

CONTRACT

THIS CONTRACT is made and entered into _____, by and between the TOWN OF DANVILLE, Indiana, acting by and through the TOWN COUNCIL, hereinafter referred to as the "TOWN", and A&F ENGINEERING CO., LLC., hereinafter referred to as the "CONSULTANT".

WITNESSETH

WHEREAS the TOWN desires to contract for engineering services required to furnish a traffic impact study and commercial driveway permitting services for a proposed commercial access drive along US 36 between CR 200 E and Main Street in the TOWN of DANVILLE; and

WHEREAS, the CONSULTANT has expressed a willingness to provide engineering services required to furnish a traffic impact study and commercial driveway permitting services for a proposed commercial access drive along US 36 between CR 200 E and Main Street in the TOWN of DANVILLE.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto mutually covenant and agree as follows:

Section 1 Services by CONSULTANT

1.1 The services to be provided by the CONSULTANT under this Contract are as set out in Appendix "A", attached to this Contract, and made an integral part hereof.

Section 2 Information and Services to be Furnished by the TOWN

2.1 The information and services to be furnished by the TOWN are as set out in Appendix "B", attached to this Contract, and made an integral part hereof.

Section 3 Schedule and Notice to Proceed

3.1 The CONSULTANT shall begin the work under this Contract on _____.

Section 4 Compensation

4.1 The CONSULTANT shall receive payment for the work performed under this Contract as set forth in Appendix "C", attached to this Contract, and made an integral part hereof contingent on the receipt of payment from the four participating developers.

Section 5 General Provisions

5.1 Work Office

The CONSULTANT shall perform the work under this Contract at 8365 Keystone Crossing, Suite 201, Indianapolis, Indiana 46240.

5.2 Employment

During the period of this Contract, the CONSULTANT shall not engage on this project on a full or part time or other basis any professional or technical personnel who are or have been at any time during the period of this Contract in the employ of the TOWN except regularly retired employees.

5.3 Covenant Against Contingent Fees

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Contract, and that they have not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty the TOWN shall have the right to annul this Contract without liability, or, at its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

5.4 Subletting and Assignment of Contract

No portion of the work under this Contract shall be sublet, assigned or otherwise disposed of, except with the written consent of the TOWN. Consent to sublet, assign or otherwise dispose of any portion of the work under this Contract shall not be construed to relieve the CONSULTANT of any responsibility for the fulfillment of this Contract. A subcontractor shall not subcontract any portion of its work under this Contract. CONSULTANT understands and agrees that it shall remain responsible for the work under this Contract as if directly performed by CONSULTANT.

5.5 Ownership of Documents

All documents, including tracings, drawings, reports, estimates, specifications, field notes, investigations, studies, etc., as instruments of service, are to be the property of the TOWN. During the performance of the services provided for, the CONSULTANT shall be responsible for any loss or damage to the documents, herein enumerated, while they are in their possession and any such loss or damage shall be restored at their expense. Full access to the work during the progress of the work shall be available to the TOWN.

5.6 Access to Records

The CONSULTANT and their subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the cost incurred and shall make such materials available at its respective offices at all reasonable times during the period of this Contract and for three years from the date of final payment under the terms of this Contract, for inspection by the TOWN and copies shall be furnished if requested.

5.7 Compliance with State and Other Laws and Standard of Care

The CONSULTANT specifically agrees that in performance of the services herein enumerated by him or by a subcontractor or anyone acting on behalf of either, they will comply with any and all Local,

State, and Federal statutes, ordinances, and regulations and obtain all permits that are applicable to the entry into and performance of this Contract.

CONSULTANT expressly represents that the basic services covered by this Contract will conform to the information furnished to or by the TOWN to CONSULTANT, and that such basic services will be performed in a timely manner, in a professional manner and in accordance with the industry standards. In addition, CONSULTANT acknowledges that it knows of the TOWN'S intended use and expressly represents that the basic services covered by this Contract which have been selected, provided or performed by CONSULTANT, based upon such use, will be fit and sufficient for the particular purposes intended by the TOWN. CONSULTANT shall be responsible for the quality, technical accuracy, and the coordination of the basic services, furnished by CONSULTANT under this Contract. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its basic services if the errors or deficiencies result, independently of all other causes, from the negligent acts or omissions of CONSULTANT.

