

**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>	June 10, 2020	<b>Meeting Date:</b>	June 15, 2020
<b>Contact Information:</b>			
<b>Requested by:</b>	Mark Richards		
<b>On Behalf of Organization or Individual:</b>		Department of Planning & Engineering	
<b>Telephone:</b>	317-736-3631		
<b>Email address:</b>	mrichards@franklin.in.gov		
<b>Mailing Address:</b>	70 E. Monroe Street, Franklin, IN 46131		
<b>Describe Request:</b>			
Request approval of amphitheater inspection PSA with CrossRoad Engineers			
<b>List Supporting Documentation Provided:</b>			
Inspection Proposal			
Professional Services Agreement			
<b>Who will present the request?</b>			
<b>Name:</b>	Mark Richards	<b>Telephone:</b>	317-736-3631

*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.*



April 23, 2020

Mr. Mark Richards, City Engineer  
70 E. Monroe Street  
Franklin, Indiana 46131

Re: Amphitheater Construction Project  
Fee Proposal for Construction Inspection & Staking

Dear Mark:

As you requested, we have prepared a fee proposal to provide full-time construction inspection and construction staking services for the above referenced project. Construction is scheduled to begin in mid-October 2020 and be completed by September 2021.

Below is a listing of individuals we expect to be using on this project:

Trent E. Newport	Director
Brad Stahley	Resident Project Representative (RPR)
Charles Stewart	Assistant RPR
To Be Named	Project Inspector
To Be Named	Assistant Project Inspectors
To Be Named	CADD Technicians (As Builts)

The duration is expected to extend from October 2020 through September 2021, with some minimal activity over the winter months. During the period of time when the majority of the construction is occurring (estimated 7 weeks in 2020; 24 weeks in 2021), we have budgeted 4 hours per week for the Director, 8 hours per week for the RPR, 45 hours per week for the Assistant RPR, 45 hours per week for the Project Inspector, and 16 hours per week for the Assistant Project Inspector. Over the winter months (estimated 5 weeks in 2020; 13 weeks in 2021), we have budgeted 2 hours per week for the Director and 20 hours per week for the RPR. Once the construction has been completed next spring, we will prepare the final construction record and as-built plans. In addition to the inspection, we will be providing construction staking services and provide as built plans once the project is completed. The budgeted hours, with the corresponding billing rates, yield the estimated costs shown on the attached spreadsheet.

If you should have any questions or need any further information, please call me.

Sincerely,

CrossRoad Engineers, PC

A handwritten signature in black ink, appearing to read "Trent E. Newport", is positioned above the printed name.

Trent E. Newport, P. E.  
President



## Amphitheater Construction Project

City of Franklin

### Estimated Costs for Construction Inspection & Staking

ACTIVITY		DIR	RPR	ASST RPR	PROJ INSP	ASST PROJ INSP	CADD TECH
Construction Duration (2020)	7 wks	28	56	315	315	112	0
Winter Const Duration (Late 2020)	5 wks	10	100	0	0	0	0
Winter Const Duration (Early 2021)	13 wks	26	260	0	0	0	0
Construction Duration (2021)	24 wks	96	192	1080	1080	384	0
Complete Final Record	6 wks	8	12	60	16	0	4
TOTAL HOURS		168	620	1455	1411	496	4

The proposed fee for these estimated hours is as follows:

#### DIRECT LABOR COSTS --

<u>Personnel Class</u>	<u>Billing Rate</u>	<u>Total Hours</u>	<u>Direct Labor Costs</u>
Director (2020)	\$160.00	38	\$6,080.00
Director (2021)	\$165.00	130	\$21,450.00
RPR (2020)	\$125.00	156	\$19,500.00
RPR (2021)	\$130.00	464	\$60,320.00
Assistant RPR (2020)	\$115.00	315	\$36,225.00
Assistant RPR (2021)	\$120.00	1140	\$136,800.00
Project Inspector (2020)	\$105.00	315	\$33,075.00
Project Inspector (2021)	\$110.00	1096	\$120,560.00
Asst. Proj. Inspector (2020)	\$85.00	112	\$9,520.00
Asst. Proj. Inspector (2021)	\$90.00	384	\$34,560.00
CADD Technician (2021)	\$95.00	4	<u>\$380.00</u>
<b>TOTAL DIRECT LABOR COSTS</b>			<b>\$478,470.00</b>

