



**AGREEMENT**  
**FOR**  
**ENGINEERING SERVICES**

Job No. 040957  
Hwy. 412/Barrington Rd. Inters. Impvts. (Tontitown) (S)  
(City of Tontitown)

**PREAMBLE**

**THIS AGREEMENT**, entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between City of Tontitown (“Owner”), and Burns & McDonnell Engineering Company, Inc. (“Consultant”), a corporation existing under the laws of the State of Missouri, with principal offices at 9400 Ward Parkway, Kansas City, Missouri 64114.

**WITNESSETH:**

**WHEREAS** the Owner is planning to improve the intersection of Highway 412 and Barrington Road in Tontitown, Arkansas; and,

**WHEREAS**, the Owner’s forces are fully employed on other urgent work that prevents their early assignment to the aforementioned work; and,

**WHEREAS**, the Consultant’s staff is adequate and well qualified, and it has been determined that its current workload will permit completion of the project on schedule.

**NOW THEREFORE**, it is considered to be in the best public interest for the Owner to obtain the assistance of the Consultant’s organization in connection with engineering services. In consideration of the faithful performance of each party of the mutual covenants and agreements set forth hereinafter, it is mutually agreed as follows:

**1. PRELIMINARY MATTERS**

- 1.1. “Consultant’s Representative” shall be Jonathan Ely, until written notice is provided to the Owner designating a new representative.
- 1.2. “Contract Ceiling Price.” The Contract Ceiling Price for this Agreement is \$439,830. The Contract Ceiling Price is the maximum aggregate amount of all payments that the Owner may become obligated to make under this Agreement. In no event, unless modified in writing, shall total payments by the Owner under this Agreement exceed the Contract Ceiling Price. The Consultant shall not be entitled to receive adjustment, reimbursement, or payment, nor shall the Owner, its officers, agents, employees, or representatives, incur any liability for, any fee or cost, exceeding the Contract Ceiling Price.
- 1.3. “Contract Price” is aggregate amount of allowable costs and fees to be paid by the Owner under this Agreement.
- 1.4. “Default” means the failure of the Consultant to perform any of the provisions of this Agreement. *Default includes, but is not limited to, failure to complete phases of the work according to schedule or failure to make progress in the work so as to endanger timely performance of this Agreement, failure to pay subconsultants in a timely manner, failure to comply with federal and state laws, and failure to comply with certifications made in or pursuant to this Agreement.*

- 1.5. "Department" or "ARDOT" means the Arkansas Department of Transportation.
- 1.6. "DOT" means the United States Department of Transportation.
- 1.7. "FAR" means the Federal Acquisition Regulations, codified in 48 CFR.
- 1.8. "Owner" means City of Tontitown.
- 1.9. "Fee" whether fixed or otherwise is a dollar amount that includes the Consultant's profit on the job.
- 1.10. "FHWA" means the Federal Highway Administration.
- 1.11. "Indirect Cost Rate." The Indirect Cost Rate is defined in the provisions of 48 CFR Part 31 and is also subject to any limitations contained herein. The Indirect Cost Rate for the Consultant under this Agreement shall be 246.17 percent (FY 2023), unless modified in writing through a supplemental agreement. If applicable, the Indirect Cost Rate for each subconsultant shall be listed in Appendix B.
- 1.12. "Title I Services" are those services provided by the Consultant before the award of the contract for construction of the Project, consisting primarily of engineering services for the planning or design of the Project.
- 1.13. "Title I Services Price." The Title I Services Price for this Agreement is \$439,830. The Title I Services Price is the maximum aggregate amount of all payments that the Owner may become obligated to make under this Agreement for fees and costs related to Title I Services. In no event, unless modified in writing, shall total payments by the Owner related to Title I Services exceed the Title I Services Price. The Consultant shall not be entitled to receive adjustment, reimbursement, or payment for, nor shall the Owner, its officers, agents, employees, or representatives, incur any liability for, any fee or cost related to, Title I Services exceeding the Title I Services Price.
- 1.14. "Title II Services" are those services provided by the Consultant after the award of the contract for the construction of the Project, consisting primarily of engineering services during the construction of the Project.
- 1.15. "Title II Services Ceiling Price." The Title II Services Ceiling Price for this Agreement is not applicable (N/A). The Title II Services Ceiling price is the maximum aggregate amount of all payments that the Owner may become obligated to make under this Agreement for fees and costs related to Title II Services. In no event, unless modified in writing, shall total payments by the Owner related to Title II Services exceed the Title II Services Ceiling Price. The Consultant shall not be entitled to receive adjustment, reimbursement, or payment for, nor shall the Owner, its officers, agents, employees, or representatives, incur any liability for, any fee or cost related to, Title II Services exceeding the Title II Services Ceiling Price.
- 1.16. "Title II Multiplier" (if applicable) is the mark-up by which the fee and indirect costs associated with Title II services are calculated. The Title II Multiplier, which accounts for the fee and indirect costs, is multiplied by the salary rate, as shown on the Schedule of Salary Ranges, of the particular individual(s) performing the Title II services. The Title II Multiplier under this Agreement is N/A at the time of contract execution.

