

**BOARD OF PUBLIC WORKS AND SAFETY**  
**Agenda Request Form**

(Form B-01-2012)

*Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.*

<b>Date Submitted:</b>	<b>12.13.2023</b>	<b>Meeting Date:</b>	<b>12.18.2023</b>
<b>Contact Information:</b>			
<b>Requested by:</b>	<b>Lynnette Gray</b>		
<b>On Behalf of Organization or Individual:</b> <b>City of Franklin</b>			
<b>Telephone:</b>	<b>317-738-3365</b>		
<b>Email address:</b>	<a href="mailto:lynng@jgmlawfirm.com">lynng@jgmlawfirm.com</a>		
<b>Mailing Address:</b>	<b>63 E. Court St., P.O. Box 160, Franklin, IN 46131</b>		
<b>Describe Request:</b>			
Approval of Professional Services Agreement with Drake Construction			
<b>List Supporting Documentation Provided:</b>			
Professional Services Agreement			
<b>Who will present the request?</b>			
<b>Name:</b>	<b>Lynnette Gray and Brett Jones</b>	<b>Telephone</b>	<b>317-738-3365</b>

*In order for an individual and/or agency to be considered for new business on the Board of Works agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 4:00 p.m. on the Wednesday before the meeting.*

## PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") dated \_\_\_\_\_, 2023, is made by and between the City of Franklin, acting by and through its Board of Public Works and Safety ("OWNER") and Drake Construction, ("CONSULTANT") an Indiana sole proprietorship.

Project Description: The Maintenance Building Restoration Project ("Project") involves the remodel of the existing maintenance building located at 2871 N. Morton Street, Franklin, Indiana, as described in the Roof Damage Assessment – Engineering Report ("Report") dated May 22, 2023, and prepared by EFI Global ("EFI") along with the associated engineering assessment provided by EFI, both of which are attached hereto at EXHIBITS A and B, respectively.

### RECITALS

WHEREAS, OWNER wishes to hire CONSULTANT to provide certain construction management services with respect the Project; and

WHEREAS, CONSULTANT has professional experience, knowledge and expertise relating to these services and has expressed a willingness to furnish the services in connection therewith, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises, the mutual covenants and undertakings herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

#### Section I - Services by CONSULTANT

The scope of work to be managed by CONSULTANT are described in EXHIBIT A, which is attached hereto, and made a part hereof, and are referred to herein as the "Services". The scope of work to be managed may only be changed by further agreement of the parties.

#### Section II - Information and Services to be furnished by OWNER

The information and services to be furnished by OWNER are as set out in EXHIBIT C, which is attached to this Agreement, and incorporated herein by reference.

#### Section III - Commencement of Services and Schedule

CONSULTANT shall commence performance under this Agreement and shall provide the Services hereunder in accordance with EXHIBIT C, which is attached to this Agreement, and incorporated herein by reference.

#### **Section IV - Compensation**

For all Services rendered by CONSULTANT under this Agreement, OWNER agrees to pay CONSULTANT a percentage fee of all contracts to complete the Project as established in EXHIBIT C, which is attached to this Agreement, and incorporated herein by reference.

#### **Section V - Term and Termination**

1.

##### **Term**

This Agreement shall commence upon execution by the parties and shall continue until completion of the Services unless terminated as set forth below.

2.

##### **Termination**

OWNER reserves the right to terminate or suspend this Agreement upon five days advance written notice to CONSULTANT. Upon termination of this Agreement, CONSULTANT shall deliver all Work Product (as defined herein) to OWNER. The dollar amount for any earned but unpaid Services performed by CONSULTANT shall be based upon an estimate of the portions of the total Services completed by CONSULTANT through the effective date of termination, which estimated shall be as made by OWNER in the exercise of its honest and reasonable judgment for all Services to be paid for on a lump sum basis and shall be based upon an audit by OWNER of those Services. A copy of said audit shall be provided to CONSULTANT within five (5) days of termination.

#### **Section VI - General Provisions**

1.

##### **Subcontracting**

It is recognized that CONSULTANT may engage subconsultants to perform a portion of the work under this Agreement. The engagement of subconsultants by CONSULTANT shall not relieve CONSULTANT of any responsibility for the fulfillment of this Agreement. No sub consultant shall subcontract any portion of its work under this Agreement.

2.

