

3
4 AN ORDINANCE approving CONSULTING CONTRACT –
5 PROFESSIONAL ENGINEERING SERVICES FOR
6 GOEGLEIN RD OVER BULLERMAN DRAIN - WO #0382X
7 - (\$145,377.00) between A&Z ENGINEERING, LLC and the
8 City of Fort Wayne, Indiana by and through its Board of
9 Public Works.

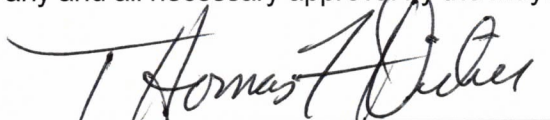
10 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF**
11 **THE CITY OF FORT WAYNE, INDIANA:**

12 **SECTION 1.** That the CONSULTING CONTRACT - PROFESSIONAL
13 ENGINEERING SERVICES FOR GOEGLEIN RD OVER BULLERMAN DRAIN - WO
14 #0382X - between A&Z ENGINEERING, LLC and the City of Fort Wayne, Indiana by and
15 through its Board of Public Works is hereby ratified, and affirmed and approved in all
16 respects, respectfully for:

17 Consulting and professional engineering services for the
18 CONSTRUCTION ADMINISTRATION AND INSPECTION FOR THE
19 SUPER STRUCTURE REPLACEMENT OF BRIDGE OVER
20 BULLERMAN DRAIN IN THE FORT WAYNE DISTRICT;

21 involving a total cost of ONE HUNDRED FORTY-FIVE THOUSAND THREE HUNDRED
22 SEVENTY-SEVEN AND 00/100 DOLLARS - (\$145,377.00). A copy of said Contract is on
23 file with the Office of the City Clerk and made available for public inspection, according to
24 law.

25 **SECTION 2.** That this Ordinance shall be in full force and effect from and
26 after its passage and any and all necessary approval by the Mayor.

27 
28 _____
29 Council Member

30 APPROVED as to form and legality

31 
32 _____
33 Malak Heiny, City Attorney

LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of the date of the last signature affixed hereto ("Effective Date") by and between City of Fort Wayne, acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and A&Z ENGINEERING, LLC, (A&Z) ("the CONSULTANT"), [a corporation/limited liability company organized under the laws of the State of INDIANA].

Des. No.: 1902836

Project Description: Construction Administration and Inspection for the Super Structure Replacement over Bullerman Drain in the Fort Wayne District

RECITALS

WHEREAS, the LPA has entered into an agreement to utilize federal monies with the Indiana Department of Transportation ("INDOT") for a transportation or transportation enhancement project ("the Project"), which Project Coordination Contract is herein attached as Attachment 1 and incorporated as reference; and

WHEREAS, the LPA wishes to hire the CONSULTANT to provide services toward the Project completion more fully described in Appendix "A" attached hereto ("Services");

WHEREAS, the CONSULTANT has extensive experience, knowledge and expertise relating to these Services; and

WHEREAS, the CONSULTANT has expressed a willingness to furnish the Services in connection therewith.

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

The "Recitals" above are hereby made an integral part and specifically incorporated into this Contract.

SECTION I SERVICES BY CONSULTANT. The CONSULTANT will provide the Services and deliverables described in Appendix "A" which is herein attached to and made an integral part of this Contract.

SECTION II INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA. The information and services to be furnished by the LPA are set out in Appendix "B" which is herein attached to and made an integral part of this Contract.

SECTION III TERM. The term of this Contract shall be from the date of the last signature affixed to this Contract to the completion of the construction contract which is estimated to be December 2022. A schedule for completion of the Services and deliverables is set forth in Appendix "C" which is herein attached to and made an integral part of this Contract.

SECTION IV COMPENSATION. The LPA shall pay the CONSULTANT for the Services performed under this Contract as set forth in Appendix "D" which is herein attached to and made an integral part of this Contract. The maximum amount payable under this Contract shall not exceed \$ 145,377.00

SECTION V NOTICE TO PROCEED AND SCHEDULE. The CONSULTANT shall begin the work to be performed under this Contract only upon receipt of the written notice to proceed from the LPA, and shall deliver the work to the LPA in accordance with the schedule contained in Appendix "C" which is herein attached to and made an integral part of this Contract.

SECTION VI **GENERAL PROVISIONS**

1. **Access to Records.** The CONSULTANT and its sub-consultants, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection or audit by the LPA, State, FHWA, or authorized designees. Copies shall be furnished at no cost to the LPA if requested.

