

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.

Project Description: The **Arvin/Hurricane/Eastview Construction** Project ("Project") involves the construction inspection, on-site material testing, asbuilt drawings, and construction staking services for the reconstruction of the existing intersection into a modern roundabout.

RECITALS

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

Section I – Services by CONSULTANT

The engineering services to be performed by CONSULTANT are described in 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 in Appendix "E" 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

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 E. Newport, President

Steve Barnett, Mayor

Melissa Jones, Member

Robert Swinehamer, Member

Attest:

Attest:

Walter E. Charles, CEO

(Signature)

(Print or type name and title)

APPENDIX "A"

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 insure 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 Indiana State Highway Commission Construction Manual 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.

APPENDIX "B"

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.

APPENDIX "C"

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.

APPENDIX "D"

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 \$196,000 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 2019</u>
Director	\$155
Resident Project Rep.	\$120
Project Inspector	\$100
Asst. Project Inspector	\$ 80
Senior Project Manager	\$135
CADD Manager	\$105
CADD Technician	\$ 90
Survey Manager	\$125
Asst. Survey Manager	\$ 90
Survey Crew – 1 Man	\$110
Crew Chief	\$ 90
Field Man	\$ 70
Survey Technician	\$ 90

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 a rate of \$0.52 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.