



SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

This is an Agreement between **City of Tontitown** (Owner) and **Crafton, Tull & Associates, Inc.** (Engineer). Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as **2023 Pavement Maintenance Program** (Project). Engineer's services under this Agreement (Services) are described in the attached **Exhibit A**.

Address of Project: **City of Tontitown, Arkansas**

Owner and Engineer further agree as follows:

1.01 Services of Engineer

- A. Engineer shall provide or furnish the Services set forth in this Agreement, and any Additional Services authorized by Owner and consented to by Engineer.

2.01 Owner's Responsibilities

- A. Owner shall provide Engineer with existing Project-related information and data in Owner's possession and needed by Engineer for performance of Engineer's Services. Owner will advise the Engineer of Project-related information and data known to Owner but not in Owner's possession. Engineer may use and rely upon Owner-furnished information and data in performing its Services, subject to any express limitations applicable to the furnished items.
 - 1. Following Engineer's assessment of initially-available Project information and data, and upon Engineer's request, Owner shall obtain, furnish, or otherwise make available (if necessary through retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Services; or, with consent of Engineer, Owner may authorize the Engineer to obtain or provide all or part of such additional information and data as Additional Services.
- B. Owner shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance. Owner shall give prompt notice to Engineer whenever Owner observes or otherwise becomes aware of (1) any relevant, material defect or nonconformance in Engineer's Services, or (2) any development that affects the scope or time of performance of Engineer's Services.

3.01 Schedule for Rendering Services

- A. Engineer shall complete its Services within a reasonable period of time. If, through no fault of Engineer, the orderly and continuous progress of Engineer's Services is impaired, or Engineer's Services are delayed or suspended, then the time for completion of Engineer's Services shall be adjusted equitably.

4.01 Invoices and Payments

- A. Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable upon receipt.
- B. Payment: As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in this Paragraph 4.01, Invoices and Payments. If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.
- C. Failure to Pay: If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer's invoice, then (1) the amounts due Engineer will be subject to interest at the rate of 8% per annum (or the maximum rate of interest permitted by law, if less) from said thirtieth day; (2) in addition Engineer may, after giving 7 days' written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges, and in such case Owner waives any and all claims against Engineer for any such suspension; (3) if any payment due Engineer remains unpaid after 90 days, Engineer may terminate the Agreement for cause pursuant to Paragraph 5.01.A.2; (4) the Owner understands the Engineer is entitled to a lien against the property if not paid in full for Services provided to improve the property and that this lien can be enforced by the sale of the property if necessary, in accordance with the laws of the state in which the property is located.
- D. Reimbursable Expenses: Engineer is entitled to reimbursement of expenses as indicated in Paragraph 4.01.E and 4.01.F.
- E. Basis of Payment
 - 1. Hourly Rates with a not-to-exceed maximum. Owner shall pay Engineer for Services as shown in Exhibits A1 & A2 as follows:
 - a. An amount equal to the cumulative hours charged to the Project by Engineer's employees times standard hourly rates for each applicable billing class, plus reimbursement of expenses incurred in connection with providing the Services.
 - b. Reimbursable expenses shall be invoiced at cost times a 1.15 multiplier. Compensation for reimbursable expenses is estimated to be \$ 500 .
 - c. Engineer's Standard Hourly Rates are attached as **Exhibit B**.
 - d. The Engineer may subcontract with other consultants to complete the services on the Project. The cost for such subconsultants shall be invoiced over and above the Engineer's hourly fees at cost times a 1.05 multiplier. The Owner shall have the

opportunity to approve the use of such subconsultants prior to the Engineer engaging their services.

- e. The total compensation for Services and reimbursement of expenses shall not exceed \$ 24,935 without prior authorization from the Owner.
- F. Additional Services: For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services. Engineer's standard hourly rates are attached as **Exhibit B**.

5.01 Termination

A. Termination for Cause

- 1. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.
 - a. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 5.01.A.1 if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- 2. In addition to its termination rights in Paragraph 5.01.A.1, Engineer may terminate this Agreement for cause upon 7 days' written notice (a) if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional, (b) if Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, (c) if payment due Engineer remains unpaid for 90 days, as set forth in Paragraph 4.01.C, or (d) as the result of the presence at the Site of undisclosed Constituents of Concern as set forth in Paragraph 6.01.I.
- 3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.

B. Termination for Convenience: Owner may terminate this Agreement for convenience, effective upon Engineer's receipt of notice from Owner.

C. Payments Upon Termination: In the event of any termination under Paragraph 5.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement, and to reimbursement of expenses incurred through the effective date of termination. If the Agreement is terminated for non-payment all remaining unpaid balances shall bear interest at the maximum rate of interest permitted under State law. Upon making such payment, Owner will have the limited right to the use of all deliverable documents, whether completed or under preparation, subject to the provisions of Paragraph 6.01.F, at Owner's sole risk.