2. **Assignment; Successors**

A. The CONSULTANT binds its successors and assignees to all the terms and conditions of this Contract. The CONSULTANT may assign its right to receive payments to such third parties as the CONSULTANT may desire without the prior written consent of the LPA, provided that the CONSULTANT gives written notice (including evidence of such assignment) to the LPA thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

B. The CONSULTANT shall not assign or subcontract the whole or any part of this Contract without the LPA's prior written consent. Additionally, the CONSULTANT shall provide prompt written notice to the LPA of any change in the CONSULTANT's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

3. **Assignment of Antitrust Claims.** As part of the consideration for the award of this Contract, the CONSULTANT assigns to the LPA all right, title and interest in and to any claims the CONSULTANT now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

4. **Audits.** The CONSULTANT acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC § 5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the CONSULTANT to be a "Contractor" under 2 C.F.R. 200.330 for purposes of this Contract. However, if it is determined that the CONSULTANT is a "sub recipient" and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), CONSULTANT shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

5. **Authority to Bind CONSULTANT.** The signatory for the CONSULTANT represents that he/she has been duly authorized to execute this Contract on behalf of the CONSULTANT and has obtained all necessary or applicable approvals to make this Contract fully binding upon the CONSULTANT when his/her signature is affixed and accepted by the LPA.

6. **Certification for Federal-Aid Contracts Lobbying Activities.** The CONSULTANT certifies, by signing and submitting this Contract, to the best of its knowledge and belief that the LPA has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal agreement, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, (Disclosure Form to Report Lobbying), in accordance with its instructions.
3. The CONSULTANT also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier sub-consultants, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.
7. **Changes in Work.** The CONSULTANT shall not commence any additional work or change the scope of the work until authorized in writing by the LPA. The CONSULTANT shall make no claim for additional compensation or time in the absence of prior written approval and amendment executed by all signatories hereto. This Contract may be amended, supplemented, or modified only by a written document executed in the same manner as this Contract. The CONSULTANT acknowledges that no claim for additional compensation or time may be made by implication, oral agreements, actions, inaction, or course of conduct.
8. **Compliance with Laws.**
 - A. The CONSULTANT shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the LPA and the CONSULTANT to determine whether the provisions of this Contract require formal modification.
 - B. The CONSULTANT and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the LPA as set forth in IC § 4-2-6, *et seq.*, IC § 4-2-7, *et seq.* and the regulations promulgated thereunder. If the CONSULTANT has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the CONSULTANT shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Contract. If the CONSULTANT is not familiar with these ethical requirements, the CONSULTANT should refer any questions to the Indiana State Ethics Commission or visit the Inspector General's website at <http://www.in.gov/ig/>. If the CONSULTANT or its agents violate any applicable ethical standards, the LPA may, in its sole discretion, terminate this Contract immediately upon notice to the CONSULTANT. In addition, the CONSULTANT may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.
 - C. The CONSULTANT certifies by entering this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The CONSULTANT agrees that any payments currently due to the State of Indiana may be withheld from payments due to the CONSULTANT. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the CONSULTANT is current in its payments and has submitted proof of such payment to the State.
 - D. The CONSULTANT warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State and LPA of any such actions. During the term of such actions, the CONSULTANT agrees that the State and LPA may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the CONSULTANT's liability or guilt in any action initiated by the State or its agencies, and the LPA decides to delay, withhold, or deny work to the CONSULTANT, the CONSULTANT may request that it be allowed to continue, or receive work, without delay. The CONSULTANT must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State/LPA may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

F. The CONSULTANT warrants that the CONSULTANT and its sub-consultants, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the LPA. The CONSULTANT, its employees and sub-consultants have complied with and shall continue to comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the CONSULTANT pursuant to this Contract. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the LPA.

G. The CONSULTANT affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC § 5-22-3-7:

- (1) The CONSULTANT and any principals of the CONSULTANT certify that:
 - (A) the CONSULTANT, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or
 - (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and
 - (B) the CONSULTANT will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.
- (2) The CONSULTANT and any principals of the CONSULTANT certify that an affiliate or principal of the CONSULTANT and any agent acting on behalf of the CONSULTANT or on behalf of an affiliate or principal of the CONSULTANT, except for de minimis and nonsystematic violations,
 - (A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

9. **Condition of Payment.** The CONSULTANT must perform all Services under this Contract to the LPA's reasonable satisfaction, as determined at the discretion of the LPA and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The LPA will not pay for work not performed to the LPA's reasonable satisfaction, inconsistent with this Contract or performed in violation of federal, state, or local law (collectively, "deficiencies") until all deficiencies are remedied in a timely manner.

10. Confidentiality of LPA Information.

- A. The CONSULTANT understands and agrees that data, materials, and information disclosed to the CONSULTANT may contain confidential and protected information. Therefore, the CONSULTANT covenants that data, material, and information gathered, based upon or disclosed to the CONSULTANT for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the LPA's prior written consent.
- B. The parties acknowledge that the Services to be performed by the CONSULTANT for the LPA under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the LPA in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the CONSULTANT and the LPA agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by the CONSULTANT, the CONSULTANT agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Contract.

11. Debarment and Suspension.

- A. The CONSULTANT certifies by entering into this Contract that neither it nor its principals nor any of its sub-consultants are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CONSULTANT.
- B. The CONSULTANT certifies that it has verified the state and federal suspension and debarment status for all sub-consultants receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred sub-consultants. The CONSULTANT shall immediately notify the LPA if any sub-consultant becomes debarred or suspended, and shall, at the LPA's request, take all steps required by the LPA to terminate its contractual relationship with the sub-consultant for work to be performed under this Contract.