##### **Ownership of Documents**

All reproducible materials prepared by CONSULTANT or its subconsultants in connection with this Agreement, alone or in combination with others, on any and all media, in whole or in part, and all copies thereof, whether created before, during, or after the term of this Agreement (collectively, the "Work Product") will be the property of the OWNER.

CONSULTANT shall be allowed to retain copies of all documents included in the Work Product, unless prohibited for reasons of security and as mutually agreed by both parties.

CONSULTANT agrees that written agreements with any and all subconsultants used by CONSULTANT to fulfill CONSULTANT's obligations hereunder shall contain language substantially similar to that of this Subsection to assign OWNER all Work Product by such subconsultants, and to require cooperation with CONSULTANT on the same terms and conditions as set forth herein.

The provisions of this Subsection shall survive the expiration, suspension, abandonment, termination, or completion of this Agreement.

3. Access to Records

Full access to the work during the progress of the Services shall be available to the OWNER.

4. Liability for Damages

CONSULTANT assumes all risk of loss, damage or destruction to all of its materials, tools, appliances and property of every description, and for injury to or deaths of its employees or agents arising out of or in connection with the performance of this Agreement, excluding that which occurs due to the acts or failure to act of any third party, and excluding that which is caused by the OWNER.

5. General Liability Insurance

- a. Amounts of Coverage. CONSULTANT shall procure and maintain at its expense insurance of the kind and in the amounts set forth in EXHIBIT C by companies authorized to do such business in the State of Indiana covering all Services and related activities performed by CONSULTANT.
- b. Evidence of Insurance. Before commencing its Services, CONSULTANT shall furnish to OWNER a certificate, or certificates, showing that it has complied with this Section VI.5.b, which certificate or certificates, shall also designate OWNER as an additional named insured. The policies shall not be changed or canceled unless thirty (30) days prior written notice has been given to OWNER.

6. Worker's Compensation

CONSULTANT shall be responsible for providing all necessary unemployment and Worker's Compensation Insurance for its employees. CONSULTANT shall provide the OWNER with a certificate of insurance indicating that it has complied with this requirement upon request.

7. Changes in Work

- a. Prior Approval. CONSULTANT shall not commence any additional services or change of scope until authorized by OWNER.
- b. Additional Services. Additional services may include, but not be limited to:
  - i. Services associated with significant changes in the scope, extent, or

character of the portions of the Project required by, but not limited to, changes in scope, complexity or schedule and revisions required by changes in applicable laws and regulations or due to any other causes beyond CONSULTANT's control.

ii. Preparing to serve or serving as a consultant or witness for OWNER in any litigation or other dispute resolution process related to the Project that does not involve a claim against CONSULTANT or a claim that is based on an alleged act of negligence or breach of contract by CONSULTANT.

iii. Subject to other provisions of this Agreement, additional or extended services during the Project made necessary by (1) emergencies or Acts of God endangering the Project site, (2) an occurrence of a hazardous environmental condition, (3) damages to OWNER's facilities caused by fire, flood or other cause, (4) acceleration or deceleration of the Schedule involving services beyond normal working hours, (5) significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages and (6) default or failure to perform by other consultants.

8. Non-Discrimination

CONSULTANT and its subconsultants, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of the Services under this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, handicap, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the Agreement.

9. Safety

- a. Responsibility. CONSULTANT shall be directly responsible for the safety requirements and programs applicable to its own employees, its subconsultants and other parties with whom it has contracted to perform Services with respect to the Project.
- b. Compliance. CONSULTANT's safety program shall comply with applicable federal, state and local statutes, rules, regulations and ordinances. CONSULTANT shall report to OWNER, in writing, any injury or accident at the Project site involving its employees, its subconsultants or other parties for which it is responsible, within forty-eight (48) hours or a shorter period of time if required by law.
- c. Notification. CONSULTANT shall not be responsible for the safety requirements or programs applicable to any other person or entity involved with the Project other than CONSULTANT and its subconsultants.

10. Independent Contractor

OWNER and CONSULTANT are acting in an individual capacity in the performance of this Agreement and will not act as agents, employees, partners, joint venturers or associates of one

another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Neither party will assume any liability for any injury (including death) to any persons, nor damage to any property, arising out of the acts or omissions of the agents, employees, or subconsultants of the other party. CONSULTANT shall be responsible for providing all necessary unemployment and worker's compensation insurance for its employees.

