

AGREEMENT

**TOWN OF LAPEL, INDIANA
and
ms consultants, inc.
for**

**THE PERFORMANCE OF ENGINEERING, ARCHITECTURAL AND PLANNING
SERVICES**

This AGREEMENT entered into this _____ day of _____, 2023 by and between the **Town of Lapel**, Indiana, with the Town Hall located at 825 North Main Street, Lapel, IN 46051, hereinafter referred to as the OWNER, and **ms consultants, inc.**, Engineers, Architects, and Planners, a corporation duly licensed and existing under the laws of the State of Indiana for the practice of engineering, hereinafter referred to as the ENGINEER, with offices located at 115 West Washington Street, Suite 1310, Indianapolis, Indiana, 46204.

WITNESSETH:

That, the OWNER and the ENGINEER, for the mutual considerations herein contained and specified, have agreed and do hereby agree as follows:

SECTION 1

Services of the Engineer

- 1.1 Provide the OWNER (Only by Request of the OWNER) with BASIC ENGINEERING SERVICES (hereinafter referred to as the PROJECT) to include, but not limited to the following.
 - 1.1.1 If requested, attend one (1) regularly scheduled Town Council meeting per month. This task will be performed by an individual with a Senior Registered Professional or Project Manager classification.
 - 1.1.2 Keep the OWNER's representative informed on any federal or state grants of any nature that may be available for engineering projects and assist the OWNER in the preparation of applications and supporting documents for governmental grants and / or loans.
 - 1.1.3 Assist the OWNER in identifying grant applications, represent the OWNER at the meetings, and update the OWNER's Capital Improvement program for utilities annually.

- 1.1.4 Provide telephone and meeting consultation and other miscellaneous engineering services as may be required from time-to-time and which is NOT associated with a specific project or assignment including review of resident concerns and problem areas in the Town.
 - 1.1.5 Review new development construction plans, roadway plans, utility plans, land development plans, and grading plans that are submitted to the OWNER's Planning Commission. Review will be performed for general conformance with the OWNER's Subdivision and Land Development Regulations. This also includes reviewing current water / wastewater system and treatment capacities.
 - 1.1.6 Furnish the services of special consultants as may be required and requested to meet specific project needs.
 - 1.1.7 Furnish renderings, maps or exhibits as may be requested.
 - 1.1.8 Provide general engineering assistance with the water, sewer and storm water utility.
 - 1.1.9 Serve as an expert witness in any administrative or judicial proceeding.
 - 1.1.10 Attendance at special meetings as requested by the OWNER.
 - 1.1.11 Other professional engineering, architectural, and planning services as may be reasonably requested.
 - 1.1.12 At no cost to the OWNER, the ENGINEER shall attend miscellaneous meetings with funding and planning agencies from time to time that are relative to the OWNER'S future projects. The ENGINEER shall also organize and conduct an annual Strategic Planning Meeting with the OWNER to discuss the status of current projects, discuss future projects including funding alternatives, and have in attendance a senior level highway engineer, project manager, environmental engineer and architect.
- 1.2 Provide the OWNER with supplemental engineering services. These services will be conducted either by a separate agreement or by a Task Order supplementing this contract as issued by the OWNER under this agreement. The costs (including hours and hourly rates or lump sum fees) associated with larger capital projects shall be negotiated at the time of authorization.

SECTION 2

Period of Services

- 2.1 The ENGINEER agrees to commence work immediately after receipt of this signed

agreement, unless noted otherwise. The term of this Agreement shall be for the period of 24 months.

SECTION 3

Payments to the Engineer

- 3.1 The OWNER shall pay the ENGINEER for services rendered under Section 1, paragraphs 1.1.1 to 1.1.12, subject to Section 5.1, a fee calculated on an hourly basis per classification of those assigned to the tasks included in Exhibit A and made part of this agreement.
- 3.2 On major engineering and planning projects requiring local, state or federal funding and coordination thereof, a separate lump sum fee agreement may be negotiated by the OWNER and the ENGINEER within the guidelines of the state and federal agencies involved.
- 3.3 The OWNER shall make prompt monthly payments. Non-payment of monthly statements shall be considered grounds for termination of this agreement. Unpaid monthly statements will be charged an interest fee of 3% accruing annually.
- 3.4 The compensation set forth in this agreement may be renegotiated to cover costs not within the purview of the Scope of Services originally contemplated herein. Such costs may arise from significant changes in the extent of the PROJECT, including but not limited to, changes in size, complexity, character, or schedule of the PROJECT when such revisions and changes are due to causes beyond the ENGINEER's control.

SECTION 4

OWNER's Responsibilities

- 4.1 Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the OWNER's policies and decisions with respect to ENGINEER's services for the PROJECT.
- 4.2 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the project including previous reports, record drawing, easement documents, design and construction standards which the OWNER will require to be included on the contract documents, and any other data relative to the PROJECT.
- 4.3 Arrange for access to, and make all provisions for, the ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this agreement.
- 4.4 Promptly review and comment upon the acceptability of all documents, reports, drawings, specifications, contract documents, bonds and other documents presented by ENGINEER.

