

## **PROFESSIONAL SERVICES AGREEMENT**

This contract is entered into by and between The Town of McCordsville ("Town"), with its office at 6280 West 800 North, McCordsville, Indiana 46055, and Sims-Durkin Associates Engineering Company ("SDA").

### **1.0 TERM**

The term of this agreement begins on June 27, 2022 and ends on June 30, 2023. This agreement is governed by the laws of the State of Indiana.

### **2.0 SERVICES**

SDA will perform professional consulting and services as follows: 1. Plan Reviews for proposed Buildings and Facilities. 2. Inspections of Buildings and Facilities for Code and Permit Compliance.

### **3.0 BUDGET AND PAYMENT ARRANGEMENTS**

SDA will invoice the Town on a monthly schedule hourly rate and expense basis, itemized by permit and/or task. The Town agrees to pay approved invoices within 45 days of invoice date.

### **4.0 INDEPENDENT PROVIDER**

The parties are at all times independent Providers, and neither party will be considered an agent, servant, partner, employee, of the other party. It is established that SDA is not an employee of the Town. SDA understands and agrees that the Town will provide no employment-related benefits pursuant to this agreement and that SDA shall have no claim against the Town for any social security, worker's compensation, disability unemployment, vacation, or health benefits. SDA shall secure and keep in force during the term of this Agreement insurance coverage, covering SDA for any and all claims of any nature which may, in any manner, arise out of or result from SDA's performance under this Agreement. SDA shall obtain and maintain worker's compensation coverage meeting all the statutory requirements of IC § 22-3-2.

### **5.0 FINANCIAL REPORTING**

SDA shall be responsible for all financial record keeping and reporting as well as for any state, federal or local income tax reporting and payment, and any other tax-related reporting and payment, pertaining to any and all income earned during the term of this Agreement.

### **6.0 INDEMNIFICATION**

SDA agrees to indemnify, defend, and hold harmless the Town, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses, only to the extent that such claims, costs, fees and expenses are caused by negligent acts or negligent omissions of SDA and/or its subcontractors, if any, in the performance of this Contract, and the dollar value of all claims and demands shall be limited to the maximum claims-made insurance coverage maintained by SDA.

### **7.0 NOTICE**

Any notice or other correspondence required to be sent under this Agreement shall be sent to:

**SDA:**

J.W. Sims & Associates Engineering Company,  
DBA Sims-Durkin Associates Engineering Company  
PO Box 68659  
Indianapolis, IN 46268  
jwsims@sims-durkin.com

**TOWN:**

Town of McCordsville  
6280 West 800 North  
McCordsville, IN 46055  
jpack@mccordsville.org

**8.0 CONFLICT OF INTEREST**

No officer, employee, or agent of the Town or SDA or any other party who has any function or responsibility in connection with the planning or execution of this Contract shall have any personal financial interest, direct or indirect, in this Contract, or receive any benefit from it, other than regular employment or fees as agreed upon.

**9.0 MODIFICATIONS**

Any modification or revision to this agreement shall not be effective nor enforceable against the other party unless such modification or revision is in writing and signed by authorized representatives of both the Town and SDA. In the event the services performed by SDA are not acceptable to the Town, SDA shall honor the requests of the Town to make changes to the services at no additional charge, so long as the scope of the services does not change.

**10.0 NONDISCRIMINATION**

Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, SDA covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law. Breach of this covenant may be regarded as a material breach of the contract.

**11.0 FORCE MAJEURE**

Neither party will be liable for failure or delay in performing its obligations under this Contract if such failure or delay results from any act of God, act of war, civil unrest, labor strike, riot, fire, flood, earthquake, epidemic, act of governmental authorities, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence) ("Force Majeure"). If, due to Force Majeure, either party is rendered unable, wholly or in part, to carry out its obligations under this Contract, then such party will give notice and complete details of such Force Majeure in writing to the other party within a reasonable time after occurrence of such Force Majeure. The contractual obligations of the party giving such notice will be suspended (a) while such party is unable to perform, but for no longer period and (b) only to the extent such party is unable to perform due to the reported Force Majeure. Furthermore, such party will endeavor to remove or overcome such inability to perform with all reasonable dispatch.

