"). The parties agree as follows:

## **I. PROJECT DESCRIPTION**

Provide preliminary and construction engineering services to include topographic surveying, construction plan preparation, permitting, contract administration, construction inspection, construction layout, material testing, and other services related to the reconstruction or rehabilitation of approximately 7 miles of City roads.

Our fee is based on the plans and specifications prepared for this project. Fees based on a Time and Material basis are our best estimate as to the amount of work required to complete the task and may / will vary as we have no control over the Contractor's operations and schedule.

## **II. BASE SCOPE OF SERVICES**

Giffels Webster will provide consulting services for the Project, as summarized in Exhibit A | Scope of Services. Only those services summarized Exhibit A | Scope of Services are included in this Agreement. Giffels Webster and the Client agree that services not identified in Exhibit A | Scope of Services are not the responsibility of Giffels Webster unless provided for under a separate agreement.

## **III. COMPENSATION**

The fees associated with each task identified in our scope of services are summarized below. The Client shall pay all of the costs of review, inspection, zoning, assessment, permit and bond fees, capital/lateral charges, tap fees, as well as any other fees not specifically covered by the terms of this Agreement.

**2021 Paving Program (approximately 2 miles of road repair)**

<u>Task</u>	<u>Fee Basis</u>	<u>Contract Amount</u>
1. Topographic Surveying	Time & Material	\$22,985
2. Final Design	Lump Sum	\$57,462
3. Bidding Documents	Each	\$5,363
4. Construction Engineering		
a. Contract Administration	Time & Material	\$45,970
b. Construction Inspection	Time & Material	\$79,221
c. Construction Layout	Time & Material	\$15,323
d. Material Testing	Time & Material	\$15,323
5. Permitting	Time & Material	\$1,050
6. Mailings	Time & Material	\$1,000
7. Cambridge S.A.D. Prel. Plan	Time & Material	\$1,000

**2022 Paving Program (approximately 2.5 miles of road repair)**

<u>Task</u>	<u>Fee Basis</u>	<u>Contract Amount</u>
1. Topographic Surveying	Time & Material	\$28,746
2. Final Design	Lump Sum	\$72,365
3. Bidding Documents	Each	\$5,363
4. Construction Engineering		
a. Contract Administration	Time & Material	\$53,492
b. Construction Inspection	Time & Material	\$94,417
c. Construction Layout	Time & Material	\$21,164
d. Material Testing	Time & Material	\$21,164
5. Permitting	Time & Material	\$1,050
6. Mailings	Time & Material	\$1,000

**2023 Paving Program (approximately 2.5 miles of road repair)**

<u>Task</u>	<u>Fee Basis</u>	<u>Contract Amount</u>
1. Topographic Surveying	Time & Material	\$28,985
2. Final Design	Lump Sum	\$72,365
3. Bidding Documents	Each	\$5,363
4. Construction Engineering		
a. Contract Administration	Time & Material	\$53,492
b. Construction Inspection	Time & Material	\$94,417
c. Construction Layout	Time & Material	\$21,164
d. Material Testing	Time & Material	\$21,164
5. Permitting	Time & Material	\$1,050
6. Mailings	Time & Material	\$1,000

#### **IV. REIMBURSABLE EXPENSES**

Giffels Webster's fees, as outlined in Section III, do not include certain reimbursable expenses, which include shipping, handling, postage and delivery fees or out of town travel not identified as included above. This also includes outside reproduction of drawings, reports or other deliverables not being used internally by Giffels Webster for the completion of our effort. Subconsultant costs, if not expressly included in the scope of work outlined above, are also considered reimbursable expenses. The Client agrees to reimburse Giffels Webster for said fees at cost plus ~~45%~~ 5%.

#### **V. INVOICING**

Time and material portions of this Agreement will be invoiced in accordance with Exhibit B | Bill Rate Schedule. Lump-sum portions will be invoiced on a percentage completion-to-date basis.

Progress invoices for all work will be submitted to the Client monthly and a final bill will be submitted upon completion of the services. Each invoice will be considered due within 30 days of the invoice date, and past due thereafter. Client agrees that all invoices will be reviewed with any requests for amendments or clarifications forwarded in writing to Giffels Webster within 30 days of the date of the invoice. It is further agreed that all invoices 30 days past due cannot be contested.

Payment not received within 60 days of the date of the invoice is subject to a 5% penalty fee. Giffels Webster reserves the right to suspend and terminate work under this Agreement upon failure of the Client to pay invoices as due.