## **2. TYPE OF AGREEMENT**

- 2.1. This Agreement is a lump sum contract for Title I Services. The Consultant is being hired to perform professional engineering services in connection with the Project as set forth herein. In consideration for Title I Services performed, the Owner will pay to the Consultant the Title I Services Price, as defined herein. If Title II services are to be performed, the Owner will reimburse the Consultant for allowable direct costs and also pay the Consultant an amount determined by multiplying the salary rate of the individual(s) performing the Title II services, as shown on the Schedule of Salary Ranges, by the Title II Multiplier.
- 2.2. The Project to be performed under this Agreement is a federally-assisted project and federal funds will be used, in part, to pay the Consultant. Therefore, notwithstanding any provision of this Agreement, all payments, costs, and expenditures are subject to the requirements and limitations of FAR, and the Consultant shall certify the accuracy of all invoices and requests for payment, along with supporting documentation and any information submitted to the Owner with any claim for full or partial payment.

## **3. COSTS, FEES, AND PAYMENT**

### **3.1. *Allowable costs.***

- 3.1.1. Allowable costs are subject to the limitations, regulations, and cost principles and procedures in FAR, which are expressly incorporated into this Agreement by reference. For the purpose of compensating for allowable costs (except as provided in subparagraph 2 below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term *costs* includes only—
- 3.1.1.1. Those recorded costs that, at the time of the request for reimbursement, the Consultant has paid by cash, check, or other form of actual payment for items or services purchased directly for the Agreement;
- 3.1.1.2. When the Consultant is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—
- Materials issued from the Consultant's inventory and placed in the production process for use in its performance under this Agreement;
  - Direct labor;
  - Direct travel;
  - Other direct in-house costs;
  - Properly allocable and allowable indirect costs, as shown in the records maintained by the Consultant for purposes of obtaining reimbursement under government contracts; and
  - The amount of progress payments that have been paid to the Consultant's subconsultants under similar cost standards.

