

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") dated _____ is made by and between the **City of Franklin**, acting by and through its Board of Public Works and Safety ("OWNER") and **CrossRoad Engineers, PC**, ("CONSULTANT") an Indiana corporation organized under the laws of the State of Indiana.

RECITALS

WHEREAS, OWNER wishes to hire CONSULTANT to provide certain professional services with respect to **Linville Way Road Construction Project** ("Project"); and

WHEREAS, CONSULTANT has extensive 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 engineering services to be performed by CONSULTANT are described in the Fee Proposal letter dated April 4, 2017 and presented as Appendix "A", which is attached hereto, and made a part hereof, and are referred to herein as the "Services".

Section II – Information and Services to be furnished by OWNER

The information and services to be furnished by OWNER are as set out in Appendix "B", 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 the Schedule contained in Appendix "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 on the basis of fees and charges established in Appendix "D", 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 and deliverables as set forth in Appendix “C” or 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 to be paid for on a cost basis or a cost plus fixed fee basis as described in Section IV hereof.

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 subconsultant 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. CONSULTANT and its subconsultants shall maintain all books, documents, papers, accounting records and other evidence pertaining to the cost incurred under this Agreement and shall make such materials available at its respective offices at all reasonable times during the period of this Agreement and for three (3) years from the date of final payment for Services is made by OWNER to CONSULTANT.

4. Liability for Damages

CONSULTANT assumes all risk of loss, damage or destruction to the Work Product, 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 below by companies authorized to do such business in the State of Indiana covering all Services and related activities performed by CONSULTANT.

<u>Coverage</u>	<u>Limits</u>
a. Workmen's Compensation And Disability	Statutory Requirements
b. Employer's Liability Bodily Injury by Accident	\$500,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$500,000 each employee
c. Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property Damage, contractual liability, Products-completed operations	\$1,000,000
General Aggregate Limit (other than Products/Completed Operations	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000

Fire Damage (any one fire)	\$50,000
Medical Expense (any one person)	\$5,000
d. Comprehensive Auto Liability (single Limit, owned, hired and non-owned)	\$1,000,000 each accident
Bodily injury and property damage	\$1,000,000
Umbrella Excess Liability	\$2,000,000 each Occurrence and
The Deductible on the Umbrella Liability	\$10,000 shall not be more than

- 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. Certificate shall include in the comments section of the document verbiage indicating that "The City of Franklin is Additionally 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.

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 Engineer
70 East Monroe Street
Franklin, Indiana 46124**

To CONSULTANT: **CrossRoad Engineers, PC
3417 Sherman Drive
Beech Grove, Indiana 46107**

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/she 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/she is the CONSULTANT, or that he/she 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/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she 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.

CrossRoad Engineers, PC
(CONSULTANT)

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

Trent Newport, President

Steve Barnett, Mayor

Robert Swinehamer, Member

Melissa Jones, Member

Attest:

Attest:

Signee Name and Title

Mark Richards, City Engineer

APPENDIX A
SERVICES BY CONSULTANT

1. SUPPLEMENTAL TOPOGRAPHIC SURVEY

Consultant shall perform the field work and office work necessary to supplement the provided topographic survey for completion of this project. Included will be information such as one foot contouring, existing street elevations, existing sanitary and storm structures, and verification of existing utilities. This survey will also include all research, office work, and field work necessary to re-establish the existing Right-of-Ways at either end of the project.

2. PRELIMINARY PHASE & PRIMARY PLAT

After the survey is completed, Consultant shall prepare a preliminary layout to identify the existing site amenities and proposed project features such as the proposed street improvements, sidewalks, drainage structure improvements, etc. It is assumed that the proposed development will consist of three (3) lots and one (1) block to be served by the proposed roadway. Once the layout has been completed, Consultant shall meet with Owner to discuss and make any necessary adjustments. A total of two (2) team meetings and iterations of the initial layout are included within this phase.

Based on the approved preliminary layout, Consultant shall perform the necessary field and office work to generate the required primary plat document per the City of Franklin standards. Consultant shall also prepare the applications and forms for the filing of the primary plat submission and considerations for approval. It is anticipated that the Owner's attorney will provide any necessary written commitments, covenants and restrictions, and/or other management/maintenance agreement related documents to supplement the primary plat filing. Consultant shall attend the necessary hearings to represent the Owner and present the project for consideration by all the respective boards. For this phase, it is anticipated that one (1) TAC meeting and one (1) Plan Commission Hearing will be required. This phase includes all office and drive time required for the preparation and attendance of the meetings.

The attendance of additional meetings deemed necessary due to remonstrations, continuation, tabling, or any other circumstance beyond the control of Consultant shall be done so on an hourly basis.

3. DESIGN & CONSTRUCTION DRAWINGS & SECONDARY PLAT

Based on the approved primary plat and survey information obtained, Consultant shall design all the elements for the development necessary to insure the workability of:

- Road alignment and intersections of Graham Road and Commerce Parkway;

- drainage, grading, and storm sewers (Not including Detention or Water Quality);
- Water main extension through development;
- Sanitary main extension through development;
- Sanitary sewer lateral connections to three (3) lots and manhole connection to one (1) block; and
- Misc. utility service alignments through development (sizing and design by others).