12. Delays and Extensions. The CONSULTANT agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the Services specified in this Contract. Such delays, if any, shall be compensated for by an extension of time for such period as may be determined by the LPA subject to the CONSULTANT's approval, it being understood, however, that permitting 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 LPA of any of its rights herein. In the event of substantial delays or extensions, or change of any kind, not caused by the CONSULTANT, which causes a material change in scope, character, or complexity of work the CONSULTANT is to perform under this Contract, the LPA at its sole discretion shall determine any adjustments in compensation and in the schedule for completion of the Services. CONSULTANT must notify the LPA in writing of a material change in the work immediately after the CONSULTANT first recognizes the material change.

13. Disadvantaged Business Enterprise Program.

- A. Notice is hereby given to the CONSULTANT and any sub-consultant, and both agree, that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification and failure to promptly cure such breach, may result in termination of this Contract or such remedy as INDOT deems appropriate. The referenced section requires the following assurance to be included in all subsequent contracts between the CONSULTANT and any sub-consultant:

The CONSULTANT, sub recipient or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

- B. The CONSULTANT shall make good faith efforts to achieve the DBE percentage goal that may be included as part of this Contract with the approved DBE sub-consultant identified on its Affirmative Action Certification submitted with its Letter of Interest, or with approved amendments. Any changes to a DBE firm listed in the Affirmative Action Certification must be requested in writing and receive prior approval by the LPA and INDOT's Economic Opportunity Division Director. After this Contract is completed and if a DBE sub-consultant has performed services thereon, the CONSULTANT must complete, and return, a Disadvantaged Business Enterprise Utilization Affidavit ("DBE-3 Form") to INDOT's Economic Opportunity Division Director. The DBE-3 Form requires certification by the CONSULTANT AND DBE sub-consultant that the committed contract amounts have been paid and received.

14. Disputes.

- A. Should any disputes arise with respect to this Contract, the CONSULTANT and the LPA agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The CONSULTANT agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the CONSULTANT fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the LPA or the CONSULTANT as a result of such failure to proceed shall be borne by the CONSULTANT, and the CONSULTANT shall make no claim against the LPA for such costs.
- C. If a party to this Contract is not satisfied with the progress toward resolving a dispute, the party must notify the other party of this dissatisfaction in writing. Upon written notice, the parties have (10) business days, unless the parties mutually agree in writing to extend this period, following the written notification to resolve the dispute. If the dispute is not resolved within ten (10) business days, a dissatisfied party may submit the dispute in writing to initiate negotiations to resolve the dispute. The LPA may withhold payments on disputed items pending resolution of the dispute.

15. **Drug-Free Workplace Certification.**

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the CONSULTANT hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The CONSULTANT will give written notice to the LPA within ten (10) days after receiving actual notice that the CONSULTANT, or an employee of the CONSULTANT in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the LPA for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the CONSULTANT certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CONSULTANT's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the CONSULTANT's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the CONSULTANT of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the LPA in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

16. **Employment Eligibility Verification.** As required by IC § 22-5-1.7, the CONSULTANT swears or affirms under the penalties of perjury that the CONSULTANT does not knowingly employ an unauthorized alien. The CONSULTANT further agrees that:

- A. The CONSULTANT shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The CONSULTANT is not required to participate should the E-Verify program cease to exist. Additionally, the CONSULTANT is not required to participate if the CONSULTANT is self-employed and does not employ any employees.
- B. The CONSULTANT shall not knowingly employ or contract with an unauthorized alien. The CONSULTANT shall not retain an employee or contract with a person that the CONSULTANT subsequently learns is an unauthorized alien.

- C. The CONSULTANT shall require his/her/its sub-consultants, who perform work under this Contract, to certify to the CONSULTANT that the sub-consultant does not knowingly employ or contract with an unauthorized alien and that the sub-consultant has enrolled and is participating in the E-Verify program.
- D. The CONSULTANT agrees to maintain this certification throughout the duration of the term of a contract with a sub-consultant.

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

- 17. **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.
- 18. **Funding Cancellation.** As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- 19. **Governing Law.** This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.
- 20. **Indemnification.** The CONSULTANT agrees to indemnify, defend, and hold harmless the LPA, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the CONSULTANT and/or its sub-consultants, if any, in the performance of this Contract. The LPA will not provide indemnification to the CONSULTANT.
- 21. **Independent Contractor; Workers' Compensation Insurance.** The CONSULTANT is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or sub-consultants of the other party. The CONSULTANT shall provide all necessary unemployment and workers' compensation insurance for the CONSULTANT's employees, and shall provide the LPA with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.
- 22. **Liability.** If the CONSULTANT or any of its sub-consultants fail to comply with any federal requirement which results in the LPA's repayment of federal funds to INDOT the CONSULTANT shall be responsible to the LPA, for repayment of such costs to the extent such costs are caused by the CONSULTANT and/or its SUB-CONSULTANTS.
- 23. **Licensing Standards.** The CONSULTANT, its employees and sub-consultants shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the CONSULTANT pursuant to this Contract. The LPA will not pay the CONSULTANT for any services performed when the CONSULTANT, its

employees or sub-consultants are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the CONSULTANT shall notify the LPA immediately and the LPA, at its option, may immediately terminate this Contract.

