

# CONTRACT

THIS CONTRACT is made and entered into \_\_\_\_\_, 2021, by and between the Town of McCordsville, Indiana, acting by and through its Town Council, hereinafter referred to as the "LOCAL PUBLIC AGENCY", and A&F ENGINEERING CO., LLC., hereinafter referred to as the "CONSULTANT".

## WITNESSETH

WHEREAS, the LOCAL PUBLIC AGENCY desires to contract for engineering services required to furnish services to the Town of McCordsville on an as needed basis; and

WHEREAS, the CONSULTANT has expressed a willingness to provide services on an as needed basis;

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 LOCAL PUBLIC AGENCY

2.1 The information and services to be furnished by the LOCAL PUBLIC AGENCY 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 under this Contract on January 1, 2022.

### Section 4 Compensation

4.1 The CONSULTANT shall receive payment for the work performed under this Contract as set forth in Appendix "C", 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 LOCAL PUBLIC AGENCY except regularly retired employees.

## 5.3 Covenant Against Contingent Fees

The CONSULTANT warrants that they have 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 they have 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 or making of this Contract. For breach or violation of this warranty the LOCAL PUBLIC AGENCY 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 LOCAL PUBLIC AGENCY . 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 LOCAL PUBLIC AGENCY. 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 their possession and any such loss or damage shall be restored at their expense. Full access to the work during the progress of the work shall be available to the LOCAL PUBLIC AGENCY.

5.6 Access to Records

The CONSULTANT and their 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 this Contract, for inspection by the LOCAL PUBLIC AGENCY 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 him or by a subcontractor or anyone acting in behalf of either, that they 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, his subcontractors, agents, or employees in connection with such services, and shall be responsible for all parts of his work both temporary and permanent.

5.9 Status of Claims

The CONSULTANT shall be responsible for keeping the LOCAL PUBLIC AGENCY 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 LOCAL PUBLIC AGENCY.

5.10 Workman's Compensation and Liability Insurance

The CONSULTANT shall procure and maintain, until final payment by the LOCAL PUBLIC AGENCY for the services covered by this Contract, insurance of the kinds and in the amounts hereinafter provided in insurance companies authorized to do such business in the State of Indiana covering all operations under this Contract whether performed by him or by his 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 LOCAL PUBLIC AGENCY, showing that this section has been complied with. During the life of this Contract, the CONSULTANT shall furnish the LOCAL PUBLIC AGENCY with certificates

showing that the required insurance coverage is maintained. The certificate or certificates shall provide that the policies shall not be changed or canceled until ten (10) days written notice has been given to the LOCAL PUBLIC AGENCY. In the event that such written notice of change or cancellation is given, the LOCAL PUBLIC AGENCY 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 \$100,000.00 for each person, including death at any time resulting therefrom, and not less than \$300,000.00 in any one accident, and not less than \$100,000.00 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 \$100,000.00 for each person, including death at any time resulting therefrom, and not less than \$300,000.00 in any one accident, and not less than \$100,000.00 for all damages arising out of injury to or destruction of property, including hired and non-owned vehicles.
- (D) Professional Liability coverage shall be in effect from the effective date of this Agreement and shall remain in effect continuously until the applicable statute of limitations has run (Coverage Period). Coverage also shall extend to employees who may retire, transfer or otherwise cease employment with ENGINEER during the Coverage Period. Professional Liability insurance shall be not less than \$1,000,000 per claim and aggregate.

#### 5.11 Changes in Work

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

5.12 Delays and Extensions

The CONSULTANT agrees that no charges or claim for damages shall be made by him 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 LOCAL PUBLIC AGENCY 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 LOCAL PUBLIC AGENCY of any or its rights herein.

5.13 Abandonment and Termination

The LOCAL PUBLIC AGENCY reserves the right to terminate or suspend this Contract upon written notice.

- (A) If the LOCAL PUBLIC AGENCY shall abandon the services herein mentioned, the CONSULTANT shall deliver to the LOCAL PUBLIC AGENCY all data, reports, drawings, specifications, and estimates completed or partially completed and these shall become the property of the LOCAL PUBLIC AGENCY . 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 a made by the LOCAL PUBLIC AGENCY in the exercise of its honest and reasonable judgement for 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 herein - before specified, or within such further extension or extensions or time as agreed upon, the LOCAL PUBLIC AGENCY 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 LOCAL PUBLIC AGENCY 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 LOCAL PUBLIC AGENCY 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 or in fulfillment of this Contract, shall be delivered within twenty (20) days to the LOCAL PUBLIC AGENCY . In the event of the failure by the CONSULTANT to make such delivery upon demand, then and in that event the CONSULTANT shall pay to the LOCAL PUBLIC AGENCY any damage it may sustain by reason thereof.

5.14 Successors and Assignees

The LOCAL PUBLIC AGENCY, insofar as authorized by law, binds itself and its successors, and the CONSULTANT binds their successors, executors, administrators and assignees, to the other party of this Contract and to the successors, 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 the LOCAL PUBLIC AGENCY nor the CONSULTANT shall assign, sublet or transfer its or their 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-Discrimination

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.