Consultant shall prepare construction drawings in accordance with all state and local laws and ordinances and include the following:

- Title Sheet;
- Topographical Survey and Existing Conditions Plan;
- Site Development Plan:
 - location of intersections and road alignment through development; and
 - driveway access points, curbs, and sidewalks.
- Roadway Construction Details:
 - Road Plan & Profiles;
 - Road Cross Sections;
 - storm structures, and grading (Not including Detention or Water Quality); and
 - plan and profiles as necessary.
- Intersection Construction Details:
 - Grading spot elevations; and
 - Pavement marking.
- Maintenance of Traffic Plan:
 - INDOT/MUTCD standards.
- Sanitary Sewer Main Extension:
 - Plan and profiles as necessary for IDEM approval; and
 - Sanitary details and lateral connection points.
- Water Main Extension:
 - Plan per INAW developer standards handbook; and
 - Water main details, valves, hydrants, connection points.
- Erosion Control Plan:
 - consistent with local MS4 requirements for Rule 5 conformance.
- Miscellaneous Details and Specifications; and
- Secondary Plat Document.

This scope does not include any landscape plans, architectural plans or property signage plans. In addition, this work does not include any building permits and Fire Prevention and Building Safety Approvals. Consultant shall not be responsible for obtaining approvals or permits normally obtained by the architect and/or contractor(s).

4. REGULATORY SUBMITTALS & BIDDING PHASE

Consultant shall prepare the necessary applications for submittal and review and/or approval of the civil construction plans and secondary plat prepared as part of this agreement. This task will include the necessary administration services for preparing the submittals as well as travel costs associated with the coordination efforts to obtain civil engineering plan approval through the necessary local regulatory agencies. It is anticipated that one (1) Technical Review Committee meeting and one (1) Plan Commission hearing in the City of Franklin will be required for the review and approval of this project. In addition, coordination with IDEM for the sanitary sewer main extension and coordination with INAW for the water main extension will be included.

This phase will include the preparation of an Engineer's Estimate for the overall project, as well as the necessary administrative services required for facilitating and reviewing the public bid of the project. It is assumed that one (1) pre-bid meeting, two (2) plan addendums, and one (1) City Council meeting will be required for the bidding assistance and awarding of contract.

Consultant shall not be responsible for any submittal items relating to architectural or signage plans. This phase does not include the acquisition of any construction or building permits through any agency as permitting shall be the responsibility of the architect and/or selected contractor.

5. DOCUMENTS FOR RIGHT-OF-WAY GRANT AND/OR EASEMENT

Consultant shall provide survey exhibits and legal descriptions for any necessary off-site easements and/or grants of rights-of-way. This work will not include any of the front-end documents required for the recording of these documents, as it is assumed that these will be provided by Owner's attorney. This phase does not include the procurement of any necessary grants. This work shall be performed on a "per each" basis based on the rate as shown on the Fee Schedule included with this document as Attachment "A".

6. CONSTRUCTION STAKING, INSPECTION & AS-BUILT PLANS

Once design is complete, Consultant may be retained to perform construction staking (including plat monumentation), inspection, and as-built plans for this project. This work will be provided on an hourly basis with a Not-to-Exceed amount to be determined once design is completed.

APPENDIX B

INFORMATION AND SERVICES TO BE FURNISHED BY OWNER

Owner (or others) shall supply Consultant with an ALTA Boundary Survey as well as a topographic survey for the site which will cover most of the area of need. This information shall be supplied in ACAD.dwg format with benchmark information and z-coordinate data intact for Consultant use in the design.

APPENDIX C

COMMENCEMENT OF SERVICES AND SCHEDULE

Services by Consultant shall commence upon issuance of a Notice to Proceed by Owner. Project schedule shall be as follows:

Task A: Supplemental Topographic Survey	3 weeks after Notice to Proceed
Task B: Preliminary Phase & Primary Plat	3 weeks after completion of Task A
Task C: Design & Construction Drawings & Secondary Plat	6 weeks after approval of Task B by Owner
Task D: Regulatory Submittals & Bidding Phase	3 weeks after approval of Task C by Owner
Task E: Documents for R/W Grant and/or Easement	3 weeks after approval of Task C by Owner
Task F: Construction Staking, Inspection And As-Built Plans	TBD

APPENDIX D
COMPENSATION

Compensation shall be paid lump sum. Consultant shall submit progress payments based on percent completion of each task no later than the 5th day of each month, subject to agreement by Owner with respect to the amount of work completed. Invoices submitted on a timely basis shall be due and payable by the 30th day of the month. Invoices not paid within 30 days after submission shall accrue interest at a rate of 1.5% per month. Following are fees for each project task:

Task A	\$ 6,000
Task B	\$15,000
Task C	\$60,000
Task D	\$15,000
Task E	\$ 800 each
Task F	TBD, subject to approval by Owner
Total	\$96,000 (excluding Tasks E & F)