24. **Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.
25. **Nondiscrimination.** Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the CONSULTANT covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). The CONSULTANT certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the LPA and any applicant or employee of the CONSULTANT or any sub-consultant.

The LPA is a recipient of federal funds, and therefore, where applicable, the CONSULTANT and any sub-consultants shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

26. **Notice to Parties:** Any notice, request, consent or communication (collectively a "Notice") under this Agreement shall be effective only if it is in writing and (a) personally delivered; (b) sent by certified or registered mail, return receipt requested, postage prepaid; or (c) sent by a nationally recognized overnight delivery service, with delivery confirmed and costs of delivery being prepaid, addressed as follows:

Notices to the LPA shall be sent to:

Phillip LaBrash, PE Assistant City Engineer
City of Fort Wayne Indiana
200 East Berry Street
Fort Wayne IN, 46802

Notices to the CONSULTANT shall be sent to:

Jamal T. Anabtawi, P.E.
A&Z Engineering, LLC
1220 Ruston Pass
Fort Wayne, IN 46825

or to such other address or addresses as shall be furnished in writing by any party to the other party. Unless the sending party has actual knowledge that a Notice was not received by the intended recipient, a Notice shall be deemed to have been given as of the date (i) when personally delivered; (ii) three (3) days after the date deposited with the United States mail properly addressed; or (iii) the next day when delivered during business hours to overnight delivery service, properly addressed and prior

to such delivery service's cut off time for next day delivery. The parties acknowledge that notices delivered by facsimile or by email shall not be effective.

27. **Order of Precedence; Incorporation by Reference.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the LPA, (3) RFP dated April 3, 2017 (4) CONSULTANT's response to RFP dated May 5, 2017, and (5) attachments prepared by the CONSULTANT. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

28. **Ownership of Documents and Materials.**

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the CONSULTANT prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the CONSULTANT hereby transfers and assigns any ownership claims to the LPA so that all Materials will be the property of the LPA. If ownership interest in the Materials cannot be assigned to the LPA, the CONSULTANT grants the LPA a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the CONSULTANT, without the prior written consent of the LPA, is prohibited. During the performance of this Contract, the CONSULTANT shall be responsible for any loss of or damage to the Materials developed for or supplied by the LPA and used to develop or assist in the services provided while the Materials are in the possession of the CONSULTANT. Any loss or damage thereto shall be restored at the CONSULTANT's expense. The CONSULTANT shall provide the LPA full, immediate, and unrestricted access to the Materials and to CONSULTANT's work product during the term of this Contract.

29. **Payments.**

A. All payments shall be made in arrears and in conformance with the LPA's fiscal policies and procedures. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC § 4-13-2-20.

B. If the CONSULTANT is being paid in advance for the maintenance of equipment, software or a service as a subscription, then pursuant to IC § 4-13-2-20(b) (14), the CONSULTANT agrees that if it fails to fully provide or perform under this Contract, upon receipt of written notice from the LPA, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

30. **Penalties/Interest/Attorney's Fees.** The LPA will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34-13-1 and IC § 34-52-2.

Notwithstanding the provisions contained in IC § 5-17-5, any liability resulting from the LPA's failure to make prompt payment shall be based solely on the amount of funding originating from the LPA and shall not be based on funding from federal or other sources.

31. **Pollution Control Requirements.** If this Contract is for \$100,000 or more, the CONSULTANT:

i. Stipulates that any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;

- ii. Agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and
 - iii. Stipulates that, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the Federal Highway Administration of the receipt of any knowledge indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.
32. **Renewal Option.** This Contract may be renewed under the same terms and conditions. The term of the renewed contract may not be longer than the term of the original Contract.
33. **Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.
34. **Status of Claims.** The CONSULTANT shall give prompt written notice to the LPA any claims made for damages against the CONSULTANT resulting from Services performed under this Contract and shall be responsible for keeping the LPA currently advised as to the status of such claims. The CONSULTANT shall send notice of claims related to work under this Contract to:
- Phillip LaBrash, PE
Assistant City Engineer
City of Fort Wayne Indiana
200 East Berry Street
Fort Wayne IN, 46802
35. **Sub-consultant Acknowledgement.** The CONSULTANT agrees and represents and warrants to the LPA, that the CONSULTANT will obtain signed sub-consultant Acknowledgement forms, from all sub-consultants providing Services under this Contract or to be compensated for Services through this Contract. The CONSULTANT agrees to provide signed originals of the sub-consultant Acknowledgement form(s) to the LPA for approval prior to performance of the Services by any sub-consultant.
36. **Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.
37. **Taxes.** The State is exempt from most state and local taxes and many federal taxes. The LPA will not be responsible for any taxes levied on the CONSULTANT as a result of this Contract.
38. **Termination for Convenience.**
- A. This Contract may be terminated, in whole or in part, by the LPA, whenever, for any reason, the LPA determines that such termination is in its best interest. Termination of services shall be affected by delivery to the CONSULTANT of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The CONSULTANT shall be compensated for services properly rendered prior to the effective date of termination. The LPA will not be liable for services performed after the effective date of termination. The CONSULTANT shall be compensated for services herein provided but in no case shall total payment made to the CONSULTANT exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

