

# **PROFESSIONAL SERVICES CONTRACT**

## **CONTRACT**

THIS CONTRACT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the Town of McCordsville, Indiana, acting by and through the TOWN COUNCIL, hereinafter referred to as the "TOWN", and A&F Engineering Co., LLC, hereinafter referred to as "CONSULTANT".

## **WITNESSETH**

WHEREAS, the TOWN desires to contract for engineering services for the preparation of roadway impact fees;

WHEREAS, the CONSULTANT has expressed a willingness to provide the engineering services required in the preparation of the roadway impact fees.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto mutually covenant and agree as follows:

### **Section 1 Services by CONSULTANT**

- 1.1 The services to be provided by the CONSULTANT under this Contract are as set out in Appendix "A", attached to this Contract, and made an integral part hereof.

### **Section 2 Information and services to be furnished by the TOWN**

- 2.1 The information and services to be furnished by the TOWN are as set out in Appendix "B", attached to this Contract, and made an integral part hereof.

### **Section 3 Schedule and Notice to Proceed**

- 3.1 The CONSULTANT shall begin the work to be performed under this Contract upon written Notice to Proceed from the TOWN and shall deliver the work to in accordance with the schedule contained in Appendix "C", attached to this Contract, and made an integral part hereof.
- 3.2 The CONSULTANT shall not begin the work prior to the date of the written notice to proceed.

### **Section 4 Compensation**

- 4.1 The CONSULTANT shall receive payment for the work performed under this Contract as set forth in Appendix "D", attached to this Contract, and made an integral part hereof.

### **Section 5 General Provisions**

#### **5.1 Work Office**

The CONSULTANT shall perform the work under this Contract at 8365 Keystone Crossing, Suite 201, Indianapolis, Indiana, 46240.

5.2 Employment

During the period of this Contract, the CONSULTANT shall not engage on this project on a full or part time or other basis any professional or technical personnel who are or have been at any time during the period of this Contract in the employ of the TOWN except regularly retired employees.

5.3 Covenant Against Contingent Fees

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award of making this Contract. For breach or violation of this warranty the TOWN shall have the right to annul this Contract without liability, or, at its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

5.4 Subletting and Assignment of Contract

No portion of the work under this Contract shall be sublet, assigned or otherwise disposed of, except with the written consent of the TOWN. Consent to sublet, assign or otherwise dispose of any portion of the work under this Contract shall not be construed to relieve the CONSULTANT of any responsibility for the fulfillment of this Contract. A subcontractor shall not subcontract any portion of its work under this Contract.

5.5 Ownership of Documents

All documents, including tracings, drawings, reports, estimates, specifications, field notes, investigations, studies, etc., as instruments of service, are to be the property of the TOWN. During the performance of the services, herein provided for, the CONSULTANT shall be responsible for any loss or damage to the documents, herein enumerated, while they are in its possession and any such loss or damage shall be restored at its expense. Full access to the work during the progress of the work shall be available to the TOWN.

5.6 Access to Records

The CONSULTANT and its subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the cost incurred and shall make such materials available at its respective offices at all reasonable times during the period of this Contract and for three years from the date of final payment under the terms of the Contract, for inspection by the TOWN and copies shall be furnished if requested.

5.7 Compliance with State and Other Laws

The CONSULTANT specifically agrees that in performance of the services herein enumerated by it or by a subcontractor or anyone acting in behalf of either, that it will comply with any and all Local, State, and Federal Statutes, ordinances, and regulations and obtain all permits that are applicable to the entry into and performance of this Contract.

5.8 Responsibility for Claims and Liabilities

The CONSULTANT shall be responsible for all damage to life and property due to activities of the CONSULTANT, its subcontractors, agents, or employees in connection with such services, and shall be responsible for all parts of its work both temporary and permanent and shall hold the Town harmless, therefore.

5.9 Status of Claims

The CONSULTANT shall be responsible for keeping the TOWN currently advised as to the status of any claims made for damages against the CONSULTANT resulting from services performed under this Contract. The CONSULTANT shall send notice of claims related to work under this Contract to the TOWN.

5.10 Workman's Compensation and Liability Insurance

The CONSULTANT shall procure and maintain, until final payment by the TOWN for the services covered by this Contract, insurance of the kinds and in the amounts hereinafter provided in insurance company's authorized to do such business in the State of Indiana covering all operations under this Contract whether performed by it or by its subcontractor. The CONSULTANT will not be given a notice to proceed until the CONSULTANT has furnished a certificate or certificates in a form satisfactory to the TOWN, showing that this section has been complied with. During the life of the Contract, the CONSULTANT shall furnish the TOWN with certificates showing that the required policies shall not be changed or cancelled until ten (10) days written notice has been given to the TOWN. In the event that such written notice of change or cancellation is given, the TOWN may at its option terminate this Contract and no further compensation shall in such case be made to the CONSULTANT. The kinds and amounts of insurance required are as follows:

- (A) Policy covering the obligations of the CONSULTANT in accordance with the provisions of the Workmen's Compensation Law. This Contract shall be void and of no effect unless the CONSULTANT procures such policy and maintains it until acceptance of the work.
- (B) Comprehensive Policies of Bodily Injury Liability and Property Damage Liability Insurance, including Owners and Contractors Protective Coverage and a Save and Hold Harmless Endorsement of the types herein specified each with Bodily Injury Limits of Liability of not less than \$300,000.00 for each person, including death at any time resulting therefrom, and not less than \$1,000,000.00 in any one accident, and not less than \$300,000.00 for all damages arising out of injury to or destruction of property.
- (C) Automobile Policies of Bodily Injury and Property Damage Liability Insurance of the types herein specified with bodily injury limits of liability of not less than \$300,000.00 for each person, including death at any time resulting therefrom, and not less than \$1,000,000.00 in any one accident, and not less than \$300,000.00 for all damages arising out of injury to or destruction of property, including hired and non-owned vehicles.
- (D) Professional Liability Insurance \$2,000,000.00 for each claim and \$2,000,000.00 in the aggregate.

- (E) Umbrella Liability Insurance \$5,000,000.00 for each occurrence and \$5,000,000.00 in the aggregate.

5.11 Changes in work

In the event the TOWN requires a major change in scope, character of complexity of the work after the work has progressed as directed by the TOWN, adjustments in compensation to the CONSULTANT and in time of performance of the work as modified, shall be determined by the TOWN in the exercise of its honest and reasonable judgment and the CONSULTANT shall not commence the additional work of the change of the scope of the work until a supplemental agreement is executed and the CONSULTANT is authorized in writing by the TOWN.

5.12 Delays and Extensions

The CONSULTANT agrees that no charges or claim for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Contract. Such delays or hindrances, if any, shall be compensated for by an extension of time for such period as may be determined by the TOWN in the exercise of its honest and reasonable judgement, it being understood, however, the permitting of the CONSULTANT to proceed to complete any services, or any part of them after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the TOWN of any or its rights herein.

5.13 Abandonment and Termination

The TOWN reserves the right to terminate or suspend this Contract upon written notice.

(A) If the TOWN shall abandon the services herein mentioned, the CONSULTANT shall deliver to the TOWN all data, reports, drawings, specifications, and estimates completed or partially completed and these shall become the property of the TOWN. The earned value of the work performed shall be based upon an estimate of the portions of the total services as have been rendered by the CONSULTANT to the date of the abandonment and which estimate shall be made by the TOWN in the exercise of its honest and reasonable judgement of all services to be paid for on a lump sum basis.

(B) If, at any time, for any cause whatsoever, the CONSULTANT shall abandon or fail to timely perform any of its duties hereunder, including the preparation and completion of plans and specifications within the several times hereinbefore specified, or within such further extension or extensions or time as agreed upon, the TOWN may give written notice, that if the CONSULTANT shall not within twenty (20) calendar days from the date of such notice, have complied with the requirements of this Contract, then the Contract is deemed terminated. Upon the mailing or delivery of such notice or personal delivery thereof to the CONSULTANT, AND THE failure of the CONSULTANT within said described (20) day period to fully comply with each and all requirements of this Contract, this Contract shall terminate and the TOWN may by any method it deems to be necessary designate and employ other consultants by agreement or otherwise, to perform and complete the services herein described. When written notice is

referred to herein, it shall be deemed given when deposited in the mail addressed to the CONSULTANT at its last known address.

- (C) In case the TOWN shall act under the last preceding paragraph, then and in such event, all data, reports, drawings, plans, sketches, sections, and models, all specifications, estimates, measurements, and data pertaining to the project, prepared under the terms of in fulfillment of this Contract, shall be delivered within twenty (20) days to the TOWN. In the event of the failure by the CONSULTANT to make such delivery upon demand, then and in that event the CONSULTANT shall pay the TOWN any damage it may sustain by reason thereof.

5.14 Successors and Assignees

The TOWN, insofar as authorized by law, binds itself and its successors, and the CONSULTANT binds its successors, executors, administrators and assignees, to the other party of the Contract and to the successor, executors, administrators and assignees of such other party, as the case may be insofar as authorized by law, in respect to all covenants of this Contract.

Except as above set forth, neither TOWN nor the CONSULTANT shall assign, sublet or transfer its or its interest in this Contract without the consent of the other.

5.15 Supplements

This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

5.16 Non Appropriation Clause

The parties acknowledge that the Town of McCordsville which is a governmental entity whose funds are subject to appropriation by its fiscal body. Therefore, if any time during the initial term or any subsequent term of this Agreement, the fiscal body should fail to appropriate sufficient funds to continue the contract, the contract shall become null and void. In the event of a non-appropriation of funds, the Town of McCordsville will give notice to A&F Engineering Co., LLC immediately of such failure and shall pay A&F Engineering Co., LLC for all services provided prior to the exhaustion of the appropriate funds. The Town of McCordsville agrees to seek funding for the continuation of this agreement during each budget cycle during the initial term or any subsequent term of this Agreement.