11. Indemnification

CONSULTANT agrees to indemnify OWNER, its officials, and employees, and to hold each of them harmless from claims and suits, including court costs, attorney's fees, and other expenses caused by any negligent act, effort or omission of, or by any recklessness or willful misconduct by CONSULTANT, its employees, or subconsultants. CONSULTANT's indemnification and defense obligations hereunder shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated.

12. Notification

All written notices required by this Agreement shall be sent to the parties at the following addresses by certified mail, return receipt:

To OWNER:

City Street Commissioner  
70 East Monroe Street  
Franklin, Indiana 46124

To CONSULTANT:

Drake Construction  
355 Whiteland Road  
Whiteland, Indiana 46184

13. Authority to Bind Consultant

CONSULTANT warrants that it has the necessary authority to enter into this Agreement. The signatory for CONSULTANT represents that he has been duly authorized to execute this Agreement on behalf of CONSULTANT and has obtained all necessary or applicable approval to make this Agreement fully binding upon CONSULTANT when his/her signature is affixed hereto.

14. Successors and Assignees

This Agreement is binding upon and shall inure to the benefit of OWNER and CONSULTANT and their respective successors and permitted assigns. CONSULTANT shall not assign this Agreement without the written consent of OWNER.

15. Entire Agreement; Amendments

This Agreement and its Appendices, each of which is incorporated herein by reference and

made a part of this Agreement, constitutes the entire Agreement of the parties with regard to the subject matter hereof and supersedes all prior discussions or agreements concerning any subject matter related hereto. This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

16. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without giving effect to principles respecting conflicts of laws. Subject to Section 19, any action pursuant to this Agreement shall be brought and tried in a court of competent jurisdiction in Johnson County, Indiana, and each party hereby irrevocably consents to the personal and subject matter jurisdiction of any such court and waives any objection to such jurisdiction and venue.

17. Non-Waiver

It is agreed and acknowledged that no action or failure to act by OWNER or CONSULTANT as to a breach, act or omission of the other shall constitute a waiver of any right or duty afforded either of them under this Agreement, as to any subsequent breach, act or omission of the other nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereof, except as may be specifically agreed in writing. No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused unless such a waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

18. Invalid Provisions

If any part of this Agreement is later found to be contrary to, prohibited by, or invalid under applicable law, rules or regulations, that provision shall not apply and shall be omitted to the extent so contrary, prohibited or invalid, but the remainder of this Agreement shall not be invalidated and shall be given full force and effect insofar as possible.

19. Dispute Resolution

Any dispute arising out of this Agreement that cannot be resolved through informal discussions between the parties, shall be subject to this Section. .

- a. The parties agree that the existence of a dispute notwithstanding, the parties shall continue without delay to carry out all of their respective responsibilities under this Agreement.
- b. Should any dispute arise with respect to this Agreement that cannot be resolved through informal discussions between the parties, a party shall serve written notice to the other party outlining the details of the dispute and demanding mediation. No later than twenty (20) days from the date of the notice demanding mediation, the parties shall confer to discuss the selection of the mediator and agree upon other mediation procedures.
- c. Submission of a dispute under this Agreement to a mediation procedure shall be a condition precedent to filing litigation. No litigation shall be initiated by either party unless the mediation has been completed (unsuccessfully) or a party has failed to participate in a mediation procedure.

20. Employment Eligibility Verification

CONSULTANT affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien.

CONSULTANT shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. CONSULTANT is not required to participate should the E-Verify program cease to exist. Additionally, CONSULTANT is not required to participate if CONSULTANT is self-employed and does not employ any employees.

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

CONSULTANT shall require its subconsultants, who perform work under this Agreement, to certify to CONSULTANT that the subconsultant does not knowingly employ or contract with an unauthorized alien and that the subconsultant has enrolled and is participating in the E-Verify program. CONSULTANT agrees to maintain this certification throughout the duration of the term of an agreement with a subconsultant.

OWNER may terminate for default if CONSULTANT fails to cure a breach of this provision no later than thirty (30) days after being notified by OWNER.

21. No Investment in Iran

As required by IC 5-22-16.5, CONSULTANT certifies that it is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Agreement and denial of future agreements, as well as an imposition of a civil penalty.