- B. If the LPA terminates or partially terminates this Contract for any reason regardless of whether it is for convenience or for default, 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 ten (10) days to the LPA. In the event of the failure by the CONSULTANT to make such delivery upon demand, the CONSULTANT shall pay to the LPA any damage (including costs and reasonable attorneys' fees and expenses) it may sustain by reason thereof.
39. **Termination for Default.**
- A. With the provision of thirty (30) days' notice to the CONSULTANT, the LPA may terminate this Contract in whole or in part if the CONSULTANT fails to:
1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the LPA determines progress is being made and the extension is agreed to by the parties;
 2. Deliver the supplies or perform the services within the time specified in this CONSULTANT or any extension.
 3. Make progress so as to endanger performance of this Contract; or
 4. Perform any of the other provisions of this Contract.
- B. If the LPA terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the LPA considers appropriate, supplies or services similar to those terminated, and the CONSULTANT will be liable to the LPA for any excess costs for those supplies or services. However, the CONSULTANT shall continue the work not terminated.
- C. The LPA shall pay the contract price for completed supplies delivered and services accepted. The CONSULTANT and the LPA shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The LPA may withhold from these amounts any sum the LPA determines to be necessary to protect the LPA against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the LPA in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.
- E. Default by the LPA. If the CONSULTANT believes the LPA is in default of this Contract, it shall provide written notice immediately to the LPA describing such default. If the LPA fails to take steps to correct or cure any material breach of this Contract within sixty (60) days after receipt of such written notice, the CONSULTANT may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination, including reasonable attorney fees and expenses, provided that if such cure is not reasonably achievable in such time, the LPA shall have up to one hundred twenty (120) days from such notice to effect such cure if the LPA promptly commences and diligently pursues such cure as soon as practicable. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of such termination. The CONSULTANT agrees that it has no right of termination for non-material breaches by the LPA.
40. **Travel.** No expenses for travel will be reimbursed unless specifically authorized by this Contract. Permitted expenses will be reimbursed at the rate paid by the State and in accordance with the Budget Agency's *Financial Management Circular – Travel Policies and Procedures* in effect at the time the expenditure is made. Out-of-state travel requests must be reviewed by the LPA for availability of funds and for conformance with *Circular* guidelines.

41. **Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the LPA's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CONSULTANT shall be and remain liable to the LPA in accordance with applicable law for all damages to the LPA caused by the CONSULTANT's negligent performance of any of the services furnished under this Contract.
42. **Work Standards/Conflicts of Interest.** The CONSULTANT shall understand and utilize all relevant INDOT standards including, but not limited to, the most current version of the Indiana Department of Transportation Design Manual, where applicable, and other appropriate materials and shall perform all Services in accordance with the standards of care, skill and diligence required in Appendix "A" or, if not set forth therein, ordinarily exercised by competent professionals doing work of a similar nature utilizing the highest professional and technical guidelines and standards.
43. **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the parties hereto. Other than the indemnity rights under this Contract, nothing contained in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto) any rights, benefits or remedies of any kind or character whatsoever.

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Non-Collusion.

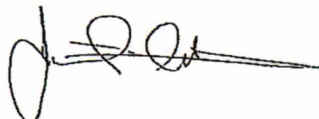
The undersigned attests, subject to the penalties for perjury, that he/she is the CONSULTANT, or that he/she is the properly authorized representative, agent, member or officer of the CONSULTANT, that he/she has not, nor has any other member, employee, representative, agent or officer of the CONSULTANT, 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 Contract other than that which appears upon the face of this Contract. Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC §4-2-6-1, has a financial interest in the Contract, the Party attests to compliance with the disclosure requirements in IC §4-2-6-10.5.

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


A&Z ENGINEERING, LLC

City of Fort Wayne Indiana
Board of Public Works

Date 11-28-23



Signature

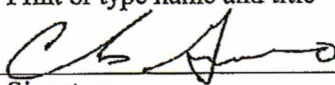


Signature

Jamal T. Anabtawi, Member
(Print or type name and title)

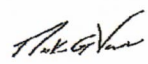
Shan Gunawardena, Chair
Print or type name and title

ABSENT
Signature

Kumar Menon, Member
Print or type name and title

Signature

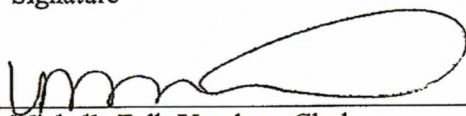
Chris Guerrero, Member
Print or type name and title

Attest:

Signature


Mark G. Voss, Project Manager/VP

Attest:

Signature


Michelle Fulk-Vondran, Clerk
(Print or type name and title)

APPENDIX "A"

SERVICES TO BE FURNISHED BY CONSULTANT:

In fulfillment of this Contract, the CONSULTANT shall comply with the requirements of the appropriate regulations and requirements of the Indiana Department of Transportation and Federal Highway Administration.