#### DIRECT NON - LABOR COSTS --

MILEAGE		<u>Direct Non-Labor Costs</u>
Budgeted mileage rate is	\$0.575 /mile	
Director (Constr Duration)	50 miles/wk x 31 weeks	\$891.25
Director (Winter Const Duration)	30 miles/wk x 18 weeks	\$310.50
RPR (Constr Duration)	100 miles/wk x 31 weeks	\$1,782.50
RPR (Winter Const Duration)	200 miles/wk x 18 weeks	\$2,070.00
Assistant RPR (Constr Duration)	250 miles/wk x 31 weeks	\$4,456.25
Proj. Inspector (Constr Duration)	250 miles/wk x 31 weeks	\$4,456.25
Asst. Proj. Inspector (Constr Duration)	100 miles/wk x 31 weeks	\$1,782.50
ON-SITE MATERIALS TESTING		
See attached on-site material testing proposal from Earth Exploration, Inc.		\$18,518.80
CONSTRUCTION STAKING & AS BUILTS		
Budgeted Amount (Performed hourly using standard hourly rates)		\$80,000.00
		<u><b>\$114,268.05</b></u>
<b>TOTAL ESTIMATED COSTS</b>		<b>\$592,738.05</b>
<b>USE</b>		<b>\$593,000.00</b>



7770 West New York Street  
Indianapolis, IN 46214  
(317) 273 1690  
(317) 273 2250 (FAX)

April 17, 2020

Mr. Chip Charles  
Crossroad Engineers, PC  
3417 Sherman Drive  
Beech Grove, Indiana 46107  
[ccharles@crossroadengineers.com](mailto:ccharles@crossroadengineers.com)

Re: Proposal for Materials Testing Services  
Franklin Greenways Trail Amphitheater  
Franklin, Indiana  
Terracon Proposal No.: PCJ201089

Mr. Charles,

We appreciate the opportunity to submit a proposal for materials testing services for the referenced project. We understand the scope of our services to include observations and materials testing services for the construction of the new Amphitheater located in Franklin, Indiana. This project includes the construction of a new amphitheater with associated site amenities including restrooms, concrete and asphaltic sidewalk and trails, site utilities, parking lot construction, and a pedestrian bridge crossing the creek on the SW quadrant of the site.

### **Scope of Services**

We further understand our services will include laboratory testing of fill and backfill material for compaction characteristics due to cuts and fills across the project site; verification of bearing soils for foundations along with the conformation of suitably compacted fill/backfill for embankment construction and utility installation via use of the light weight deflectometer and dynamic cone penetrometer; field testing of concrete for slump, air content, unit weight, and temperature; and laboratory testing of concrete for ultimate compressive strength. Field inspection and materials testing services will be performed by a qualified Senior Engineering Technician and all observations and test results will be communicated via the submission of a Daily Construction Observation Report within 24-hours of the completion of said services being provided. Deficiencies, or failing test results, will be communicated immediately to the Crossroad Engineers representative onsite and through the use of a deficiency log tracked throughout the duration of our involvement with the testing services on this project.

### **Estimated Budget**

We have reviewed the project drawings and the estimated durations that were provided to us in order to generate an approximate estimate of our fees associated with this project. Based on our understanding of what our involvement will be with the project and the scope of services contained herein, we propose an estimated budget of **\$18,518.80** to be billed on a unit rate basis in accordance with the estimated budget summary and construction services unit rates



Terracon Consultants, Inc. 7770 West New York St. Indianapolis, IN 46214  
P (317)-273-1690 F (317)-273-2250 [www.terracon.com](http://www.terracon.com)

## Proposal for Materials Testing Services

Franklin Amphitheater ■ Franklin, IN

April 17, 2020 ■ Terracon Proposal No. PCJ201089



attached within this proposal. Billing of our services will be made on a monthly basis according to the attached Unit Rate Fee Schedule. Please understand, we will make all attempts necessary to be prudent with our time and associated cost involvement with the work.

### Closing

Once again, we appreciate the opportunity to propose our Materials Testing Services to Crossroad Engineers, PC for the new Franklin Amphitheater project. Should you have any questions or if we could be of further assistance, please call us at your convenience.