- 3.1.2. Consultant's contributions to any pension or other post-retirement benefit, profit-sharing or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; *provided*, that the Consultant pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Consultant actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Consultant actually makes the payment.
- 3.1.3. Allowable costs for travel are subject to the limitations, regulations, and cost principals and procedures in FAR and the State of Arkansas Travel Regulations as adopted by the Department Accounting Manual, which are expressly incorporated into this Agreement by reference.
- 3.1.4. Notwithstanding the audit and adjustment of invoices or vouchers, allowable indirect costs under this Agreement shall be obtained by applying Indirect Cost Rates established in accordance with Subsection 3.3 below.
- 3.1.5. Any statements in specifications or other documents incorporated in this Agreement by reference designating performance of services or furnishing of materials at the Consultant's expense or at no cost to the Owner shall be disregarded for purposes of cost-reimbursement.
- 3.2. Invoices shall be submitted by email in pdf format that cannot be altered to:
- Email: [planning@tontitownar.gov](mailto:planning@tontitownar.gov)
- 3.3. *Indirect Cost Rates.*
- 3.3.1. Allowable indirect costs incurred by the Consultant shall also be limited to the Indirect Cost Rate. The Indirect Cost Rate of the Consultant for this Agreement shall be the rate as set forth in **subsection 1.11**. If applicable, the Indirect Cost Rate for subconsultants shall be determined in the same manner and subject to the same limitations as the Consultant, and shall be listed for each subconsultant identified in **Appendix B**. The Indirect Cost Rate, or any adjustment thereto, shall not change any monetary ceiling, contract obligation, or specific cost allowance, or disallowance provided for in this Agreement except as provided for in sections 3.3.4. and 3.3.5. The Indirect Cost Rate must reflect the allowable indirect costs pursuant to FAR.
- 3.3.2. In establishing the Indirect Cost Rate or proposing any adjustment thereto, the Consultant shall, upon request, submit to the Owner, ARDOT, FHWA, or their representatives an audited indirect cost rate and supporting cost data in accordance with the requirements set forth in the current *Arkansas Department of Transportation Indirect Cost Rate Audit Requirements*.
- 3.3.3. During the term of this Agreement, if an audit of a subsequent accounting period of the Consultant demonstrates that the Consultant has incurred allowable indirect costs at a different rate than the Indirect Cost Rate, the Indirect Cost Rate shall be adjusted. Any adjustment is subject to the audit and documentation requirements of the FAR and the current *Arkansas Department of Transportation Indirect Cost Rate Audit Requirements*. Except in the case of a provisional Indirect Cost Rate, as provided in the following subparagraphs, or the disallowance of cost following a subsequent audit, any adjustment to the Indirect Cost Rate shall be effective only prospectively from the date that the adjustment is accepted.

- 3.3.4. In order to expedite some projects, when an audited indirect cost rate has not yet been submitted and approved, the Owner may extend a temporary waiver and accept a provisional indirect cost rate. This provisional rate must be reviewed by and receive a positive recommendation from the Arkansas Department of Transportation. The provisional cost proposal must be accompanied by written assurance from an independent CPA that he/she has been engaged to audit the costs in accordance with the above requirements. The anticipated audit must be based on costs incurred in the most recently completed fiscal year for which the cost data is available, with the audit scheduled to begin within a reasonable time frame. If the date of the initial cost proposal is within the last quarter of the current fiscal year, the audit may be delayed until the current fiscal year is closed and the final cost data is available. The written assurance from the CPA that he or she has been engaged to perform the audit at an appropriate time is still required.
- 3.3.5. Once an audited indirect cost rate is approved, the ceiling prices provided for in the initial agreement using the provisional indirect cost rate will be adjusted with a supplemental agreement to implement the resulting increase or decrease from revising the indirect cost rate, and all amounts paid to the consultant prior to receipt and acceptance of an audited indirect cost rate will be retroactively adjusted for changes in the indirect cost rate. However, no changes in hours, fixed fees, or other costs will be allowed as a result of applying the audited indirect cost rate.
- 3.4. *Fees.* The justification for the fees and cost used to develop the lump sum Title I Services Price for the scope of services described herein is contained in Appendix A-2. In consideration for the engineering services rendered by the Consultant, the Owner shall pay to the Consultant the Title I Services Price in the manner provided herein.
- 3.5. *Invoices, Reimbursement, and Partial Payments.* Submission of invoices and payment of the fees shall be made as follows, unless modified by the written agreement of both parties:
- 3.5.1. Not more often than once per month, the Consultant shall submit to the Owner, in such form and detail as the Owner may require, an invoice or voucher supported by a statement of the claimed allowable costs for performing this Agreement and estimates of the amount and value of the work accomplished under this Agreement. The invoices for costs and estimates for fees shall be supported by any data requested by the Owner.
- 3.5.2. In making estimates of completion for invoicing purposes, such estimates shall include only the amount and value of the work accomplished and performed by the Consultant under this Agreement that meets the standards of quality established under this Agreement. The Consultant shall submit with the estimates any supporting data required by the Owner. At a minimum, the supporting data shall include a progress report in the form and number required by the Owner.
- 3.5.3. Upon approval of the estimate by the Owner, payment upon properly executed vouchers shall be made to the Consultant, as soon as practicable, of 100 percent of the allowed costs, and of the approved amount of the estimated fee, less all previous payments. Notwithstanding any other provision of this Agreement, only costs and fees determined to be allowable by the Owner in accordance with subpart 31.2 of the Federal Acquisition Regulations (FAR) in effect on the date of this Agreement and under the terms of this Agreement shall be reimbursed or paid.
- 3.5.4. Before final payment under the Agreement, and as a condition precedent thereto, the Consultant shall execute and deliver to the Owner a release of all claims which are known or reasonably could have been known to exist against the Owner arising