The CONSULTANT shall be responsible for performing the following activities:

A. Engineering Personnel

For the fulfillment of all services outlined in Section B below, the CONSULTANT will provide one (1) fulltime Resident Project Representative (RPR), and Inspection personnel as required for a period of time necessary to complete the construction project and final construction records. The qualifications and experiences of personnel provided by the CONSULTANT are subject to approval by the Local Public Agency and the Indiana Department of Transportation (INDOT) and no personnel will be assigned to the project until Local Public Agency and INDOT approval is obtained. The fulltime Resident Project Representative will take directions from and report to the Indiana Department of Transportation's Area Engineer on all matters concerning contract compliance and administration. The fulltime Resident Project Representative will coordinate project activities with the Local Public Agency's Project Coordinator and Indiana Department of Transportation's Area Engineer.

B. Description of Services

1. Construction Schedule: Review the construction schedule prepared by the Contractor for compliance with the Contract and give to the Local Public Agency detailed documentation concerning its acceptability.
2. Conferences: Attend pre-construction conferences as directed by the Local Public Agency, arrange a schedule of bi-weekly 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 Local Public Agency, and assist in the notification to those who are expected to attend. Record for the Local Public Agency, as directed, minutes of such meetings. The CONSULTANT shall be available for conferences as requested by the Local Public Agency, State, and Federal Highway Administration to review working details of the project. The Local Public Agency, State and Federal Highway Administration may review and inspect the activities whenever desired during the life of the Agreement.
3. Liaison: Serve as the Local Public Agency'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 Local Public Agency and INDOT by the full-time Resident Project Representative.
4. Cooperate with the Local Public Agency in dealing with the various Federal, State and Local Agencies having jurisdiction over the project.
5. Assist the Local Public Agency and INDOT in obtaining from the Contractor a list of his proposed suppliers and sub-contractors.
6. Assist the Local Public Agency and INDOT 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 accordance with INDOT's procedures.
8. Samples – Obtain field samples of materials delivered to the site as required by the State and deliver such samples to the appropriate INDOT laboratory office.
9. Shop Drawings:
 - a. Receive shop drawings and falsework drawings. Check for completeness and then forward to INDOT personnel 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 Local Public Agency and INDOT 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 Local Public Agency 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 the manner and extent prescribed by 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 Local Public Agency and Indiana Department of Transportation.
 - d. Verify that required testing has been accomplished.
11. Modification(s): Consider and evaluate the Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to the Local Public Agency and Indiana Department of Transportation.
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 logbook, 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 logbook to the Local Public Agency.
 - c. Maintain for the Local Public Agency, 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 Local Public Agency 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 INDOT and the Local Public Agency.
13. Reports: Furnish to the INDOT and the Local Public Agency at periodic intervals, as required, progress reports of the project including the Contractor's compliance with the approved construction schedule. The reports will include weekly progress reports detailing the work performed and a monthly progress report summarizing both the construction and construction

engineering completion status. Furnish bi-weekly reports including photos of the progress for Local Public Agency use for public updates.

14. Progress Estimates: Prepare progress estimates for periodic partial payments to the Contractor and deliver to the Local Public Agency and Indiana Department of Transportation 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 in accordance with the directions of the INDOT's Area Engineer. 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 Indiana Department of Transportation's procedures.
18. Conflict of Interest: The CONSULTANT acknowledges and agrees that the CONSULTANT, a firm associated with the CONSULTANT or an individual associated with the CONSULTANT cannot accept or perform any work (including but not limited to construction engineering, production staking, falsework drawings, shop drawings) for the contractor, material supplier of the contractor or for any of the contractor's subcontractors on this project. For purposes of this section a firm is associated with the CONSULTANT if the firm and CONSULTANT have a common director, common officer or a common owner. For purposes of this section an individual is associated with the CONSULTANT if the individual is an employee of the CONSULTANT or an employee of a firm associated with the CONSULTANT. For purposes of this section the following definitions shall be used:
Director – Any member of the board of directors of a corporation.
Officer – The president, secretary, treasurer, or such other officers as may be prescribed by the corporation bylaws.
Owner – A sole proprietor, any partner in a partnership, or any shareholder of a corporation.

APPENDIX "B"

INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA:

The LPA shall furnish the CONSULTANT with the following:

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

APPENDIX "C"

SCHEDULE:

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

All work by the CONSULTANT under this Contract shall be completed and delivered to the LPA for review and approval within the approximate time periods shown in the following submission schedule:

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 Local Public Agency. The CONSULTANT shall complete and deliver the final construction record and final estimate to the District within forty-five (45) working days after the contractor's last day of work.