**12.0 TERMINATION**

This agreement may be terminated by either party upon giving 30 days written notice to the other party. Upon receipt of a proper accounting of services rendered to the termination date, the Town shall be liable to pay for services rendered through that date. Further, this Contract may be terminated by the Town in the event of non-appropriation by its governing body.

### **13.0 E-VERIFY**

As required by IC §22-5-1.7, SDA swears or affirms under the penalties of perjury that the SDA does not knowingly employ an unauthorized alien. SDA further agrees that:

SDA shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3.

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

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

### **14.0 STANDARD OF CARE AND PROFESSIONAL LIABILITY INSURANCE**

Services provided for projects will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

SDA will maintain professional liability insurance for the duration of the Services and for one year after completion of the Services, in an aggregate amount of \$1,000,000 minimum; on a claims-made basis, maximum \$1,000,000 per claim; with a maximum deductible of \$20,000; for the purpose of providing financial remedy up to the limits of insurance coverage for correction of negligent errors and negligent omissions if after appropriate and acceptable due process agreed to by both parties, SDA is found culpable for professional liability claims beyond the standard of care of the profession. If any claim or demand is presented to SDA, The Town understands that legal representation of SDA's insurance carrier will become involved in the resolution of the claim or demand. The Town and SDA agree to attempt to resolve disputes by first meeting to discuss the situation; advancing to non-binding mediation; and advancing to litigation only if meeting(s) and mediation efforts fail to reach an agreement. SDA is independent of the Construction Contractors and Building Owners. SDA has no authority over the Contractors and is not responsible for materials or methods used, or damages or liabilities that could result from a Contractor's work.

### **15.0 ACCESS TO SITE AND INFORMATION**

The Town shall make available to SDA all information pertinent to the Services to be provided, including permit documents, plans and specifications for proposed construction, and similar documents and information. The Town shall grant SDA access to project sites and facilities affected, for the purpose of observing existing and new conditions, inspecting work in progress or completed, and as generally required for SDA to perform its duties and responsibilities.

IN WITNESS THERETO, the parties have executed this agreement.

**TOWN OF MCCORDSVILLE**

DATE: \_\_\_\_\_

\_\_\_\_\_

**SIMS-DURKIN ASSOCIATES ENGINEERING COMPANY**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Joseph W. Sims, PE  
President  
JW Sims & Associates Engineering Company, DBA  
Sims-Durkin Associates Engineering Company

Standard Terms and Conditions for Calendar Year 2022Standard Hourly Rates and Reimbursable Expenses

Principal Engineer	\$193.00
Project Manager	\$179.00
Senior Project Engineer	\$155.00
Project Engineer	\$132.00
Construction Inspector	\$132.00
Senior Designer/Senior Technologist	\$117.00
Designer/Technologist	\$ 95.00
Clerical	\$ 74.00
Engineering Intern	\$ 49.00
Vehicle Mileage	\$ 00.85/mi
Printing/Supplies/Miscellaneous Expenses	Cost
Travel and Associated Expenses	Cost
Plan Review and Permit Fees	Cost
Subcontractors	Cost + 10%

Hourly rates may vary for each project; subject to negotiation and job conditions.

Standard Schedule of Values for Stipulated Sum Fees

Preliminary Design	30% of total fee
State/Local Permitting Submittal Design	45%
Final Design	5%
Bidding/Negotiation Phase	5%
Construction Administration	<u>15%</u>
	100%

Schedule of values may vary with each project; subject to negotiation and job conditions.

Standard Invoicing and Payment Terms

For stipulated fee projects, invoicing will be prepared on a monthly timetable, percentage of completion basis, with the total fee allocated among each phase of work as described in the schedule of values. For work performed on an hourly rate and expense basis, appropriate supporting itemization will be submitted. Unless otherwise negotiated in advance, payment with no retainage withheld is expected to be received within 45 days. 45 days of credit is extended for the purpose of allowing time for invoice and payment processing. A 2% discount may be taken for any payment or partial payment received within 10 days of date of invoice. A 1% per month service charge may be assessed for late payments beyond 45 days. A Mechanic's lien or equivalent claim may be filed if payments are not received in a timely manner. Services are not provided on speculation or

contingency unless negotiated and documented in advance, and additional fees may be required in accordance with the additional risk.