5.17 E-Verify

Under Ind. Code § 22-5-1.7-11, by entering into the Contract with the TOWN, the CONSULTANT is required to enroll in and verify the work eligibility status of all of its newly hired employees through the E-Verify program. The CONSULTANT is not required to verify the work eligibility status of all of its newly hired employees through the E-Verify program if the E-Verify program no longer exists. By executing this Contract, the CONSULTANT affirms that it does not knowingly employ an unauthorized alien. The CONSULTANT further affirms that, prior to entering into the Contract with

the TOWN, it will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

5.18 Non-Discrimination

The CONSULTANT agrees that it, and its subcontractors, will not discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to the employee's hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of the employee's race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of the Contract.

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IN TESTIMONY WHEREOF, the parties hereto have executed this Contract.

A&F ENGINEERING CO., LLC

TOWN COUNCIL

MCCORDSVILLE, INDIANA

BY:



Steven J. Fehribach, P.E.  
President

BY:

Thomas R. Strayer, President

Attest:

Attest:

BY:



Matt Brown, P.E., PTOE  
Vice President

BY:

## **APPENDIX “A”**

### **SCOPE OF WORK**

#### **PURPOSE**

The purpose of this project is to develop a Road Impact Fee for the Town of McCordsville, Indiana. The plan will investigate existing conditions, existing traffic volumes, existing capacities of streets and intersections, forecast 10-year future traffic volumes, investigate various future traffic mitigation strategies for roadway and intersections and develop a road impact fee.

#### **STUDY AREA**

The study area to be included in this Road Impact Fee is shown in the attached zone improvement plan.

#### **SCOPE OF WORK**

The following work items will be included in this Road Impact Fee:

#### **EXISTING CONDITIONS**

1. 24-Hour Volume Counts – for selected roadway segments conduct a 24-hour traffic volume count. Each volume count will be by direction. There are a total of at least 33 counts (see attached map).
2. Peak Hour Volume Counts – for selected intersections, make a manual turning movement volume count. Each count shall be made over 5 hours of a typical weekday around the am and pm peak travel times. There are a total of at least 28 counts (see attached map).
3. Inventory existing intersections and roadway conditions.
4. Capacity Analysis – Conduct a capacity analysis for each of the analysis roadway segments and intersections using the existing traffic volumes.
5. Roadway Requirements – Based on the traffic volume data and capacity analyses, prepare recommendations for the design of the analysis roadway segments and intersections to meet minimum level of service requirements. These



recommendations will document the roadway and intersection needs for the TOWN under existing conditions.

6. Construction Estimate – Prepare a construction estimate for the needed improvements. This would establish the level of participation for the TOWN as it exists today.

## **PROPOSED CONDITIONS**

1. Generated Trips – Estimate the total number of trips that will be generated for each parcel of vacant land that is identified to be developed in the next 10-years within the study area.
2. Trip Assignment & Distribution – Assign and distribute the generated trips from each parcel to the roadway network included in this analysis.
3. Total Traffic – Forecast 10-year traffic within the study area.
4. Capacity Analysis – Calculate the capacity for the analysis roadway segments and intersections using the total 10-year traffic volumes.
5. Roadway Requirements – Based on the traffic volume data and capacity analyses, prepare recommendations for the design of roadway segments and intersections to meet minimum level of service requirements. These recommendations will document the roadway and intersection needs to accommodate 10-year traffic volumes.
6. Construction Estimate – Prepare a construction estimate for the needed improvements. This would establish the level of participation for all new development in the form of impact fees.

## **REPORT**

1. Prepare a data report summarizing all existing traffic volume counts.
2. Prepare a written report documenting all data, analyses, recommendations, construction estimates, and impact fees calculations.

## **APPENDIX “B”**

### **INFORMATION AND SERVICE TO BE FURNISHED BY THE TOWN**

- A. The TOWN shall furnish the CONSULTANT with the following:
  - 1. The TOWN shall designate an employee as the Project Coordinator to coordinate activities between the TOWN and the CONSULTANT.
  - 2. 10-year vacant parcels, land uses & densities to be included in this analysis.
  - 3. Any new roadways, roadway improvements or intersection improvements that are anticipated over the next 10-years should be identified.
  - 4. 5-year historical funding sources and values to construct and maintain roadway infrastructure.

## **APPENDIX “C”**

### **SCHEDULE**

#### **A. SCHEDULE**

1. The work by the CONSULTANT under this AGREEMENT shall be completed and delivered to the LOCAL PUBLIC AGENCY within the time specified below following receipt of a written notice to proceed (NTP):

Data Collection	50 days after NTP
Preliminary Report	230 days after NTP
Final Report	260 days after NTP

**APPENDIX “D”**  
**COMPENSATION**

**A. AMOUNT OF PAYMENT**

1. The CONSULTANT shall receive as payment for the work performed under this AGREEMENT as follows:

Traffic Volume Data Collection	\$ 23,250.00
Traffic Data Analysis & Report	<u>\$ 53,230.00</u>
Total	\$ 76,480.00

2. The CONSULTANT shall be paid for the work performed under the AGREEMENT on a lump sum fee basis.