# PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made by and between CrossRoad Engineers, PC ("Professional"), and The Town of McCordsville, Indiana ("Owner"), February 28, 2020.

| PROFESSIONAL | OWNER |
|---|---|
| CrossRoad Engineers, PC<br>3417 Sherman Drive<br>Beech Grove, Indiana 46107<br>317-780-1555 | The Town of McCordsville<br>6280 W 800 N<br>McCordsville, Indiana 46055<br>317-335-3151 |

Project Name: McCord Road Engineering Report  Location: McCordsville, IN

## AGREEMENT

For and in consideration of the mutual promises contained in this Agreement, Professional and Owner agree as follows:

**1.** **Scope of Services.** Professional shall provide Owner with services in connection with the Project as described in the Scope and Fee Proposal dated February 28, 2020 (Exhibit 1). Professional shall use the standard of care typically exercised in conducting professional practices outlined in the Scope and Fee Proposal.

**2.** **Schedule of Services.** Professional shall start and complete work as set forth in the Scope and Fee Proposal. Professional shall conduct the work in an expeditious manner subject to limitations such as weather, information acquisition, communications and other factors outside of Professional's control. Both parties recognize that the schedule of services is subject to factors that may be unknown at the time of this Agreement. If modifications, changes or adjustments of these terms and conditions become necessary, such modifications shall be made in accordance with Paragraph No. 9 below.

**3.** **Authorizations to Proceed.** Unless specifically provided otherwise in the Scope and Fee Proposal, Owner shall give Professional authorizations to proceed for each phase of the Basic Services and for each Additional Service prior to Professional commencing work. Authorizations may be in writing or may be verbal.

**4.** **Owner's Responsibilities:** Owner shall do the following in a timely manner so as not to delay the services of Professional: (1) Designate in writing a person to act as Owner's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions and receive information with respect to Professional's services for the Project. Professional may rely fully on information and instructions provided by Owner's representative. Hereinafter, all references in this Agreement to "Owner" mean Owner or Owner's Representative. (2) Provide all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations, and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications. (3) Assist Professional by placing at Professional's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project; all of which the Professional may use and rely upon in performing the services under this Agreement. (4) Give prompt written notice to Professional whenever Owner observes or otherwise becomes aware of any development that affects the scope or timing of Professional's services, or any defect or nonconformance in the work of any contractor.

**5.** **Payment for Services.** Owner shall compensate Professional for services rendered according to Scope and Fee Proposal (Exhibit 1). These rates are agreed to in anticipation of the orderly and continuous progress of the Project through completion.

**6.** **Payment Terms.** Owner agrees to pay all fees within 30 days of the date of the approved invoice. Balances due over 30 days will be assessed an interest rate of ⅔% per month (8% per year). Owner agrees to pay for any costs of collection including, but not limited to lien costs, court costs or attorney's fees involved in or arising out of collecting any unpaid or past due balances.

**7.** **Invoicing.** Detailed billings will be provided on a monthly basis.

A. **Fixed Fee** - The invoices will be based on Professional's estimate of the proportion of time spent on each phase of the project at the time of billing relative to the total fee for those phases.

B. **Time and Materials** – The invoices will be based on Professional's time spent on each phase of the project at the time of billing.

8. **Insurance.** Professional shall maintain professional liability insurance for the duration of this Agreement and provide to the Owner a certificate of insurance annually no later than December 15th for the duration of the contract. Professional shall maintain professional liability insurance from an "A" rated insurer in the amount of not less than $1,000,000 per claim and $1,000,000 per policy period.

9. **Modifications and Adjustments.** If specific periods of time for rendering services set forth in the Scope and Fee Proposal are exceeded through no fault of Professional, or if Owner has requested significant modifications or changes in the general scope, extent or character of the Project, all rates, measures and amounts of compensation, as well as the time of performance, shall be equitably adjusted. The Scope and Fee Proposal related to the Project may be revised, or modified to include supplementary service for any reason, upon agreement of Professional and Owner. Owner may modify the scope, extent or character of the Project, necessitating modifications to the Scope and Fee Proposal. In each case, the Scope and Fee Proposal will be modified in a manner mutually acceptable to the Professional and the Owner, and the fees presented in the Scope and Fee Proposal will be equitably adjusted to accommodate the changes. Any change to the Scope and Fee Proposal will be documented in a Contract Change Order. Should the Professional and Owner be unable to agree on modifications to the Scope and Fee Proposal, Professional shall have the right to terminate this Agreement as outlined in Paragraph No. 10.