#### AutoCAD and Specification Standards

Sims-Durkin will generally strive to create documents that blend well with documents or standards prepared by the Client. If available and as applicable, Client base drawings, title block, and drawing numbering format are generally furnished by Client. Other drafting procedures, layering, and CAD styles regularly employed by Sims-Durkin will be used, unless specific CAD standards and procedures are identified in advance. Additional fees may be charged if strict compliance with Client CAD standards is required. The Sims-Durkin logo, address, phone and fax numbers, and web site address will be added to the title block on drawings prepared by Sims-Durkin unless negotiated otherwise in advance. Drawings are prepared using current AutoCAD/Autodesk software products. Drawings will be prepared with Revit if required for a particular project, subject to negotiation.

Specifications will be prepared using a modified CSI format. If requested, headers and footers can be edited to follow a Client example, and font style to match that used by Client. Microsoft Word and Excel software products are used for preparation of specifications and spreadsheets.

#### Standard of Care and Insurance

Services provided for projects will be performed by our office in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. It is impossible to provide engineering services and to prepare plans, specifications, and other engineering documents completely free of errors or omissions. It is impossible to execute projects without encountering unforeseen conditions and complications during construction. Sims-Durkin has no control over permitting authorities, utility companies, funding agencies, contractors, subcontractors, or manufacturers. For these reasons, not including gross negligence on the part of Sims-Durkin, Sims-Durkin shall not be required to indemnify the Client, Contractors, or other parties from the cost of reasonable construction change orders that may become necessary during the execution of the project work.

Sims-Durkin will maintain professional liability insurance and general liability insurance for the duration of the project and for one year after completion of construction, in an aggregate amount of \$2,000,000 minimum; on a claims-made basis, maximum \$1,000,000 per claim; with a maximum deductible of \$20,000; for the purpose of providing financial remedy up to the limits of insurance coverage for correction of gross negligent errors and gross negligent omissions if after appropriate and acceptable due process agreed to by both parties, Sims-Durkin is found culpable for professional liability claims beyond the intent of the standard of care statement above.

#### Intellectual Property Rights and Joint Use of Project Documents

Documents prepared by Sims-Durkin are instruments of professional service and are subject to copyright laws and common practices of the engineering and construction industries, and Sims-Durkin shall retain an ownership interest in the project documents or portions thereof developed by Sims-Durkin. The documents may contain details or sub-documents provided by Sims-Durkin, the Client, Contractors, Manufacturers, or other parties, and it is recognized that the project documents are in practice cooperatively and uniquely prepared for an individual project. In recognition of this cooperation, and subject to receipt of fees paid by the Client, it is intended that the Client shall have unlimited use of the documents for the purpose of advancing the project, such as permitting, bidding, procuring materials and construction, and for operating and maintaining the facilities of the project for the duration of the life of the facilities. Each party shall not claim ownership of documents prepared by others, or portions thereof or details prepared by others, and shall not re-publish or

otherwise distribute the documents to others for the purpose of circumvention. No party shall directly or indirectly infringe or attempt to restrict the ability of the other party to conduct current and future business of a similar nature. There shall be no restriction on the reuse by Sims-Durkin of design elements, details, specifications, and similar intellectual property prepared or developed by Sims-Durkin, on other current projects by Sims-Durkin or future Sims-Durkin projects.

Inclusion in Agreements

Project and service agreements shall include this document by reference or exhibit.

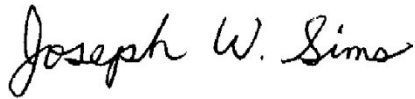
Duration

If not otherwise negotiated, these terms and conditions are effective for the calendar year identified. If included in a project or service agreement, the duration of these terms and conditions shall be in accordance with the project or service agreement.

J. W. Sims & Associates Engineering Company, an Indiana Corporation,

DBA

Sims-Durkin Associates Engineering Company

A handwritten signature in black ink that reads "Joseph W. Sims". The signature is written in a cursive, flowing style.

Joseph W. Sims, PE, President

End