Sincerely,

**EARTH EXPLORATION, INC., A TERRACON COMPANY**

Matt JW Mickelson  
Staff Engineer  
Construction Materials Group

Jeremy S. Clem  
Department Manager  
Construction Materials Group

Attachments: Estimated Budget Summary  
Construction Services Unit Rate Fee Schedule  
Terms and Conditions



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**CONSTRUCTION SERVICES AND MATERIALS TESTING COST ESTIMATE  
FRANKLIN AMPHITHEATER - FRANKLIN, IN - CROSSROAD ENGINEERS, PC  
TERRACON PROPOSAL NO.: PCJ201089**

**FIELD TESTING AND OBSERVATION SERVICES**

**Field Testing Services**

Senior Engineering Technician (Multiple service types including travel time)	31 days	8 hrs/day	\$45.00 / hr	\$11,160.00
<b>Subtotal</b>				<b>\$11,160.00</b>

**LABORATORY TESTING SERVICES**

**Compressive Strength Test Specimens**

4x8 Concrete Compressive Specimens	130	cyls	\$15.00 / ea	\$1,950.00
<b>Subtotal</b>				<b>\$1,950.00</b>

**Moisture-Density Relations (Proctors)**

Standard Proctor	3		\$150.00 / ea	\$450.00
<b>Subtotal</b>				<b>\$450.00</b>

**EQUIPMENT AND TRANSPORTATION**

Light Weight Deflectometer	7	days	\$100.00 / day	\$700.00
Dynamic Cone Penetrometer	15	days	\$60.00 / day	\$900.00
Transportation	31	trips	70 mi/trip \$0.64 / mile	\$1,388.80
<b>Subtotal</b>				<b>\$2,988.80</b>

**ENGINEERING AND ADMINISTRATION**

Project Manager	15	hrs	\$110.00 / hr	\$1,650.00
Secretarial	8	hrs	\$40.00 / hr	\$320.00
<b>Subtotal</b>				<b>\$1,970.00</b>

<b>Estimated Total Cost</b>	<b>\$18,518.80</b>
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## TERRACON CONSTRUCTION MONITORING UNIT RATE FEE SCHEDULE

**Franklin Amphitheater - Franklin, Indiana - Crossroad Engineers, PC**

**Terracon Proposal No.: PCJ201089**

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE</u>
C-1	Personnel for Consultation, Monitoring or Report Writing Including Travel Time	
	A. Construction services and project managers, per hour	\$110.00
	B. Special testing and observations (e.g., NDT, CWI, FF/FL)	100.00
	C. Staff engineer, P.E., per hour	105.00
	D. Senior project engineer, P.E., per hour	125.00
	E. Principal engineer, P.E., per hour	175.00
	F. Special consulting (Expert Witness, Subject Matter Expert, Litigation, etc.), per hour	175.00
C-2	Engineering Technician for Performing Field Testing, Sampling or Monitoring Including Travel Time	
	A. Regular time, (4 hour minimum), per hour	45.00
	B. Overtime - over 8 hours per day and Saturday, per hour	67.50
	C. Sundays and holidays, per hour	90.00
	(Technician certified by American Concrete Institute, INDOT and Troxler Electronic Laboratories)	
C-3	Secretarial, per hour	40.00
C-4	Soil/Aggregate Testing	
	A. Standard Proctor (ASTM D-698), per each	150.00
	B. Modified Proctor (ASTM D-1557), per each	165.00
	C. Hydrometer Analysis	180.00
	D. Sieve analysis with decantation (coarse aggregate), per each	140.00
	E. Sieve analysis with decantation (fine aggregate), per each	120.00
	F. Atterberg Limits	85.00
C-5	Concrete Testing	
	A. Compressive strength testing of 4" X 8" concrete cylinders, per each	15.00
	B. Compressive strength testing of 2" X 2" cubes, per each	15.00
	C. Compressive strength testing of 3" X 3" grout prisms, per each	15.00
	D. Flexural strength testing of 6" X 6" X 21" concrete beams, per each	35.00
C-6	Asphalt Testing	
	A. Unit weight of asphaltic concrete cores, per each	35.00
	B. Asphalt extraction and gradation, per each	185.00
	C. Asphalt Marshall stability, flow and density (3 points per test), per test	285.00
	D. Certified Bituminous Technician (sampling and testing at batch plant), per hour	75.00
C-7	Fireproofing Testing	
	A. Density (Dry-back and Dimensions) ASTM E605, per test	30.00
	B. Adhesion/Cohesion (ASTM E736), per test	30.00
C-8	Special Equipment	
	A. Nuclear moisture-density gauge, per site visit	60.00
	B. Dynamic cone penetrometer, per site visit	60.00
	C. FF/FL Equipment, per site visit	450.00
	D. Light Weight Deflectometer	100.00
	E. Coring Equipment, per mobilization	250.00
C-9	Reimbursable Expenses	
	A. Overnight living expenses, per person per day	100.00
	B. Per diem, per person per day	40.00
	C. Mileage for all personnel (company or private vehicle), per mile	0.64
C-10	General	
	A. All work must be authorized by a purchase order or letter of authorization.	
	B. Unit prices will remain in effect for 60 days from date of quotation.	
	C. Invoices submitted for payment are due within 30 days of the invoice date unless another payment schedule has been agreed upon prior to commencing the work.	
	D. Invoices will be submitted once a month for services provided during that month.	
	E. A service charge of 1½% per month (18% per year) will be added to all past due accounts.	