under or by virtue of this Agreement, other than any claims that are specifically excepted by the Consultant from the operation of the release in amounts stated in the release.

3.6. *Title I Services, Title II Services Ceiling Price, and Contract Ceiling Prices.* The parties agree that aggregate payments under this Agreement, including all costs and fees, shall not exceed the Contract Ceiling Price. The parties further agree that aggregate payments for Title I and Title II services under this Agreement, including all costs and fees, shall not exceed the Title I and Title II Services Ceiling Price, respectively. No adjustment of the Indirect Cost Rate, other adjustment, claim, or dispute shall affect the limits imposed by these ceiling prices. No payment of costs or fees shall be made above these ceiling prices unless the Agreement is modified in writing.

3.7. *Final payment.*

3.7.1. The Consultant shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than forty-five (45) days (or longer, as the Owner may approve in writing) after the completion date. Upon approval of the completion invoice or voucher, and upon the Consultant's compliance with all terms of this Agreement, the Owner shall promptly pay any balance of allowable costs and estimated fee owed to the Consultant. After the final release, the Consultant agrees that it will continue to provide consultation services to the Owner as needed through supplemental agreement(s) with respect to the contracted services under this Agreement until all work is completed under both Title I and Title II.

3.7.2. The Consultant shall pay to the Owner any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Consultant or any assignee under this Agreement, to the extent that those amounts are properly allocable to costs for which the Consultant has been paid by the Owner. Reasonable expenses incurred by the Consultant for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Owner. Before final payment under this Agreement, the Consultant and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

- An assignment to the Owner, in form and substance satisfactory to the Owner, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Consultant has been reimbursed by the Owner under this Agreement; and,
- A release discharging the Owner, its officers, agents, and employees from all liabilities, obligations, and claims which were known or could reasonably have been known to exist arising out of or under this Agreement.

3.8. *Owner's Right to Withhold Payment.* The Owner may withhold payment to such extent as it deems necessary as a result of: (1) third party claims arising out of negligent performance of the services of the Consultant and made against the Owner and which are covered under the indemnity provision of Section 27; (2) evidence of fraud, over-billing, or overpayment; (3) inclusion of non-allowable costs; (4) failure to make prompt payments to subconsultants in the time provided by this Agreement; (5) payment requests received including fees for unapproved subconsultants; and/or (6) unsatisfactory performance of services. The withholding of payment under this provision shall in no way relieve the Consultant of its obligation to continue to perform its services under this Agreement.