5.8 Responsibility for Claims and Liabilities and Indemnification

The CONSULTANT shall be responsible for all damage to life and property due to activities of the CONSULTANT, his subcontractors, or employees in connection with such services, and shall be responsible for all parts of his work both temporary and permanent.

CONSULTANT shall indemnify and hold harmless the Town, the Town's officers, officials, both elected and appointed, and employees, and agents from and against any and all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professional and all court or arbitration or other dispute resolution costs) caused by and/or arising out of the negligent acts, errors, or omissions of CONSULTANT or CONSULTANT's officers, directors, partners, employees, agents and CONSULTANT's subcontractors in the performance and furnishing of CONSULTANT'S services under this Contract.

5.9 Status of Claims

The CONSULTANT shall be responsible for keeping the TOWN currently advised as to the status of any claims made for damages against the CONSULTANT resulting from services performed under this Contract. The CONSULTANT shall send notice of claims related to work under this Contract to the TOWN.

5.10 Workman's Compensation and Liability Insurance

The CONSULTANT shall procure and maintain, until final payment by the TOWN for the services covered by this Contract, insurance of the kinds and in the amounts hereinafter provided in insurance companies authorized to do such business in the State of Indiana with ratings of at least A.M. Best of B+ or better covering all operations under this Contract whether performed by him or by his subcontractor. The CONSULTANT will not be given a notice to proceed until the CONSULTANT has furnished a certificate or certificates in a form satisfactory to the TOWN, showing that this section has been complied with. During the life of this Contract, the CONSULTANT shall furnish the TOWN with certificates showing that the required insurance coverage is maintained. The certificate or certificates shall provide that the policies shall not be changed or canceled until ten (10) days written

notice has been given to the TOWN. In the event that such written notice of change or cancellation is given, the TOWN may at its option terminate this Contract and no further compensation shall in such case be made to the CONSULTANT.

The kinds and amounts of insurance required are as follows:

- (A) Policy covering the obligations of the CONSULTANT in accordance with the provisions of the Workmen's Compensation Law. This Contract shall be void and of no effect unless the CONSULTANT procures such policy and maintains it until acceptance of the work.
- (B) Comprehensive Policies of Bodily Injury Liability and Property Damage Liability Insurance, including Owners and Contractors Protective Coverage and a Save and Hold Harmless Endorsement of the types herein specified each with Bodily Injury Limits of Liability of not less than \$1,000,000.00 for each person, including death at any time resulting therefrom, and not less than \$1,000,000.00 in any one accident, and not less than \$1,000,000.00 for all damages arising out of injury to or destruction of property.
- (C) Automobile Policies of Bodily Injury and Property Damage Liability Insurance of the types herein specified with bodily injury limits of liability of not less than \$100,000.00 for each person, including death at any time resulting therefrom, and not less than \$300,000.00 in any one accident, and not less than \$100,000.00 for all damages arising out of injury to or destruction of property, including hired and non-owned vehicles.
- (D) Professional Liability Insurance in the amount of not less than \$2,000,000.00 for CONSULTANT's failure to perform the services in accordance with the terms of this Contract.

5.11 Changes in Work

In the event the TOWN requires a major change in scope, character or complexity of the work after the work has progressed as directed by the TOWN, adjustments in compensation to the CONSULTANT and in time of performance of the work as modified, shall be determined by the TOWN in the exercise of its honest and reasonable judgment and the CONSULTANT shall not commence the additional work or the change of the scope of the work until a supplemental agreement is executed and the CONSULTANT is authorized in writing by the TOWN.