**Environmental**



**Facilities**



**Geotechnical**



**Materials**

# PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") dated this \_\_\_\_ day of \_\_\_\_\_, 2020, is made by and between the **City of Franklin, Indiana**, 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.

Project Description: The Franklin Amphitheater Construction Project ("Project") involves the construction inspection, on-site material testing, asbuilt drawings, and construction staking services for the construction of an amphitheater near downtown Franklin, Indiana.

## RECITALS

WHEREAS, OWNER wishes to hire CONSULTANT to provide certain professional services with respect to the 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 agree as follows:

### Section I – Services by CONSULTANT

The engineering services to be performed by CONSULTANT are described in EXHIBIT 1, 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 EXHIBIT 2, 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 EXHIBIT 3, which is attached to this Agreement, and incorporated herein by reference.

### Section IV – Compensation

For all Services rendered by CONSULTANT under this Agreement, in accordance with the terms of this Agreement, OWNER shall pay the CONSULTANT in accordance with the fees and charges



established in EXHIBIT 4, which is attached to this Agreement, and incorporated herein by reference. Compensation for the services rendered shall not exceed the sum of \$593,000 without specific written authorization of OWNER prior to incurring the charge.

## **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 EXHIBIT 1 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 in EXHIBIT 5 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.

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

The work performed by the CONSULTANT shall be at the risk of the CONSULTANT exclusively subject to paragraph 23 below. To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless the City of Franklin and its employees, officers and officials ("Indemnified Parties"), from and against any and all claims for bodily injury, death or damages to property, demands, damages, action, cause of action, suits, losses, judgments, obligations and any liabilities, costs and expenses, including but not limited to investigative and repair costs, reasonable attorneys' fees and costs ("claims") to the extent caused by negligent performance of services provided under this Agreement by CONSULTANT or its agents. These indemnity obligations shall apply to any negligent acts or omissions, or willful misconduct of the CONSULTANT, its employees, or agents, whether active or passive. The CONSULTANT'S indemnification obligations hereunder shall extend to claims occurring after this Agreement is concluded or terminated as well as while it is in force. OWNER shall not provide such indemnification to the CONSULTANT.

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.

22. Certification of Compliance with Applicable Law

In consideration of entering into this agreement, Consultant agrees to the terms and conditions of the Certificate of Compliance with Applicable Law as set forth on Exhibit 6 and all attachments thereto and said terms and conditions are specifically incorporated herein.

23. Waiver of Claims for Hazardous Materials

The parties agree and the owner acknowledges that CONSULTANT is not being retained nor is CONSULTANT required to be in any way an arranger, generator, operator, or transporter of hazardous materials present at or near the project site (as these terms are defined in applicable federal or state statutes and all related regulations). Owner agrees to make no claim or cause of action, including but not limited to negligence, breach of contract, strict liability, or breach of express or implied warranty based upon the presence of hazardous substances.