#### **4. DISALLOWANCE OF COSTS**

- 4.1. Notwithstanding any other clause of this Agreement, the Owner may at any time issue to the Consultant a written notice of intent to disallow specified costs incurred or planned for incurrence under this Agreement that have been determined not to be allowable under the contract terms.
- 4.2. Failure to issue a notice under this Section shall not affect the Owner's rights to take exception to incurred costs.
- 4.3. If a subsequent audit reveals that: (1) items not properly reimbursable have, in fact, been reimbursed as direct costs; or (2) that the Indirect Cost Rate contains items not properly reimbursable under the FAR; then, in the case of indirect costs, the Indirect Cost Rate shall be amended retroactively to reflect the actual allowable indirect costs incurred, and, in the case of both direct and indirect costs, the Owner may offset, or the Consultant shall repay to Owner, any overpayment.

#### **5. RECORDS & AUDITS**

- 5.1. *Records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- 5.2. *Examination.* The Consultant shall maintain, and the Owner, ARDOT, FHWA, and their authorized representatives shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs (direct and indirect) claimed to have been incurred or anticipated to be incurred in performance of this Agreement. This right of examination shall also include examination and audit of any records considered, relied upon, or relating to the determination of the Indirect Cost Rate or any certification thereof, including any CPA audit relied upon to establish the rate. This right of examination shall also include inspection at all reasonable times of the Consultant's offices and facilities, or parts of them, engaged in performing the Agreement.
- 5.3. *Supporting Data.* If the Consultant has been required to submit data in connection with any action relating to this Agreement, including the negotiation of or pre-negotiation audit of the Indirect Cost Rate, the negotiation of the Fee, request for cost reimbursement, request for payment, request for an adjustment, or assertion of a claim, the Owner, ARDOT, FHWA, or their authorized representatives, in order to evaluate the accuracy, completeness, and accuracy of the data, shall have the right to examine and audit all of the Consultant's records, including computations and projections, related to—
  - The determination or certification of the Indirect Cost Rate, including any independent CPA audit or certification thereof;
  - Any proposal for the Agreement, subcontract, or modification;
  - Discussions conducted on the proposal(s), including those related to negotiating;
  - Fees or allowable costs under the Agreement, subcontract, or modification;
  - Performance of the Agreement, subcontract or modification; or,
  - The amount and basis of any claim or dispute.

- 5.4. *Audit.* The Owner, ARDOT, FHWA, or their authorized representatives, shall have access to and the right to examine any of the Consultant's records involving transactions related to this Agreement or a subcontract hereunder.
- 5.5. *Reports.* If the Consultant is required to furnish cost, funding, or performance reports, the Owner, ARDOT, FHWA, or their authorized representatives shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Consultant's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- 5.6. *Availability.* The Consultant shall retain and make available at its office at all reasonable times the records, materials, and other evidence described in this Section and Section 29, Disputes and Claims, for examination, audit, or reproduction, until five years after final payment under this Agreement and all other pending matters are closed, or for any longer period required by statute or by other clauses of this Agreement. In addition—
- 5.6.1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be retained and made available for five years after the termination; and,
- 5.6.2. Records relating to any claim or dispute, or to litigation or the settlement of claims arising under or relating to this Agreement shall be retained and made available until after any such claims or litigation, including appeals, are finally resolved.
- 5.7. The Consultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

## **6. DESCRIPTION OF THE PROJECT**

- 6.1. See Appendix A-1: Scope of Work.

## **7. INFORMATION AND TITLE I SERVICES TO BE PROVIDED BY CONSULTANT**

- 7.1. See Appendix A-1: Scope of Work.

## **8. INFORMATION TO BE PROVIDED BY THE OWNER**

- 8.1. See Appendix A-1: Scope of Work.

## **9. TITLE II SERVICES TO BE PROVIDED BY CONSULTANT**

- 9.1. Title II Services are not applicable for this Agreement.