APPENDIX "D"

Compensation:

A. Amount of payment

1. The CONSULTANT shall receive as payment for the work performed under this Contract the total amount NOT To Exceed \$ 145,377.00 unless a supplement is executed by the parties that increases the maximum amount payable.
2. The CONSULTANT will be paid for the actual hours of work performed exclusively on this Contract in accordance with the following negotiated hourly billing rates per classification:

Classification	Hourly Rates	
	Reg. Rate	Ovt. Rate
Sr. Project Manager/Principle (Licensed PE)	\$ 231.00	-
Project Manager/Project Engineer (Licensed PE)	\$ 0.00	-
Sr. Engineer/Sr. Designer	\$ 0.00	-
Sr Engineer/Sr. Construction Supervisor	\$ 118.00	
Project Supervisor/RPR (Non-Engineer)	\$ 93.00	\$ 111.00
Inspector	\$ 86.00	\$ 102.00

3. For those services performed by the CONSULTANT, the CONSULTANT will be reimbursed the direct non-salary costs (the actual costs of such out-of-pocket expenses directly attributable to the Contract such as fares, round trip mileage from CONSULTANTS' personnel place of residence to the INDOT's assigned job site including the mileage at the job site, long distance calls, equipment rentals, reproductions, etc.) as approved by INDOT. The direct non-salary costs for travel reimbursement shall not exceed the limitations on travel expenses set out in the current State of Indiana policy on travel reimbursement. The CONSULTANT shall provide personnel local to the assigned District, county, or project as published in the Request for Proposal or as otherwise agreed to and stated herein such that lodging and subsistence expenses are not incurred. Travel time will not be reimbursable for less than 50 miles commute each way from CONSULTANTS' personnel residence to the assigned work location.
4. For those services performed by other than the CONSULTANT, the CONSULTANT will be reimbursed for the actual invoice for the services performed by other than the CONSULTANT, provided that each such invoice shall be subject to approval as reasonable by INDOT prior to any reimbursement thereof.
5. The CONSULTANT shall submit biweekly timesheets for each employee working on this Contract to the INDOT Area Engineer or PE/S. Hours worked by the employee shall be recorded to the nearest 0.25 hour.
6. The CONSULTANT shall not bill for overtime premium for any individual until forty hours have been worked on the Contract for the week by that individual. Holiday hours not worked on the Contract do not apply to the forty hour weekly total.
7. The actual amount payable shall be determined in accordance with a final audit by INDOT's Division of Finance.

B. Method of Payment

1. The CONSULTANT may submit a maximum of one invoice voucher per calendar month for work covered under this Contract. The invoice vouchers shall be submitted to the District Consultant Services Manager.

Fort Wayne District Office
Indiana Department of Transportation
5333 Hatfield Road
Fort Wayne, IN 46808

2. The invoice vouchers shall represent the value, to INDOT, of the partially completed work as of the date of the invoice voucher. When submitting an invoice, the CONSULTANT shall furnish a copy of records showing the individuals who worked on this Contract during the month, their classification, the number of hours worked since the last invoice voucher was submitted, and the hourly rate.
3. If INDOT does not agree with the amount claimed by the CONSULTANT on an invoice voucher, INDOT will send the CONSULTANT a letter by regular mail and list the differences between actual and claimed progress. The letter will be sent to the CONSULTANT's address on page 1 of this Contract or the CONSULTANT's last known address.
4. If, prior to the satisfactory completion of the services under this Contract, the total of the costs incurred by the CONSULTANT is within ten percent (10%) of the maximum amount payable, the CONSULTANT shall notify INDOT and the status will be evaluated.
5. The CONSULTANT shall submit to INDOT a list of personnel, along with job classification and salary, the firm is planning to use on work covered by this Contract. No additions in personnel or changes in personnel salaries shall be effective for purpose of this Contract until approved by INDOT.

CITY OF FORT WAYNE, INDIANA

A&Z Engineering, LLC

(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

- 1. FINANCIAL INTERESTS;**
- 2. POTENTIAL CONFLICTS OF INTEREST;**
- 3. CURRENT AND PENDING CONTRACTS OR PROCUREMENTS**

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$50,000 or more. Vendors shall disclose their financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the Vendor's contract, bid, proposal or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

Section 1: Disclosure of Financial Interest in Vendor

- a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

- (1) Equity ownership exceeding 5%
- (2) Distributable income share exceeding 5%
- (3) Not Applicable (If N/A, go to Section 2)

Name: Jamal T. Anabtawi Address: 6927 Pintail Drake Ct Ft Wayne IN 46845

Name: Warren J. Zwick Address: 12226 Wood Glen Drive Ft Wayne IN 46814

Name: Mark Voss Address: 6615 S 082 E Wolcottville IN 46795

Name: Landon Grogg Address: 8510 Stand Ridge Run Fort Wayne IN 46825

- b. For each individual listed in Section 1a. show his/her type of equity ownership:

sole proprietorship stock
partnership interest units (LLC)
other (explain)

- c. For each individual listed in Section 1a. show the percentage of ownership interest in Vendor (or its parent): ownership interest:

Name: Jamal T. Anabtawi 50% Equity 43% Distributable

Name: Warren J. Zwick 50% Equity 43% Distributable

Name: Mark Voss 7% Distributable

Name: Landon Grogg 7% Distributable

Section 2: Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)

For each individual listed in Section 1a. check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

- a. City employment, currently or in the previous 3 years, including contractual employment for services:
 Yes _____ No x_____

- b. City employment of "Member of Immediate Family" (defined herein as: Spouse, Child, Step Child, Parent or Step Parent, Father-in-law or Mother-in-law, Brother or Sister, Step Brother or Step Sister, Half Brother or Half Sister, Brother-in-law or Sister-in-law, Son-in-law or Daughter-in-law, Grandparent or Step Grandparent, Grandparent or Step Grandparent of Spouse, Grandchild) Including contractual employment for services in the previous 3 years:

Yes _____ No x_____

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years: Yes _____ No x_____

Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have current contracts (including leases) with the City? Yes x No _____

If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact below (attach additional pages as necessary).