(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 E. Newport, President

\_\_\_\_\_  
Steve Barnett, Mayor

\_\_\_\_\_  
Melissa Jones, Member

\_\_\_\_\_  
Robert Swinehamer, Member

Attest:

Attest:

\_\_\_\_\_  
Mark A. Beck, Vice President

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or type name and title)



## EXHIBIT 1

### SERVICES BY CONSULTANT

CONSULTANT shall be responsible for performing the following tasks:

1. Construction Schedule: Review the construction schedule prepared by the Contractor for compliance with the Contract and give to the OWNER detailed documentation concerning its acceptability.
2. Conferences: Attend pre-construction conferences as directed by the OWNER, arrange a schedule of progress meetings, and such other job conferences as required for the timely and acceptable conduct of the job, and submit such schedules prepared, to the OWNER for notification to those who are expected to attend. Record for the OWNER, as directed, minutes of such meetings. The CONSULTANT shall be available for conferences as requested by the OWNER, and OWNER may review and inspect the activities whenever desired during the life of the Agreement.
3. Liaison: Serve as the OWNER's liaison with the Contractor, working principally through the Contractor's field superintendent or such other person in authority as designated by the Contractor. Acting in liaison capacity, the fulltime Resident Project Representative shall be thoroughly familiar with the plans and specifications applicable to the project to ensure that all provisions therein are complied with. Any deviation observed shall be reported to the OWNER by the fulltime Resident Project Representative.
4. Cooperate with the OWNER in dealing with the various Federal, State and Local Agencies having jurisdiction over the project.
5. Assist the OWNER in obtaining from the Contractor a list of his proposed suppliers and sub-contractors.
6. Assist the OWNER in obtaining from the Contractor additional details or information when needed at the job site for proper execution of work.
7. Equipment: Furnish all equipment necessary to sample and test materials in general compliance with Indiana Department of Transportation's procedures.
8. Samples: Obtain field samples of materials delivered to the site as required and test them for compliance with the material specifications.
9. Shop Drawings:
  - a. Receive shop drawings and falsework drawings. Check for completeness and then forward to the designer of the project for approval.
  - b. Review approved shop and falsework drawings, specifications and other

submissions, record receipt of this data, maintain a file of all drawings and submissions, and check construction for compliance in accordance with the Contract Documents.

- c. Alert the Contractor's field superintendent when it is observed that materials or equipment are being or about to be used or installed before approval of shop drawings or samples, where such are required, and advise the OWNER when he believes it is necessary to disapprove work as failing to conform to the Contract Documents.

10. Review of Work, Inspection and Tests:

- a. Conduct on-site inspections for the OWNER of the work in progress as a basis for determining that the project is proceeding in accordance with the Contract Documents.
- b. Provide on-site acceptance testing of materials in general conformance with the latest edition of the INDOT Manual for Frequency of Sampling and Testing and Basis for use of Materials and in accordance with current accepted practices.
- c. Accompany visiting inspectors, representing Local, State or Federal Agencies having jurisdiction over the project, and report details of such inspection to the OWNER.
- d. Verify that required testing has been accomplished.

11. Modification: Consider and evaluate the Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to the OWNER.

12. Records:

- a. Prepare and maintain at the job site orderly files of correspondence, reports of job conferences, shop drawings and other submissions, reproductions of original Contract Documents, including all addenda, change orders and additional drawings subsequent to the award of the Contract, progress reports and other project related documents.
- b. Keep a diary or log book, recording hours on the job site, weather conditions, list of visiting officials, decisions, general observations, and specific observations with regard to test procedures. Upon request furnish copies of such a diary or log book to the OWNER.
- c. Maintain for the OWNER, a record of names, addresses and telephone numbers of all sub-contractors and major material suppliers.
- d. Maintain a set of drawings on which authorized changes are noted, and deliver to the OWNER upon request, but in any event at the completion of the project.
- e. Prepare the Final Construction Record and Final Estimate as required by the OWNER.

13. Reports: Furnish to the OWNER at periodic intervals, as required, progress reports of the project, including the Contractor's compliance with the approved construction schedule.