5.17 E-Verify

Pursuant to Ind. Code § 22-5-1.7-11, CONSULTANT, by entering into this Contract with LOCAL PUBLIC AGENCY, is required to enroll in and verify the work eligibility status of all of its newly hired employees through the E-Verify program. 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. CONSULTANT hereby states that it does not knowingly employ an unauthorized alien. CONSULTANT further affirms that it will enroll in the E-Verify program, and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

5.18 Non-Appropriation

The Parties acknowledge that LOCAL PUBLIC AGENCY is a governmental entity whose funds are subject to appropriation by its fiscal body. Therefore, if at any time during the initial term or subsequent term of this Contract, LOCAL PUBLIC AGENCY'S fiscal body should fail to appropriate sufficient funds to continue this Contract, it will become null and void. LOCAL PUBLIC AGENCY shall not be obligated to perform unless and until sufficient funds are appropriated. LOCAL PUBLIC AGENCY agrees to seek funding for the continuation of this Contract during each budget cycle during the initial term or subsequent term of this Contract. LOCAL PUBLIC AGENCY agrees to inform CONSULTANT in writing of any such non-allocation of funds at the earliest possible date, and shall pay for all services provided prior to exhaustion of the appropriated funds.

5.19 Governing Law and Venue

This Contract shall be governed, construed, and enforced in accordance with laws of the State of Indiana. Hamilton County courts shall have exclusive jurisdiction of any legal action arising out of this Contract.

5.20 Severability

The invalidity of any section, clause, or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses, or provisions of this Contract.

5.21 Counterparts

This Contract may be executed simultaneously in one or more counterparts, each of which shall be considered an original, but all of which together constitute one Contract. Delivery of this Contract may be accomplished by facsimile.


5.22 Headings

The headings of this Contract are for reference only, and shall not limit or otherwise affect

the terms or provisions of this Contract.

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

A&F ENGINEERING CO., LLC.

BY   
Steven J. Fehribach, P.E.  
President

TOWN COUNCIL  
TOWN OF MCCORDSVILLE, INDIANA

BY \_\_\_\_\_  
Greg Brewer, Member

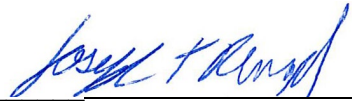
BY \_\_\_\_\_  
Larry Longman, Member

BY \_\_\_\_\_  
Tom Strayer, Member

BY \_\_\_\_\_  
Branden Williams, Member

BY \_\_\_\_\_  
Barry Wood, Member

Attest:

BY   
Joseph T. Rengel, P.E., PTOE  
Vice President

Attest:

BY \_\_\_\_\_



# **APPENDIX "A"**

## **SCOPE OF WORK**

### **1. PROFESSIONAL SERVICES**

The following is a list of services that may be included as part of the annual agreement. The agreement is to provide the LOCAL PUBLIC AGENCY with Professional Engineering Services on a as needed basis. The items listed below are examples of work previously conducted for LOCAL PUBLIC AGENCIES. These items are conducted on an as needed basis, but the intent is not to cover all intersections or roadways within the LOCAL PUBLIC AGENCY limits.

### **2. STUDIES**

- Speed Studies
- 4-Way Stop Control Studies
- Preliminary Signal Warrant Studies
- Development Traffic Assessments
- Left-Turn Lane Requirement Studies
- Right-Turn Lane Requirement Studies
- Queue Length Studies

### **3. MISCELLANEOUS**

- Pavement Marking Layout
- Pavement Marking Design
- Preliminary Intersection Design
- Review Intersections for Lane Configuration
- 24 Hour Traffic Volume Counts
- Peak Hour Traffic Volumes Counts
- Signal Timing Analysis

### **4. ADDITIONAL SERVICES**

For all design services, a lump sum contract will be provided, if requested.

## **APPENDIX "B"**

### **INFORMATION & SERVICE TO BE FURNISHED BY THE LOCAL PUBLIC AGENCY**

1. The LOCAL PUBLIC AGENCY shall furnish the CONSULTANT with the following:
  - A. The LOCAL PUBLIC AGENCY shall designate an employee as the Project Coordinator to coordinate activities between the LOCAL PUBLIC AGENCY and CONSULTANT.
  - B. Compensate the CONSULTANT for their services.

# APPENDIX "C"

## COMPENSATION

### 1. Amount of Payment

#### A. Not to Exceed Fee:

This Contract shall be assignment based. Assignment and lump sum fees shall be coordinated and approved by the Project Coordinator of the LOCAL PUBLIC AGENCY prior to starting work on an individual assignment. The maximum Contract amount is \$35,500.00 unless modified by the LOCAL PUBLIC AGENCY.

#### B. Hourly Rates:

Hourly Rates established to justify the lump sums of an individual assignment shall be as follows:

Department Manager	\$220.00
Lead Engineer	\$175.00
Staff Engineer	\$140.00
CADD Technician	\$115.00
Inspector	\$100.00
Data Collector	\$ 85.00
Administrative	\$ 75.00