1. If Owner has terminated the Agreement for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the deliverable documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.
2. If Owner has terminated the Agreement for convenience, or if Engineer has terminated the Agreement for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's subcontractors or subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Paragraph 4.01.F.

6.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions of probable construction cost (if any) are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents, other than those made by Engineer.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in

such documents, whether or not the Project is completed. Engineer grants to Owner a limited license to use the deliverable documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the deliverable documents, and subject to the following limitations:

1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and subconsultants;
 3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
 4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer agree to transmit and accept Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either through mail, email or through other agreed upon electronic means.
- H. Waiver of Damages; Limitation of Liability: To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's officers, directors, members, partners, agents, employees, subconsultants, and insurers, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$100,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. In the event of a negligent error or omission in the Engineer's designs, plans, Specifications, or other services ("the defect"), the Engineer's sole responsibility and liability for the defect shall not exceed the Engineer's services to re-perform or redesign the plans, specifications, services or other deliverables related to the defect, plus the reasonable direct damages caused by the defect. The Engineer shall not be liable for and damages shall not include the cost of any addition, betterment, or improvement to the Work, nor for any item that otherwise would have been required to complete the Work, nor the cost and expense that would have been incurred by the Owner had such defect not occurred.
- J. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of

the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.

- K. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute will be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- L. This Agreement is to be governed by the laws of the state in which the Project is located.
- M. Engineer's Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

7.01 Definitions

- A. Constructor—Any person or entity (not including the Engineer, its employees, agents, representatives, subcontractors, and subconsultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- B. Constituent of Concern—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), lead based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to laws and regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8.01 Successors, Assigns, and Beneficiaries

- A. Successors and Assigns
 - 1. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 8.01.A.2 the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
 - 2. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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.

- B. Beneficiaries: Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

9.01 Total Agreement

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

Attachments: **Exhibit A, Scope of Services**
Exhibit B, Standard Hourly Rate Schedule

This Agreement's Effective Date is **September 22, 2023**.

Owner: CITY OF TONTITOWN, ARKANSAS

Engineer: CRAFTON, TULL & ASSOCIATES, INC.

By: _____
(authorized individual's signature)

By: Bill Burnett
(authorized individual's signature)

Date: _____
(date signed)

Date: 9/27/2023
(date signed)

Name: Angela Russell
(typed or printed)

Name: William C. Burnett, PE
(typed or printed)

Title: Mayor
(typed or printed)

Title: Vice President
(typed or printed)

Address for giving notices:

Address for giving notices:

P.O. Box 305

901 N. 47th Street, Suite 400

Tontitown, AR 72770

Rogers, AR 72756

Designated Representative:

Designated Representative:

Name: Mark Latham
(typed or printed)

Name: Luke Jost, PE
(typed or printed)

Title: City Planner
(typed or printed)

Title: Project Manager
(typed or printed)

Phone: 479-361-2700

Phone: 479-878-2423

Email: planning@tontitownar.gov

Email: Luke.Jost@craftontull.com

Exhibit “A” Scope of Services

Project:	2023 Pavement Maintenance Program	
Client:	City of Tontitown	
Location of Project:	City of Tontitown (city-wide)	
Discipline:	Civil Engineering	
Discipline Manager:	Luke Jost, PE	
Project Manager:	Luke Jost, PE	
Proposal Date:	September 27, 203	
Billing Type:	Hourly Rates (Not to Exceed) plus Reimbursable Expenses	
Fee:	Planning Phase:	\$15,380
	Bidding Phase:	\$9,055
	Total	\$24,435
	Reimbursable Expenses (estimated)	\$500
Description of the Planning Project:	Planning of a 2023 Pavement Maintenance Program based on the 2020 pavement analysis conducted by First Step and provided to CTA by the City.	

Detailed Scope of Services

Planning Phase:

- Review 2020 First Step pavement condition analysis.
- Research unit costs for pavement maintenance strategies based on bid histories and contractor input.
- Develop a project hierarchy based on First Step Analysis and conversations with City staff. Hierarchy to consider the following:
 - Pavement condition rating (First Step 2020)
 - Current annual maintenance requirements (annual resources required for City crews to repair).
 - Average Daily Traffic (ADT)
 - Future Capital Improvement Programs
- Given the current budget allotment, prepare pavement maintenance program for 2023 that utilizes maintenance strategies employed on pavements at all conditions. Crafton Tull understands that pavement maintenance is most efficient when employed before pavements reach critical status. Early maintenance should be balanced with repair/replacement of pavements in critical and lost conditions.
- Develop a budget required to get all streets to a Satisfactory level within a given timeframe (timeframe to be determined with City staff).
- Prepare Report summarizing findings and Program Outline

Bidding Phase:

- Prepare bid packages (plans, specifications, & contract documents) (Maximum 2 packages)
 - Plans to include maps showing areas of improvement, typical sections, and pertinent details
- Advertise for bids
- Answer bidder’s questions and issue addenda
- Assist City with bidding process
- Review bids and provide bid recommendation

END SCOPE OF SERVICES THIS CONTRACT This is the scope of services for the Project. Should there be additions to this scope of services, those services shall be compensated for additional fee.