14. Progress Estimates: Prepare progress estimates for periodic partial payments to the Contractor and deliver to the OWNER for review and processing. The payments to the Contractor will be based on estimates of the value of work performed and materials complete in place in accordance with the contract.
15. Project Responsibility: The Resident Project Representative will be responsible for the documentation of pay quantities and estimates, and the maintenance of appropriate records related to the construction of this project.
16. Work Schedule and Suspension: The CONSULTANT's crew will be required to regulate their work week to conform to the Contractor's hours. If work on the construction project is suspended and all matters concerning contract compliance and administration are complete, the services of the CONSULTANT may also be suspended without cost to the project.
17. Contract Administration: The CONSULTANT will administer the contract in accordance with OWNER's procedures.
18. Asbuilt Drawings: The CONSULTANT will prepare Asbuilt Drawings of the proposed improvements based upon 'red-lined' drawings provided by the Contractor. The information provided by the Contractor will be incorporated into the digital design drawings and will be digitally submitted to OWNER.
19. Construction Staking: The CONSULTANT will supply survey personnel and equipment as necessary to provide construction staking services of the proposed improvements. To facilitate coordination, requests for staking services will be made by the Contractor; however, such requests are subject to approval by the OWNER's Project Coordinator.

## EXHIBIT 2

### **SERVICES BY OWNER**

OWNER shall furnish CONSULTANT with the following:

1. OWNER shall designate an employee as Project Coordinator to coordinate activities between CONSULTANT and OWNER.
2. Assistance to the CONSULTANT by placing at his disposal all available information pertinent to the project.

### EXHIBIT 3

## **SCHEDULE**

No work under this Agreement shall be performed by the CONSULTANT until the CONSULTANT receives a written notice to proceed from the OWNER.

The CONSULTANT will be prepared to begin the work under this Agreement within five (5) days after a Letter of Notification to proceed is received from the OWNER. The CONSULTANT shall complete and deliver the final construction record and final estimate to the OWNER within forty-five (45) calendar days after the Contractor's last day of work.

EXHIBIT 4

**FEE SCHEDULE**

**I. AMOUNT OF PAYMENT –**

1. The CONSULTANT shall receive as payment for the work performed under this Agreement the total fee not to exceed \$ 593,000 , unless a modification of the Agreement is approved in writing by the OWNER.
2. The CONSULTANT shall be paid for the actual hours of work performed exclusively on this Agreement in accordance with the negotiated hourly billing rates per classification:

<u>Labor Classification</u>	<u>Hourly Billing Rates 2020</u>	<u>Hourly Billing Rates 2021</u>
Director	\$160	\$165
RPR	\$125	\$130
Assistant RPR	\$115	\$120
Project Inspector	\$105	\$110
Asst. Project Inspector	\$ 85	\$ 90
Project Manager	\$120	\$125
CADD Manager	\$105	\$110
CADD Technician	\$ 90	\$ 95
Survey Manager	\$130	\$135
Asst. Survey Manager	\$ 95	\$100
Survey Crew – 1 Man	\$115	\$120
Crew Chief	\$ 95	\$100
Field Man	\$ 70	\$ 75
Survey Technician	\$ 90	\$ 95

3. The CONSULTANT shall not be paid for any service performed by the OWNER or services not required to develop this Project. Costs for routine photocopy and paper reproduction, cellular phone costs, and computer time costs will not be

paid as a reimbursable as these are included in the above fees and overhead costs. Mileage reimbursement will be at the current IRS approved rate per mile.

4. For those services performed by other than the CONSULTANT, the CONSULTANT will be reimbursed for the actual amount invoiced plus a 10% mark-up for task coordination and administrative efforts, provided that each such invoice shall be subject to approval as reasonable by the OWNER prior to any reimbursement thereof.

## **II. METHOD OF PAYMENT –**

1. 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 OWNER. The invoice voucher shall represent the value, to the OWNER, of the partially completed work as of the date of the invoice voucher. CONSULTANT shall attach thereto a copy of records showing the individuals who worked on this Agreement during the month, their classification, the number of hours worked since the last claim voucher was submitted and the hourly rate.
2. If the OWNER does not agree with the amount claimed by the CONSULTANT on a claim voucher, the OWNER will send the CONSULTANT a letter by regular mail and list the differences between actual and claimed progress.
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 specific fee shall be adjusted in accordance with Item 7. – Changes in Work of Section VI – General Provisions, set out in this Agreement.