#### **VI. STANDARD OF CARE**

All services performed by Giffels Webster will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar circumstances at the same time and in the same locality. No warranty, express or implied, is made or intended by this proposal to provide consulting services.

The Client recognizes that actual conditions may vary from those encountered at the location where feasibility studies or surveys are made by Giffels Webster and that Giffels Webster's data, interpretations and recommendations are based solely on the information readily available. To the extent that Giffels Webster performs any services to researching the location of underground services, Giffels Webster shall use reasonable means to identify and locate underground utilities and structures, such as complying with Miss Dig and reviewing existing, available facility drawings provided by franchise and public utility agencies.

#### **VII. LIABILITY**

Giffels Webster and its agents, staff and contracted consultants are protected by worker's compensation insurance. Giffels Webster has such coverage under public liability, professional liability and property damage insurance policies which it deems to be adequate. Giffels Webster shall not be responsible for any loss, damage or liability beyond the amounts, limits and conditions of such insurance.

To the fullest extent permitted by law and notwithstanding any other provision of this Agreement, the total liability in the aggregate of Giffels Webster and Giffels Webster's officers, directors, partners, employers, agents, and contracted consultants to the Client and anyone claiming by, through or under the Client for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including, but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Giffels Webster or Giffels Webster's officers, directors, partners, employees, agents, or contracted consultants shall not exceed the total compensation received by Giffels Webster under this Agreement.

The means, methods and selection of technologies used in the collection of field data is at the sole discretion of Giffels Webster. The Client understands that some technologies automatically collect data that may not be required by Giffels Webster to

complete the services included in this Agreement. The Client further understands that Giffels Webster does not review data that is not directly related to the scope of services including in this Agreement, and Client agrees that Giffels Webster has no responsibility to do so and that Giffels Webster has no responsibility to advise Client of any deficiencies that might be found if that data were reviewed.

Any unauthorized deviations from the plans, specification or contract documents by the contractor or the Client shall be their responsibility and not that of Giffels Webster. Giffels Webster shall not be liable to Client for any indirect or consequential damages whatsoever, whether such liability arises in contract or warranty, tort, including negligence, strict or statutory liability, or any other cause of action. Giffels Webster shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the work. Giffels Webster shall not be responsible for failure of any Contractor to perform or furnish the work in accordance with the Contract Documents.

#### **VIII. PUBLIC AGENCY APPROVALS**

Giffels Webster shall not be liable for damages resulting from the actions or inactions of public agencies including, but not limited to, permit processing, environmental impact reports, zoning matters, use or conditional use permits and building permits. Giffels Webster shall only act as an advisor to the Client in the governmental and public relations aspects of the Project.

Client understands that if construction documents are bid and/or awarded prior to the completion of public agency reviews, there may be increases in construction costs and change orders for which Giffels Webster has no responsibility. Client agrees to pay for any increased construction or design costs due to the Project being fast-tracked.

#### **IX. INSTRUMENTS OF SERVICE**

The Client acknowledges that Giffels Webster's drawings, plans, specifications, and other similar documents, whether in written, graphic, or electronic form, are instruments of professional service (the "Instruments") and not products. Giffels Webster and its contracted consultants shall be deemed the authors and owners of their respective Instruments and shall retain all common law, statutory and other reserved rights, including copyrights and trademarks. Upon full payment of Giffels Webster's compensation for this Project, a license to use the Instruments shall be transferred to the Client.

Giffels Webster shall not be deprived of the right to retain reproducible copies of the Instruments and the right to reuse information contained in them in the normal course of Giffels Webster's practice. The Client recognizes that the Instruments shall not be reused for additions, modifications, or renovations on this Project or for any new project without the written approval of Giffels Webster. The Client agrees to waive any claim against Giffels Webster and to defend, indemnify, and hold the Giffels Webster harmless from any claim or liability for injury or loss allegedly arising from any reuse of the Instruments by the Client or any agent of the Client without Giffels Webster's approval. The Client further agrees to compensate Giffels Webster for any time spent or expenses incurred in defense of any such claim, in accordance with Giffels Webster's prevailing fee schedule and expense reimbursement policy at the time of such claim and to pay Giffels Webster's reasonable attorney fees incurred in the defense of such claim.