10. **Term and Termination.** Professional's obligation to render services under this Agreement will extend for a period, which may reasonably be required for the services to be provided, including extra work and required extensions. If payment is not received within 45 days of the date of invoice, Professional reserves the right, after giving thirty days notice to Owner, to suspend services to the Owner or to terminate this Agreement. Professional shall not be liable to Owner or any third parties for any damages caused by the suspension or termination of work for non-payment. Should the Professional and Owner be unable to agree on modifications to the Scope and Fee Proposal as outlined in Paragraph No. 9, Professional shall have the right to terminate this Agreement upon thirty days written notice to Owner. Owner may terminate this Agreement for any reason or without cause upon thirty days written notice to Professional. If any work covered by this Agreement is suspended, terminated or abandoned, the Owner shall compensate the Professional for services rendered to the date of written notification of such suspension, termination or abandonment.

11. **Construction Costs.** Professional has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor's methods of determining prices, or over competitive bidding or market conditions. Professional's opinions of probable total Project costs and construction costs are made on the basis of Professional's experience and qualifications and represent Professional's best judgment as an experienced and qualified Professional, familiar with the construction industry. Professional cannot and does not guarantee that proposals, bids or actual costs will not vary from opinions of probable costs prepared by Professional.

12. **Limitation of Liability and Responsibilities.** The Owner shall hold harmless and indemnify Professional from all loss, damage, costs and expenses which Professional may suffer or sustain which results from acts or omission or any contractor, subcontractor, supplier, or any of their agents, employees or any other persons (except Professional's own employees and agents) at the site or otherwise furnishing or performing any of the contractor's work. Nothing contained in this paragraph, however, shall be construed to release Professional from liability for failure to properly perform duties and responsibilities assumed by Professional under this Agreement.

13. **Assignment.** Neither Professional nor Owner shall assign, sublet or transfer any rights under or interest in this Agreement without prior written consent of the other party. Any assignments shall be of all rights, obligations, interest and responsibilities hereunder. Nothing in this paragraph shall prevent Professional from employing independent professional associates and consultants to assist in the performance of the services hereunder.

14. **Rights and Benefits.** Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Owner and Professional, and all duties and responsibilities pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Professional and not for the benefit of any other party. The Engineer shall provide to Owner hard copies and in electronic media format all drawings, designs, specifications, reports, field notes, correspondence, or any other document of whatever nature that does not contain trade secrets either created by Engineer and Engineer's employees, consultants, agents, contractors, or subcontractors pertaining to any aspect of the project(s) which is the subject of this agreement. All documents prepared or furnished by Engineer are instruments of service. Subject to the following limitations, Engineer signs ownership including copyright to Owner upon payment for services rendered except engineer retains copyright in its standard systems, sections, details and specifications. Engineer grants Owner a license to use engineer standard systems, sections, details and specifications. Owner acknowledges that such documents are not intended or represented to be suitable for use on the project unless completed by Engineer or for use or reuse by owner or others on extensions of the project or in any other project or for any other use or purpose, without written verification or adaptation by Engineer.

**15.** **Successors.** This Agreement is binding on the partners, successors, executors, administrators, heirs and assigns of both parties.

**16.** **Applicable Law.** The terms and conditions of this Agreement are subject to the laws of the State of Indiana.

This Agreement, consisting of three pages together with the Attachments identified above, constitutes the entire Agreement between Owner and Professional and supersedes all prior written or oral understandings related thereto. IN WITNESS WHEREOF, the parties hereto have executed this Agreement, or caused this Agreement to be executed by their duly authorized official or agent.

| **OWNER** | | **PROFESSIONAL** | |
|---|---|---|---|
| **The Town of McCordsville, Indiana** | | **CrossRoad Engineers, PC** | |
| By: | | By: | Mark A. Beck |
| Print: | | Print: | Mark A. Beck |
| Title: | | Title: | Vice-President |
| Date: | | Date: | February 28, 2020 |

# EXHIBIT 1

February 28, 2020

Ryan Crum, Director of Planning and Building
Mark Witsman, PE, Town Engineer
Town of McCordsville
6280 W. 800 N.
McCordsville IN 46055

RE: Scope and Fee Proposal
McCord Road Engineering Report
McCordsville, Indiana

Dear Ryan and Mark:

CrossRoad Engineers is pleased to present this Scope of Services and Fee Proposal to perform a study on the potential future reconstruction and widening of McCord Road in McCordsville. The limits of this project will be from County Road 900N northward to the proposed connection with the McCord Point Subdivision for an approximate length of 0.75 mile. The scope of the study and deliverables will be presented in an Engineers Report consisting of the following:

- Proposed typical sections for improvements.
- Proposed project exhibits over the aerial background for the proposed improvements.
- Cost estimates for the various proposed construction features as well as for any required right of way for the project.
- Discussion and cost estimates for design.

The fee for the above listed scope of work will be $8,500. Once the project moves forward, we can put together a proposal based on the recommendations of this study.

We are ready to begin and appreciate your allowing CrossRoad Engineers to work on this project for you. If you have any questions, please call me at 780-1555 ext. 111.

Sincerely,

CrossRoad Engineers, PC

Mark A. Beck

Mark A. Beck, P. E.
Vice-President

3417 Sherman Drive ■ Beech Grove, Indiana 46107 ■ Tel 317·780·1555 ■ Fax 317·780·6525