## **10. COORDINATION WITH OWNER**

- 10.1. Throughout the Project, the Consultant shall hold meetings as needed in Tontitown, Arkansas, or such other location as designated by the Owner, with representatives of the Owner, ARDOT, and the FHWA so that as the Project progresses, the Consultant shall have full benefit of the Owner's knowledge of existing needs and facilities and be consistent with the Owner's current policies and practices. The extent and character of



the work to be done by the Consultant shall be subject to the general oversight and approval of the Owner.

## **11. OFFICE LOCATION FOR REVIEW OF WORK**

- 11.1. Review of the work as it progresses and all files and documents produced under this Agreement may be made by representatives of the Owner, ARDOT, and the FHWA at the project office of the Consultant located at 6576 Lynch's Prairie Cove, Suite B, Springdale, Arkansas 72762.

## **12. ACCESS TO PROPERTY**

- 12.1. The Consultant's services to the Owner may require entry upon private property. The Owner will present or mail to private landowners a letter of introduction and explanation, describing the work, which shall be drafted by the Owner. The Consultant will make reasonable attempts to notify resident landowners who are obvious and present when the Consultant is in the field. The Consultant is not expected to provide detailed contact with individual landowners. The Consultant is not expected to obtain entry by means other than the consent of the landowner. If the Consultant is denied entry to private property by the landowner, the Consultant will not enter the property. If denied entry to the property, the Consultant shall notify the Owner and advise the Owner of an alternate evaluation method if one is feasible. The Owner shall decide on the course of action to obtain access to the property.

## **13. DELIVERABLES**

- 13.1. See Appendix A-1: Scope of Work.

## **14. SUBCONTRACTING**

- 14.1. Unless expressly disclosed in Appendix B, the Consultant may not subcontract any of the services to be provided herein without the express written approval of the Owner. All subconsultants, including those listed in Appendix B, shall be bound by the terms of this Agreement. All subconsultants shall be subject to all contractual and legal restrictions concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.
- 14.2. Unless the consent or approval specifically provides otherwise, neither consent by the Owner to any subcontract nor approval of the Consultant's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Consultant of any responsibility, obligation, or duty under this Agreement.
- 14.3. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations of the FAR.
- 14.4. Furthermore, notwithstanding any other provision within this Agreement, no reimbursement or payment for any markup of the cost of any subcontract shall be considered by the Owner without the express written agreement of the Owner.

14.5. *Prompt Payment.* The Consultant shall pay subconsultants for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the Owner to the Consultant. Any retainage payments held by the Consultant must be returned to the subconsultant within 30 days after the subconsultant's work is completed. Failure to comply with this provision shall be considered a Default by the Consultant. If the Consultant fails to comply with this provision, in addition to any other rights or remedies provided under this Agreement, the Owner, at its sole option and discretion, may:

- make payments directly to the subconsultant and offset such payments, along with any administrative costs incurred by the Owner, against reimbursements or payments otherwise due to the Consultant;
- notify any sureties; and/or,
- withhold any or all reimbursements or payments otherwise due to the Consultant until the Consultant ensures that the subconsultants have been and will be promptly paid for work performed.

14.6. The Consultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

## **15. RESPONSIBILITY OF THE CONSULTANT**

15.1. Neither the employees of the Consultant, or of its subconsultants, shall be deemed employees of the Owner for the purposes of this Agreement.

15.2. The Consultant and its subconsultants agree that it will have no interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement. Furthermore, the Consultant and its subconsultants shall not enter into any other contract during the term of this Agreement that would create or involve a conflict of interest with the services provided herein or other contracts that may be adverse to the Owner, State, City or County as it relates to this Agreement.

15.3. Notwithstanding any review, approval, acceptance, or payment by the Owner, the Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Consultant under this Agreement. The Consultant shall, without additional compensation above the Contract Price, correct or revise any errors or deficiencies in its designs, surveys, drawings, specifications, and other services.