OWNER will review documents and consult with their respective legal counsel and bond council as to the acceptability of the contractual documents submitted by the ENGINEER. OWNER will complete their reviews within a reasonable time so as not to delay the services of the ENGINEER.

- 4.5 Give prompt written notice to ENGINEER whenever the OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or non-conformance in the work of any Contractor.
- 4.6 Furnish, or direct ENGINEER to provide additional services as stipulated in this agreement or other services as required in a timely manner.
- 4.7 Bear all costs incidental to compliance with the requirements of this Section 4.

SECTION 5

Remaining Provision

5.1 Termination

The OWNER shall have the right to terminate this agreement for any reason and at any time with a thirty (30) day written notice to the ENGINEER. In the event of such written notice, the ENGINEER shall immediately cease all performance of the terms of the agreement and the OWNER shall pay to the ENGINEER within thirty (30) days after the submission of the final statement all amounts due for services performed by the ENGINEER. The amount of services which the ENGINEER has performed and for which the OWNER shall be obligated to pay, as foresaid, shall be for engineering services through the date of termination and include the time required to deliver the project materials to the OWNER. In no event shall the OWNER be obligated for the payment of services defined in this agreement which have not yet been performed by ENGINEER at the time of the receipt by the ENGINEER of any such written notice of termination, any other provisions of this agreement to the contrary notwithstanding.

5.2 Ownership and Reuse of Documents

5.2.1 The OWNER acknowledges the ENGINEER'S documents and files as instruments of professional service. Nevertheless, the documents and files prepared under this AGREEMENT shall become the property of the OWNER upon completion of the work and payment in full of all monies due to the ENGINEER. The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold the ENGINEER harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the documents and files by the OWNER or by any person or entity that acquires or obtains the documents and files from or through the OWNER without the written authorization of the ENGINEER. Copies

of said documents and files will be delivered to the OWNER within 30-days of the OWNER's written request.

5.3 Insurance

The ENGINEER shall provide and maintain during the life of this Agreement the following insurance: Comprehensive General Liability, Comprehensive Automobile Liability, Workers Compensation and Professional Liability. The amounts of such coverages shall be reasonably satisfactory to the OWNER.

5.4 Successors and Assigns

5.4.1 The OWNER and ENGINEER each binds themselves and their partners, successors, executors, administrators, assigns, and legal representatives to the other party of this agreement, and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this agreement.

5.4.2 Neither the OWNER nor the ENGINEER shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this agreement without the written consent of the other, except as stated in Paragraph 6.4.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this agreement. Nothing contained in this Paragraph shall prevent the ENGINEER from employing such independent consultants, associates, and subcontractors as they may deem appropriate to assist in the performance of services hereunder, who's costs and fees must be pre-approved by the OWNER.

5.4.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

5.4.4 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the OWNER or any public body that may be a party hereto.

5.5 Discrimination Clause

The ENGINEER agrees not to discriminate against any employee or applicant for employment because of race, creed, sex, disability, or color, including, but not limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed, in duplicate, as of the date and year first above written, by affixing the signatures of the duly authorized officer of the ENGINEER, and by the duly authorized official(s) of the OWNER.

Effective Date. The Effective Date for this Agreement shall be the date as stated at the top of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Statement of Work to be effective as of the Effective Date.

LAPTEL:

Town of Lapel

By: _____

Name: _____

Title: _____

ATTEST:

Town of Lapel, Indiana

By: _____

Name: _____

Title: _____

ENGINEER:

ms consultants, inc.

By: 

Name: Daniel R. Cutshaw, P.E.

Title: Vice President - Indiana

ATTEST:

ms consultants, inc.

By: _____

Name: _____

Title: _____

EXHIBIT A
to
AGREEMENT
Between

THE TOWN OF LAPEL, INDIANA
and
ms consultants, inc.
for
THE PERFORMANCE OF ENGINEERING SERVICES

Billing Rate Schedule - 2023

Staff Level	Hourly Billing Rate
Principal (Project Manager)	\$290
Municipal Consultant	\$230
Engineer III	\$230
Engineer II	\$200
Engineer I	\$180
Architect III	\$180
Architect II	\$150
Architect I	\$130
Senior Planner	\$160
Planner	\$130
Designer III	\$170
Designer II	\$150
Designer I	\$135
Technician II	\$120
Technician I	\$100
Construction Manager	\$160
Resident Project Representative II	\$120
Resident Project Representative I	\$ 90
Land Surveyor	\$160
2-man Survey Crew	\$260
Attendance of Town Council Meetings	\$250 per meeting
Sub-contractors charged at a 1.10 multiplier	