CADD files and other electronic data shared by Giffels Webster ("Data") are components of the Instruments and are only for the Client's benefit on the specific project and for a specific use. The Client agrees that the delivery of Data does not in any way provide or imply an express warranty or guarantee to anyone that all dimensions and details are exact or to indicate that the use the Data implies the review and approval by Giffels Webster for any future use.

The Client hereby agrees that it will only rely upon Instruments that are printed copies containing the signatures and seals of the design professionals responsible for the work. The Client understands that Data provided by Giffels Webster may vary slightly from the information which is contained in the approved signed and sealed Instruments. In such cases, Client understands that the information in the signed and sealed printed copies supersedes the electronic files.

Any use of Data is at the sole risk and liability of the user. There is no representation of the suitability of the Data for other purposes, or of the durability of the Data or the medium on which the Data is furnished. Any use for a purpose other than that for which the Data is intended shall be at the receiver's risk, and the receiver shall protect and indemnify Giffels Webster from any claims, costs, losses, or damages (including Giffels Webster's reasonable attorney fees). Transfer of the Data does not transfer any license to use the underlying software or extinguish the rights of Giffels Webster to reuse the Data in the general course of a professional practice.

#### **X. COST ESTIMATES**

Giffels Webster has no control over (a) the cost of labor, material or equipment; (b) the means, methods and procedures of the Contractor's work; or (c) the results of competitive bidding. Giffels Webster's estimates of probable cost are based on Giffels Webster's experience and qualifications and represent our judgment as a design professional, but shall not be a guarantee that construction costs will not vary from Giffels Webster's cost estimates. If Client wishes greater assurance as to probable construction cost, Client should employ an independent cost estimator at Client's cost.

The earthwork cut and fill quantities determined by Giffels Webster are to be considered estimates only. Client acknowledges that calculating cuts and fills is not an exact science due to variations in topsoil thickness, shrinkage, compaction methods, material inconsistencies and other natural conditions. It is the Client's responsibility to have earthwork quantities independently verified by an experienced earthwork contractor.

#### **XI. METHODS AND PROCEDURES**

Giffels Webster shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by the Client, or the safety precautions and safety programs incidental to the work of the Client. Giffels Webster shall not be responsible for the job safety or site safety of the Project and shall not be responsible for compliance with safety programs and related OSHA or MIOSHA regulations required to be followed by the Contractor or its employees, subcontractors and agents. Jobsite safety shall be the sole responsibility of the Client and their contractor. Similarly, Giffels Webster shall not be liable for the actions or inactions of the Client's contractor(s).

#### **XII. CERTIFICATIONS**

If the Client requests Giffels Webster to execute certificates, the proposed language of such certificates shall be submitted to Giffels Webster for review at least 14 days prior to the requested dates of execution. Giffels Webster shall not be required to execute certificates that would require Giffels Webster's knowledge, services or responsibilities beyond the scope of this Agreement. Giffels Webster shall not be required to sign any documents that would result in Giffels Webster having to certify, guarantee or warrant the existence of conditions whose existence Giffels Webster cannot ascertain. The Client agrees not to make the resolution of any dispute with Giffels Webster or the payment of any amount due to Giffels Webster in any way contingent upon Giffels Webster signing any such documents.

#### **XIII. HAZARDOUS SUBSTANCES**

Hazardous substances may exist at a site where there is no reason to believe they should or could be present. Giffels Webster and Client agree that the discovery of unanticipated hazardous substances constitutes a changed condition, which requires the renegotiation of the Scope of Work or termination of this Agreement. Giffels Webster and Client also agree that the discovery of unanticipated hazardous substances may make it necessary to take immediate measures to protect health and safety. Client agrees to compensate Giffels Webster for the additional cost of those measures. In addition, Client waives any claim against Giffels Webster and agrees to defend, indemnify, and hold Giffels Webster harmless from any claim or injury or loss arising from Giffels Webster's discovery of unanticipated hazardous substances. It is understood and agreed that Giffels Webster is not, and has no responsibility as, a handler, generator, operator, treater, storer, transporter, or arranger for transport or disposal of hazardous or toxic substances found or identified at the site, and that Giffels Webster shall not be responsible to arrange for any of the same.

**XIV. RIGHT-OF-ENTRY**

The Client will arrange for right-of-entry and access to the property for the purpose of performing studies, tests, surveying and evaluations required in accordance with this Agreement. While Giffels Webster will take reasonable precautions to minimize any damage to the property, it is understood by the Client that some damage may occur, the correction of which is not Giffels Webster's responsibility under this Agreement, or otherwise.