15.4. The Consultant shall demonstrate to the Owner's Representative the presence and implementation of quality assurance in the performance of the Consultant's work. The Consultant shall identify individual(s) responsible, as well as methods used to determine the completeness and accuracy of designs, surveys, drawings, specifications, and cost estimates.

15.5. The Consultant further agrees that in its performance of work under this Agreement, it shall adhere to the requirements in the Design Standards of the ARDOT and FHWA, which shall be incorporated herein by reference.

15.6. The Owner shall have the right at any time and in its sole discretion to submit for review all or any portion of the Consultant's work to consulting engineers engaged by the Owner for that purpose. The Consultant shall fully cooperate with any such review.

- 15.7. The Consultant and any subconsultant shall employ qualified and competent personnel to perform the work under this Agreement.
- 15.8. Neither the Owner's review, approval, or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, or of any cause of action arising out of the performance of this Agreement. The Consultant shall be and remain liable to the Owner for all damages to the Owner caused by the Consultant's negligent performance of any of the services furnished under this Agreement.
- 15.9. The rights and remedies of the Owner provided under this Agreement are in addition to any other rights and remedies provided by law.
- 15.10. If the Consultant is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

## **16. WARRANTY OF SERVICES**

- 16.1. *Definitions. Acceptance*, as used in this Agreement, means the act of an authorized representative of the Owner by which the Owner approves specific services, as partial or complete performance of the Agreement. *Correction*, as used in this Agreement, means the elimination of a defect.
- 16.2. Notwithstanding inspection and acceptance by the Owner or any provision concerning the conclusiveness thereof, the Consultant warrants that all services performed and work product under this Agreement will, at the time of acceptance, conform to the requirements of this Agreement, meet the satisfaction of the Owner, and are performed in accordance to the prevailing industry standards, including standards of conduct and care, format and content.
- 16.3. If the Consultant is required to correct or re-perform, it shall be at no additional cost to the Owner above the Contract Price, and any services corrected or re-performed by the Consultant shall be subject to this Section to the same extent as work initially performed. If the Consultant fails or refuses to correct or re-perform, the Owner may, by contract or otherwise, correct or replace with similar services and charge to the Consultant the cost occasioned to the Owner thereby, or make an equitable adjustment in the Contract Price.
- 16.4. If the Owner does not require correction or re-performance, the Owner shall make an equitable adjustment in the Contract Price.
- 16.5. Nothing within this Section shall constitute a waiver or exclusion of any other right or remedy that the Owner may possess at law or under this Agreement.

## **17. TERM, COMMENCEMENT, AND COMPLETION**

- 17.1. This Agreement shall commence on the effective date set forth above and remain in effect until the completion of the Consultant's Scope of Services, as defined herein, to be completed by **January 31, 2026**, unless extended or terminated by the Owner in accordance with this Agreement.
- 17.2. The Consultant shall begin work under the terms of this Agreement within ten (10) days of receiving written notice to proceed. [If services are to be performed in subsequent phases, then each phase shall be commenced upon the Owner's approval of the previous phase. The Consultant shall not be entitled to any compensation or reimbursement for

services performed in a phase unless and until it has received approval from the Owner to proceed with such services.]

17.3. It is further agreed that time is of the essence in performance of this Agreement. The Consultant shall complete the work, or each phase, as scheduled, and the Owner shall provide any required approval of the work or phase meeting the requirements contained herein in a reasonable and timely manner. The Project shall be completed as follows:

See Appendix D: Project Schedule.

## **18. TERMINATION**

18.1. The Owner may terminate this Agreement in whole or, from time to time, in part, for the Owner's convenience or because of the Default of the Consultant.