Items Provided by City:

- Site access
- Construction materials testing
- Acquisition of Right of Way and Easements

Additional Items that can be provided by CTA under amendment or separate contract:

- Roadway or Drainage Redesign (any changes to drainage or roadway alignment/profile)
- Construction Observation/Inspection
- FEMA Studies & Map Revision Applications (CLOMR/LOMR)
- Wetland Determinations
- Corps of Engineers Permitting
- ROW Acquisition Services
- Retaining wall design



Exhibit "B"

Standard Hourly Rate Schedule
Effective January 1, 2023

Category	Hourly Rate
CIVIL ENGINEERING	
ENGINEERING PRINCIPAL	\$ 230
SR. ENGINEERING MANAGER	\$ 210
ENGINEERING MANAGER	\$ 175
SR. PROJECT ENGINEER	\$ 155
PROJECT ENGINEER	\$ 135
ENGINEER INTERN III	\$ 130
ENGINEER INTERN II	\$ 120
ENGINEER INTERN I	\$ 110
SR. ENGINEERING DESIGNER	\$ 155
ENGINEERING DESIGNER III	\$ 120
ENGINEERING DESIGNER II	\$ 100
ENGINEERING DESIGNER I	\$ 90
ENGINEERING CAD TECHNICIAN III	\$ 85
ENGINEERING CAD TECHNICIAN II	\$ 75
ENGINEERING CAD TECHNICIAN I	\$ 65
ENVIRONMENTAL	
ENVIRONMENTAL MANAGER	\$ 195
SR. ENVIRONMENTAL SCIENTIST	\$ 145
PROJECT ENVIRONMENTAL SCIENTIST	\$ 120
ENVIRONMENTAL SCIENTIST II	\$ 100
ENVIRONMENTAL SCIENTIST I	\$ 80
INSPECTION	
SR. INSPECTOR	\$ 110
INSPECTOR II	\$ 95
INSPECTOR I	\$ 70
LANDSCAPE ARCHITECTURE	
LANDSCAPE ARCHITECTURE MANAGER	\$ 155
SR. LANDSCAPE ARCHITECT	\$ 135
PROJECT LANDSCAPE ARCHITECT	\$ 110
LANDSCAPE ARCHITECT INTERN II	\$ 90
LANDSCAPE ARCHITECT INTERN I	\$ 75
LANDSCAPE ARCHITECTURE DESIGNER	\$ 80
ADMINISTRATIVE	
ADMINISTRATIVE PRINCIPAL	\$ 200
ADMINISTRATIVE MANAGER	\$ 155
ADMINISTRATIVE IV	\$ 100
ADMINISTRATIVE III	\$ 80
ADMINISTRATIVE II	\$ 60
ADMINISTRATIVE I	\$ 45

Category	Hourly Rate
PLANNING	
PLANNING MANAGER	\$ 200
SR. PLANNER	\$ 180
PROJECT PLANNER	\$ 130
PLANNER II	\$ 105
PLANNER I	\$ 90
SURVEYING	
SURVEYING PRINCIPAL	\$ 210
SR. SURVEYING MANAGER	\$ 180
SURVEYING MANAGER	\$ 170
SR. PROJECT SURVEYOR	\$ 150
PROJECT SURVEYOR	\$ 130
SURVEYOR INTERN II	\$ 120
SURVEYOR INTERN I	\$ 100
SURVEY COORDINATOR	\$ 100
CREW CHIEF II	\$ 95
CREW CHIEF I	\$ 85
FIELD SURVEYOR III	\$ 70
FIELD SURVEYOR II	\$ 60
FIELD SURVEYOR I	\$ 55
SURVEY CAD TECHNICIAN III	\$ 95
SURVEY CAD TECHNICIAN II	\$ 75
SURVEY CAD TECHNICIAN I	\$ 65
UAV SERVICES	
UAV TEAM LEAD	\$ 115
UAV PILOT	\$ 75
GEOGRAPHIC INFORMATION SYSTEMS	
GIS MANAGER	\$ 125
GIS ANALYST	\$ 100
GIS TECHNICIAN II	\$ 80
GIS TECHNICIAN I	\$ 55
REIMBURSABLE EXPENSES	
GPS Equipment	\$35/Hour
Robotic Survey Equipment	\$20/Hour
LiDAR Scanning Equipment	\$35/Hour
UAV	\$1000/Unit
Job Related Mileage	\$0.64/Mile
Per Diem for Out of Town Crews	Per GSA Allowable
Airfare and other travel related expenses	At Cost
Black and white 8.5"x11" Copies	\$0.15/sheet
Color 8.5"x11" Copies	\$1.50/sheet
Photo Paper Color Plan Sheet Copies	\$0.75/sq. ft.
Reproducible Plan Copies (Vellum)	\$1.50/sq. ft.
Reproducible Plan Copies (Bond)	\$0.35/sq. ft.
All rates are subject to change without notice.	