5.12 Delays and Extensions

The CONSULTANT agrees that no charges or claim for damages shall be made by him for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Contract. Such delays or hindrances, if any, shall be compensated for by an extension of time for such period as may be determined by the TOWN in the exercise of its honest and reasonable judgment, it being understood, however, the permitting of the CONSULTANT to proceed to complete any services, or any part of them after the date to which the time of completion may have been

extended, shall in no way operate as a waiver on the part of the TOWN of any or its rights herein.

5.13 Abandonment and Termination

- (A) The TOWN reserves the right to terminate or suspend this Contract at any time, with or without cause upon written notice. Upon the mailing or delivery of such notice or personal delivery thereof to the CONSULTANT, this Contract shall terminate, and the TOWN may by any method it deems to be necessary designate and employ other consultants by agreement or otherwise, to perform and complete the services herein described. When written notice is referred to herein, it shall be deemed given when deposited in the mail addressed to the CONSULTANT at its last known address.
- (B) If the TOWN shall abandon or terminate the services herein mentioned, the CONSULTANT shall deliver to the TOWN all data, reports, drawings, specifications, and estimates completed or partially completed and these shall become the property of the TOWN. The earned value of the work performed shall be based upon an estimate of the portions of the total services as have been rendered by the CONSULTANT to the date of the abandonment and which estimate shall be a made by the TOWN in the exercise of its honest and reasonable judgment for all services to be paid for on a lump sum basis; provided however, in no event shall CONSULTANT be entitled to or paid for services that have not been rendered.
- (C) If, at any time, for any cause whatsoever, the CONSULTANT shall abandon or fail to timely perform any of its duties hereunder, including the preparation and completion of plans and specifications within the several times herein before specified, or within such further extension or extensions or time as agreed upon, the TOWN may, in addition to its rights to terminate this Contract with or without cause at any time, give written notice, that if the CONSULTANT shall not within twenty (20) calendar days from the date of such notice, have complied with the requirements of this Contract, then the Contract is deemed terminated. Upon the mailing or delivery of such notice or personal delivery thereof to the CONSULTANT, and the failure of the CONSULTANT within said described (20) day period to fully comply with each and all requirements of this Contract, this Contract shall terminate and the TOWN may by any method it deems to be necessary designate and employ other consultants by agreement or otherwise, to perform and complete the services herein described. When written notice is referred to herein, it shall be deemed given when deposited in the mail addressed to the CONSULTANT at its last known address.
- (D) In case the TOWN shall act under any provision of this Section 5.13, then and in such event, all data, reports, drawings, plans, sketches, sections, and models, all specifications, estimates, measurements and data pertaining to the project, prepared under the terms or in fulfillment of this Contract, shall be delivered within twenty (20) days to the TOWN. In the event of the failure by the CONSULTANT to make such delivery upon demand, then and in that event the CONSULTANT shall pay to the TOWN any damage it may sustain by reason thereof.

5.14 Successors and Assignees

The TOWN, insofar as authorized by law, binds itself and its successors, and the CONSULTANT binds their successors, executors, administrators and assignees, to the other party of this Contract and to the successors, executors, administrators and assignees of such other party, as the case may be insofar as authorized by law, in respect to all covenants of this Contract. Except as above set forth, neither the TOWN nor the CONSULTANT shall assign, sublet or transfer its or their interest in this

Contract without the consent of the other.

- 5.15 Nondiscrimination. In carrying out the obligations under this Contract, neither CONSULTANT nor any person or entity acting by or through CONSULTANT, shall discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, familial status, or national origin. Any violation of this covenant may be regarded as a material breach of this Contract.
- 5.16 Litigation and Attorneys' Fees. In the event it shall become necessary for TOWN to bring suit to enforce any provisions of this Contract, the TOWN shall be entitled to recover, in addition to any damages or other relief granted as a result of such litigation, all costs and expenses of such litigation and reasonable attorneys' fees (including attorneys' fees and costs of appeals) incurred by TOWN.
- 5.17 No Investment Activities in Iran. As required by I.C. 5-22-16.5, the signature entered on behalf of the CONSULTANT below constitutes the CONSULTANT's certification that it is not engaged in investment activities with the government of Iran or any agency or instrumentality of the government of Iran, all as defined and regulated by Senate Enrolled Act 231, effective July 1, 2012.
- 5.18 E-Verify. CONSULTANT shall enroll in and verify the work eligibility status of all of its newly hired employees through the E-Verify program as defined in I.C. 22-5-1.7-3. CONSULTANT shall not knowingly employ or contract with any unauthorized alien. CONSULTANT shall not retain an employee or contract with a person that CONSULTANT subsequently learns is an unauthorized alien. CONSULTANT shall require all subcontractors who perform work under its contract to certify to CONSULTANT that:
- (1) Subcontractor does not knowingly employ or contract with an unauthorized alien; and
 - (2) Subcontractor has enrolled and is participating in the E-Verify program. CONSULTANT agrees to maintain this certification at least two years after the term of a contract with subcontractor.