Liberty Mills Trail Ph II – Trail Design	WO 0167R	Dawn Ritchie	03-03-2017
Ardmore-Airport Expwy StmWtr	WO 83794	Ann Marie Smrchek	03-09-2021
Coldwater Rd Widening–Rdwy Design	WO 0417A	Patrick Zaharako	07-20-2021
77037–X30 Relief Sewer Improv	WO 77037	Khylei Meyers	12-08-2020
Gulfstream Dr Stormwater Improv	WO 83869	Ann Marie Smrchek	12-15-2021
2022 On-Call Survey & Draft Services	PO 22950043	Nathan Baggett	04-08-2022
Lincolndale Stormwater Improv II	WO 83868	Michael Saadeh	03-07-2023
2023 On-Call Strmwtr Dsgn Services		Anne Marie Smrchek	06-06-2023
2023-2025 On-Call Const Insp Services		Mike Kiester	07-18-2023
2023 On-Call SWP3 Insp Services		Charles Cochran	08-08-2023
Belmont St Stormwater Improv	WO 83939	Veronika Meyer	11-08-2023

- b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes x No _____

If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

- c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

Yes ___ No x

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms:

Name / Position / Payment Terms:

Name / Position / Payment Terms:

- d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.).

Company / Name / Payment Terms: n/a

Company / Name / Payment Terms: _____

Section 4: CERTIFICATION OF DISCLOSURES

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:

- a. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- c. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;
- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit

of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same elements as the offense of bid-rigging or bid-rotating

- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

A&Z Engineering, LLC

(Name of Vendor)

1220 Ruston Pass Fort Wayne IN 46825

Address

(260) 485-7077

Telephone

warren@az-engineering.net

E-Mail Address

The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed) Warren J. Zwick

Title Member

Signature 

Date 11/30/2023

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.

DIGEST SHEET

Department: Transportation Engineering

Resolution Number: #0382X

Title of Ordinance: Goeglein Rd over Bullerman Drain

Amount of Contract: \$145,377.00 Professional Services Agreement with A&Z Engineering, LLC

Description of Project (Be Specific): Superstructure replacement of bridge on a federally funded project.

What Are The Implications If Not Approved: Cannot proceed to construction without this agreement

If Prior Approval Is Being Requested, Justify:

Additional Comments:

BILL NO. S-23-12-08

REPORT OF COMMITTEE ON PUBLIC WORKS

December 19, 2023

Tom Didier Chair


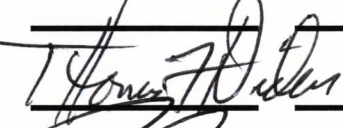






Michelle Chambers Co-Chair

All Council Members

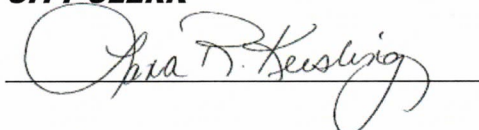
An Ordinance approving Consulting Contract – Professional Engineering Services for Goeglein Rd over Bullerman Drain - WO #0382X - between A&Z Engineering, LLC and the City of Fort Wayne, Indiana by and through its Board of Public Works

Involving a total cost of \$145,377.00

COMMITTEE ON PUBLIC WORKS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
<u>ARP</u>			
<u>CHAMBERS</u>			
<u>DIDIER</u>			
<u>ENSLEY</u>			
<u>FREISTROFFER</u>			
<u>HINES</u>			
<u>JEHL</u>			
<u>PADDOCK</u>			
<u>TUCKER</u>			

**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilperson Didier.

Read the second time by title and referred to the Public Works Committee.

Read the third time in full and on motion by Councilperson Didier, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CHAMBERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TUCKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: December 19, 2023



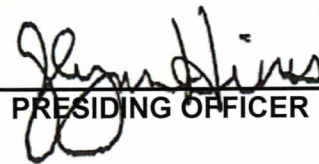
 LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as Special Ordinance No. S-23-12-08 on the 19th day of December, 2023

ATTEST:




 LANA R. KEESLING
 CITY CLERK



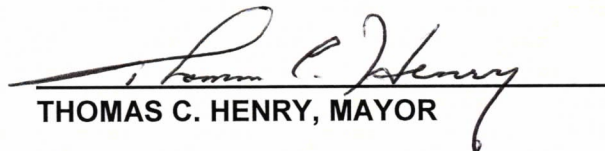
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 20th of December 2023, at the hour of 4:00 o'clock P.M. E.S.T.



 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 22ND day of December 2023, at the hour of 10:00 o'clock AM E.S.T.



 THOMAS C. HENRY, MAYOR

