

## **CONTRACT**

THIS CONTRACT is made and entered into May 10, 2022, 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 perform the intersection and corridor planning along CR 600 W between CR 500 and 96<sup>th</sup> Street in the McCordsville town limits; and

WHEREAS, the CONSULTANT has expressed a willingness to provide engineering services required to perform the intersection and corridor planning along CR 600 W between CR 500 and 96<sup>th</sup> Street in the McCordsville town limits;

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 June 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 \_\_\_\_\_  
Thomas R. Strayer, President

Attest:

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

Attest:

BY \_\_\_\_\_

**APPENDIX "A"**  
**SCOPE OF WORK**

Corridor Scoping Services:

- A. The CONSULTANT shall prepare preliminary quantities and estimates for seven major intersections along the corridor from the 10% design plans performed at these intersections. The CONSULTANT shall also prepare preliminary quantities and estimates for the reconstructed roadways in between the major intersections based on assumed cross sectional elements defined by TOWN staff.
  
- B. Based on review of 10% design plans and the calculated quantities and estimates, make recommendations to TOWN staff on future construction projects and grant requests to complete the total reconstruction of the corridor in an orderly fashion utilizing grants to minimize the TOWN's overall costs. The segments of projects with costs associated for each segment will be shown in an exhibit for public reference.
  
- C. The 10% drawing linework, along with the preliminary estimates, and project/grant request recommendations will be put together in exhibit format for presentation and discussion at four public meetings. Public meets shall be with Town Council, County Commissioners, County Economic Development personnel, and the interested public.
  
- D. Taking into account input from the elected officials, economic development personnel, and the general public, final exhibits for future projects and grant requests along the corridor, as well as projected construction costs for each segment shall be organized into a final exhibit for submittal to the TOWN staff.

## **APPENDIX "B"**

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

The LOCAL PUBLIC AGENCY shall furnish the CONSULTANT with the following:

1. Assist the CONSULTANT in obtaining property owner information, deeds, plans of adjacent developments, section corner information, and any other pertinent information necessary to perform work under this Agreement.
2. Criteria for design and details for signs, signals, highways, and structures such as grades, curves, sight distances, clearances, design loads, etc.
3. Specifications and standard drawings applicable to the project.
4. Plans of existing structures within the project limits, if available.
5. All written reviews pertinent to the project that are received by the LOCAL PUBLIC AGENCY.
6. Actual relocation and land acquisition costs.
7. Traffic assignments.
8. Available data from the transportation planning process.
9. Utility plans available to the LOCAL PUBLIC AGENCY covering utility facilities, the location of signals and underground conduits throughout the affected areas.
10. Guarantee access to enter upon public and private lands as required for the CONSULTANT under this Agreement.
11. All legal services as may be required for development of the project.

**APPENDIX "C"**  
**COMPENSATION**

A. Amount of Payment

1. The CONSULTANT shall receive as payment for the work performed under this Agreement the total fee not to exceed \$ 24,750.00 unless a modification of the Agreement is approved in writing by the LOCAL PUBLIC AGENCY.
2. The CONSULTANT will be paid for the work performed under this Agreement in accordance with the following schedule:
  - a. Corridor Planning \$24,750.00 Lump Sum

The CONSULTANT shall not be paid for any services performed by the LOCAL PUBLIC AGENCY or services not required to develop this project. In accordance with Section III of this Agreement, if notice to proceed with any portion of the work is not given prior to 2 years from the date of this Agreement, the fees for that portion of the work may be renegotiated as mutually agreed upon by the LOCAL PUBLIC AGENCY and the CONSULTANT. Costs for routine photocopy and paper reproduction, cellular phone costs, pager costs, and computer time costs will not be paid as a reimbursable but is to be included in the above fees and overhead costs.

B. Method of Payment

1. The CONSULTANT may submit a maximum of one invoice voucher per calendar month for work covered under this Agreement. The invoice voucher shall be submitted to the LOCAL PUBLIC AGENCY. The invoice voucher shall represent the value, to the LOCAL PUBLIC AGENCY, of the partially completed work as of the date of the invoice voucher. The CONSULTANT shall attach thereto a summary of each pay item in Section A.2. of this Appendix, percentage completed and prior payments in a form acceptable to the LOCAL PUBLIC AGENCY.
2. The LOCAL PUBLIC AGENCY for and in consideration of the rendering of the engineering services provided for in Appendix "A", agrees to pay the CONSULTANT for rendering such services the fee established above upon completion of the work thereunder, acceptance thereof by the LOCAL PUBLIC AGENCY and upon the CONSULTANT submitting an invoice and county claim voucher as described above.
3. In the event of a substantial change in the scope, character or complexity of the work on the project, the maximum fee payable and the specified fee shall be adjusted in accordance with item 9 (changes in work) of the General Provisions, set out in this Agreement.