5.15 Supplements

This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

IN TESTIMONY WHEREOF, the parties hereto have executed this Contract.


A&F ENGINEERING CO., LLC

TOWN OF DANVILLE, INDIANA

BY 
Steven J Fehribach, PE
President

BY _____

Attest:

BY 
R. Matthew Brown, PE, PTOE
Vice President

BY _____

DRAFT

APPENDIX A

SCOPE OF SERVICE

PHASE I – TRAFFIC IMPACT STUDY

The study intersections for the traffic analysis include:

- a. US 36 & CR 200 E
 - b. CR 200 E & Danville Commons Drive
 - c. US 36 & Proposed Access Drive
1. Conduct AM and PM peak hour traffic volume counts at the study intersections.
 2. Estimate year 2045 background traffic volumes by applying a 0.5% per year growth rate to the existing traffic volumes and adding traffic projections from the following future developments:
 - a. Easton Grey (Avon)
 - b. Miles Farm (Danville)
 - c. 3.35 acre Walmart outlot (assumed to be 21,500 square feet of general retail)
 3. Using the ITE Trip Generation Manual (12th Edition), estimate the number of generated trips for approximately 260,000 square feet of general retail development (proposed development) that will be located on approximately 40 acres along US 36 between CR 200 E and Main Street. The estimate of square footage and land uses may be refined based on the most recent site plan(s) developed for the two parcels owned by Brazos Family Properties LLC.
 4. Assign and distribute the generated traffic volumes from the proposed development to the study intersections assuming the following access scenarios for the development:
 - a. No access to US 36
 - b. Right-In/Right-Out access to US 36
 - c. Left-In/Right-In/Right-Out access to US 36
 5. Add the generated traffic volumes from the proposed development to the year 2045 background traffic volumes.
 6. Conduct capacity/level of service and turn lane warrant analyses using the traffic volumes obtained in step 5 at each of the study intersections for each of the access scenarios outlined in step 4.
 7. Prepare a written traffic impact study documenting all data, analysis, conclusions and recommendations outlining the results from each of the access scenarios.

PHASE II – PERMIT APPLICATION

1. File permit application on the INDOT EPS for the proposed access drive.
2. Upload applicable documentation to supplement the permit application. This does not include environmental studies, conceptual or design plans.

APPENDIX B

INFORMATION AND SERVICE TO BE FURNISHED BY THE TOWN

The TOWN shall furnish the consultant with the following:

1. All relevant site plans and/or site details needed for the traffic impact study.
2. All relevant documents needed for the commercial driveway permit application.

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APPENDIX C

FEES

The fees to provide the services outlined in the scope of work are as follows:

1. The lump sum fee to provide the services outlined in Appendix A is \$38,460.00. This includes the \$600 fee to file the INDOT permit application.
2. The fees to provide additional services, if required, will be billed on the basis of an hourly rate as shown in the hourly rate schedule. However, a lump sum or maximum fee will be offered if the scope of work for any additional services can be defined.
3. Hourly Rate Schedule:
 - a. Principal \$300.00
 - b. Vice President \$295.00
 - c. Senior Traffic Engineer \$165.00
 - d. Traffic Engineer \$130.00
 - e. Data Collection Specialist \$125.00
 - f. AutoCAD Technician \$140.00