**XV. ASSIGNMENT**

Neither the Client nor Giffels Webster may delegate or assign its duties or rights under this Agreement without the written consent of the other party, such consent not to be unreasonably withheld.

**XVI. DELAYS**

If Giffels Webster is delayed at any time in the progress of the services by any reason beyond its control, including any act or omission of the Client, by any act or omission of a contractor or by adverse weather or other conditions not reasonably anticipated, the time for completion of the services shall be extended by a time equal to the time of such delay and an equitable adjustment in Giffels Webster's fee shall be made as may be reasonable under the circumstances.

**XVII. CHANGES TO THE AGREEMENT**

The Client and Giffels Webster agree that the discovery of unanticipated or changed conditions may require a renegotiation of the Scope of Work, or termination of the Agreement. Furthermore, changes in the scope of the project or to any of the assumptions used in the preparation of the Agreement may also require a renegotiation of the Scope of Work. In the event that the Agreement is changed, Giffels Webster shall be entitled to an appropriate adjustment in schedule and compensation. If renegotiated terms cannot be agreed to, Client agrees that Giffels Webster has the right to terminate this Agreement subject to the provisions of paragraph 5 of these general conditions.

**XVIII. TERMINATION**

Either party may terminate this Agreement, on at least 5 days written notice to the other, in the event of the other party's breach of the Agreement. In addition, wholly without reference to breach, any party may terminate this Agreement on 10 days written notice to the other (without cause). In the event of termination, Giffels Webster shall be paid for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this Agreement. Client shall also reimburse Giffels Webster for all termination expenses.

**XIX. RECOVERY OF COSTS**

In the event that legal action is brought by either party against the other in the courts (including an action to enforce or interpret any aspect of this Agreement), the prevailing party shall be reimbursed by the other for the prevailing party's legal cost, in addition to whatever other judgments or settlement sums, if any, may be due. Such legal costs shall include, but not be limited to, reasonable attorney's fees, court costs, expert witness fees, and other documented expenses, in addition to any other relief to which it may be entitled. The maximum liability for Giffels Webster will be that amount established in Section VII above.

**XX. PHOTOGRAPHY**

The Client permits the taking and use of photographs of by Giffels Webster (or Giffels Webster's agent) of the Client's project site; and irrevocably grants to Giffels Webster and its legal representatives, agents, and assigns full perpetual rights to take and use such photographs in Giffels Webster's advertising, trade, or for any purpose. The Client also consents to the use of any printed matter in conjunction therewith and hereby waives any right to inspect or approve the finished product or products, or the advertising copy or other published matter that may be used in connection therewith, or the use to which it may be put. This release shall be binding upon the Client and his (her, or its) legal representatives, successors, and assigns.

**XXI. ACCEPTANCE AND AUTHORIZATION TO PROCEED**

The Client certifies that the person executing this Agreement is authorized to sign on behalf of the Client's organization. The Client understands that this Agreement includes Exhibit A | Scope of Services, Exhibit B | Bill Rate Schedule and all issued change orders and amendments. The Client also certifies that, if it is a business entity, it is registered with the State of Michigan and is authorized to conduct business in Michigan. If Client agrees with the terms of this Agreement, Client should sign both copies of the Agreement and return one copy to Giffels Webster. Giffels Webster's receipt of the signed Agreement from the Client will constitute a written notice to proceed unless otherwise indicated in writing by the Client.

**GIFFELS WEBSTER**

**CITY OF LATHRUP VILLAGE**

BY:



\_\_\_\_\_  
Scott A. Ringler, PE  
Partner  
03/15/2021

BY:

\_\_\_\_\_  
Name  
Title  
Date

## **EXHIBIT A**

### **SCOPE OF SERVICES**

1. Topographic Surveying:
  - Field survey along each road segment from the point of beginning to the point of ending. Field topo to including vertical grades, utility structure rims and inverts, culvert inverts, sidewalk and driveway grades, contours, setting benchmarks, and other items required for the design of the road reconstruction or rehabilitation.
2. Construction Documents:
  - Prepare design plans suitable for bidding and construction. Design plans to include notes and details, erosion control, demolition, improvements, proposed grades, culvert and ditch clean-outs, traffic control, sequence of construction, and other design items.
  - Construction documents to include all proposed work items and corresponding quantities.
3. Bidding Documents:
  - Prepare standard proposal documents including the City of Lathrup Village front and back end documents, specifications, maintenance of traffic, progress clause, special provisions, notices to bidders.
  - Prepare Engineer's Opinion of Cost.
  - Upload construction and bidding documents to MITN for contractor bidding.
  - Attend the bid opening, prepare bid tabs, check references, and provide a recommendation for bid award.
  - Prepare executed contract documents with contractor insurance and bonding.
4. Construction Engineering:
  - a. Contract Administration:
    - Perform Project Engineer and Office Technician duties required administration of the contract. This work includes but is not limited to preparing for and administering the preconstruction meeting, uploading project files, uploading inspection daily reports, preparing monthly contractor pay applications, reviewing material certifications, resolving field issues, reviewing contractor claims, and other work items related to the construction of the project.
  - b. Construction Inspection:
    - Provide a qualified Inspection Technician to monitor the construction for compliance with contract requirements. Preparing daily field inspection reports with pay items, verifying materials used, documenting contractor's equipment and personnel, and uploading inspection reports to Field Manager.
  - c. Construction Layout:
    - Provide surveying services for the placement of the proposed improvements. Surveying stakes will be placed along the edge of the road and include proposed grades for the contractor to build to.
  - d. Material Testing:
    - Third party material testing will include providing density testing for aggregate bases and asphalt placement. Concrete test cylinders will be made in the field and tested in the laboratory for compression strength, air-entrainment, and slump.
5. Permitting:
  - Prepare permit applications to the RCOC for any work along or adjacent to a County Road and to the OCWRC for erosion control.
6. Mailings:
  - Assist the City in preparing and mailing residential informational letters.

### **EXCLUSIONS**

In addition to the clarifications identified above, the following services are specifically excluded for our scope of work unless a separate written agreement is made between Giffels Webster and the Client.

- A. Any other items not specifically identified in the scope of services.



## EXHIBIT B BILL RATE SCHEDULE

All work will be billed according to the following minimum rate schedule unless specific agreement is made in writing with an officer of Giffels Webster for another basis of charges. Time and material agreements will be invoiced in accordance with the rates identified below while lump sum portions of Agreements will be invoiced on a percentage completion-to-date basis.

Construction Inspector .....	\$85	Intern .....	\$55
Senior Construction Inspector .....	\$95	Clerical   Administrative .....	\$40
Construction Administrator .....	\$95	Project Assistant.....	\$75
Instrument Crew .....	\$130	Staff Technician.....	\$75
Survey Crew .....	\$165	Project Technician.....	\$85
Staff Surveyor.....	\$90	Senior Technician.....	\$95
Project Surveyor.....	\$105	Lead Technician .....	\$105
Senior Surveyor.....	\$115	Staff Landscape Architect.....	\$90
Lead Surveyor .....	\$120	Project Landscape Architect.....	\$105
Survey Manager .....	\$120	Senior Landscape Architect.....	\$115
GIS Analyst .....	\$85	Lead Landscape Architect.....	\$120
GIS Specialist.....	\$95	Landscape Architecture Manager.....	\$120
Senior GIS Specialist .....	\$105	Staff Engineer.....	\$90
GIS Manager .....	\$120	Project Engineer .....	\$105
Staff Planner.....	\$90	Senior Engineer.....	\$115
Associate Planner .....	\$105	Lead Engineer .....	\$120
Senior Planner.....	\$115	Traffic Engineer .....	\$115
Principal Planner .....	\$120	Senior Traffic Engineer.....	\$140
Project Manager .....	\$125	Senior Project Manager.....	\$145
Partner.....	<del>\$165</del> \$145		

### Notes to the Billing Rate Schedule:

1. The assignment of personnel is solely the responsibility Giffels Webster.
2. These rates include charges for computer and survey equipment, local travel, stakes, staff benefits, internal printing costs, telephone, fax and other overhead costs and profit.
3. Outside services not normally provided by Giffels Webster, and other reimbursable expenses (special equipment, printing, reproduction, printing and reproduction, out-of-town travel, shipping and subcontracted services) used for this project will be billed at cost plus ~~45%~~ 5% and are not included in the above hourly charge rates.
4. Overtime work (over 8 hours per day) for Construction Inspector time will be invoiced at a rate equal to ~~1.5~~ 1.25 times the above scheduled rate.