[Signature page  
follows]



### **Non-Collusion**

The undersigned attests, subject to the penalties for perjury, that he is the CONSULTANT, or that he is the properly authorized representative, agent, member or officer of the CONSULTANT, that he/she has not, nor has any other member, employee, representative, agent or officer of the CONSULTANT, directly or indirectly, to the best of his knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears within this Agreement.

In Witness Whereof, the CONSULTANT and the OWNER have, through duly authorized representatives, entered into this Agreement. The parties having read and understand the forgoing terms of this Agreement do by their respective signatures dated below hereby agree to the terms thereof.

DRAKE  
CONSTRUCTION

Dennis Drake, Proprietor

(CONSULTANT)

CITY OF FRANKLIN  
BOARD OF PUBLIC WORKS AND SAFETY  
FRANKLIN, INDIANA  
(OWNER)

Steve Barnett, Mayor

Tina Gross, Member

Ken Austin, Member

# DRAKE CONSTRUCTION

## EXHIBIT C

### Scope of Work

CONSULTANT will provide the services of Construction Manager and will be the primary point of contact for the OWNER for the project. CONSULTANT will work directly with all contractors hired by OWNER to complete all work contemplated by the Project, and the OWNER designated point of contact to provide the following service:

#### Pre-Construction Services .

CONSULTANT will create and manage a construction schedule throughout the project.  
CONSULTANT will work with the OWNER's legal counsel to draft the construction contracts necessary for the selected contractors

CONSULTANT will assist OWNER and its agents in the procurement of bid specs  
CONSULTANT will provide constructability input to the OWNER.

#### Construction Services

CONSULTANT will have a daily presence on the job site and be in daily contact with Contractors to maintain the flow of the construction activity on site.

CONSULTANT will review and provide input to OWNER of contractor submittals.

CONSULTANT will create a construction phasing plan with OWNER to balance the needs of a construction project and active workplace.

CONSULTANT will hold bi weekly coordination meetings with the contractors to discuss construction progress and schedule.

CONSULTANT will work directly with the Contractors and the Maintenance Department to establish procedures for Site Safety, Site Logistics, Site Security, Waste Management and Municipal Inspections and will continuously monitor the success of those procedures. CONSULTANT will regularly update the OWNER on the progress, and will notify OWNER of any issues that require the OWNER's involvement

#### Pay Applications

CONSULTANT shall review all Contractor Pay Applications for accuracy and completeness and OWNER shall timely and as expeditiously as possible pay and be responsible for said Pay Applications. OWNER shall also indemnify and hold

CONSULTANT harmless therefrom, including attorney fees and costs.

CONSULTANT will administer a change Order Log to track all potential Change Orders to the project.

#### CONSULTANT'S Fee:

Subject to the following, CONSULTANT will provide the Services for the following fees: Ten Percent (10%) flat fee (the "Fee") of the total approved contracts to complete the Project. It is anticipated that the contracts include, but are not necessarily limited to, Roof, Electrical, Masonry, Paint, Plumbing, Sprinkler System and Carpentry. The Fee shall be paid upon substantial completion of the Project after CONSULTANT has provided its invoice for the same. It is understood that given the anticipated scope of contracts and the associated Pre-Construction and Construction Services, CONSULTANT'S fee should not exceed the sum of Twenty-Five Thousand Dollars (\$25,000.00) unless the approved contracts and change orders dictate otherwise.

#### Insurance Requirements

##### Coverage

###### A. Workmen's Compensation & Disability

Amount: (Statutory Requirements)

###### B. Employer's Liability Bodily Injury by Accident

Amount: \$500,000 Each accident

###### Bodily Injury by Disease

Amount: \$500,000 policy  
limit

###### Bodily Injury by Disease

Amount: \$500,000 each  
employee

###### C. Commercial General Liability (Occurrence Basis)

Bodily Injury, personal injury, property damage,  
Contractual liability, products-completed operations

Amount: \$1,000,000

General Aggregate Limit (other than Products/  
Completed Operations)

Amount: \$2,000,000

Products/Completed Operations Aggregate

Amount: \$2,000,000

Each Occurrence

Amount:  
\$1,000,000

Fire Damage (any one fire)

Amount: \$50,000

Medical Expense Limit (any one person)

Amount: \$5,000

D. Comprehensive Auto Liability (single limit, owned,  
Hired, and non-owned)

Amount: \$1,000,000  
each accident

Bodily injury and property damage

Amount: \$1,000,000

Umbrella Excess Liability

Amount: \$2,000,000 each  
occurrence