18.2. The Owner shall terminate this Agreement by delivering to the Consultant written notice of the termination.

18.3. Upon receipt of the notice, the Consultant shall:

- Immediately discontinue all services affected (unless the notice directs otherwise).
- Deliver to the Owner all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.
- Terminate all subcontracts to the extent they relate to the work terminated.
- In the sole discretion and option of the Owner, and if and only if requested to do so, assign to the Owner all right, title, and interest of the Consultant under the subcontracts terminated, in which case the Owner shall have the right to settle any claim or dispute arising out of those subcontracts without waiver of any right or claim the Owner may possess against the Consultant.
- With approval or ratification by the Owner, settle all outstanding liabilities arising from the termination of subcontracts, the cost of which would be allowable in whole or in part, under this Agreement.
- Complete performance of any work not terminated.
- Take any action that may be necessary, or that the Owner may direct, for the protection and preservation of the property related to this Agreement that is in the possession of the Consultant and in which the Owner has or may acquire an interest.

18.4. If the termination is for the convenience of the Owner, the Owner shall make an equitable adjustment in the Contract Price, subject to the Ceiling Prices and Funding Limitations provisions, *but shall allow no anticipated fee or profit on unperformed services*. The Owner, upon its own determination, shall pay the Consultant in addition to payment for services rendered and reimbursable costs incurred, for all expenses the Owner determines to have been reasonably incurred by the Consultant in connection with the orderly termination of this Agreement including but not limited to demobilization, reassignment of personnel, associated indirect costs and all other expenses directly resulting from termination.

- 18.5. If the termination is for the Consultant's Default, the Owner may complete the work by contract or otherwise and the Consultant shall be liable for any reasonable and necessary additional cost incurred by the Owner to the extent caused by Consultant's Default.
- 18.6. Disputes and claims arising from termination of this Agreement shall be governed by Section 29, Disputes and Claims.
- 18.7. The rights and remedies of the Owner provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement and shall not constitute a waiver of any other such right or remedy.

## **19. STOP WORK ORDERS**

- 19.1. The Owner may, at any time, by written order to the Consultant, require the Consultant to stop all, or any part, of the work called for by this Agreement for a period of up to 90 days after the order is delivered to the Consultant, and for any further period to which the parties may agree. Upon receipt of the order, the Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Consultant, or within any extension of that period to which the parties shall have agreed, the Owner shall either—
- 19.1.1. Cancel the stop work order; or
- 19.1.2. Terminate the work pursuant to Section 18, Termination.
- 19.2. If a stop work order issued under this Section is canceled or the period of the order or any extension thereof expires, the Consultant shall resume work. The Owner shall make an equitable adjustment in the delivery schedule or Contract Price, or both, and the Agreement shall be modified in writing accordingly, if—
- The stop work order was not issued because of Consultant's Default in its performance of its obligations under any part of this Agreement; and,
  - The stop work order results in an increase in the time required for, or in the Consultant's cost properly allocable to, the performance of any part of this Agreement; and,
  - The Consultant provides Notice of Potential Claim pursuant to Section 29, Disputes and Claims.

## **20. CHANGES**

- 20.1. The Owner may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Agreement, including but not limited to: (1) drawings, surveys, designs, or specifications; (2) time of performance (i.e., hours of the day, days of the week, etc.); and (3) places of inspection, delivery, or acceptance.
- 20.2. If any such change causes an increase *or decrease* in the cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, the Owner shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fee; and (3) other affected terms.

20.3. All claims and disputes shall be governed by Section 29, Disputes and Claims. As provided in Section 29, the Consultant must provide written notice of its intention to make a claim for additional compensation before beginning the work on which the claim is based. If such notice is not given, the Consultant hereby agrees to waive any claim for such additional compensation.

20.4. Failure to agree to any adjustment shall be a dispute under Section 29, Disputes and Claims. *However, nothing in this Section or any other provision of this Agreement shall excuse the Consultant from proceeding with the Agreement as changed.*

## **21. OWNERSHIP OF DOCUMENTS & DATA**

21.1. Except for any pre-existing intellectual property, all project documents and data, regardless of form and including but not limited to original drawings, disks of CADD drawings, cross-sections, estimates, files, field notes, and data, shall be the property of the Owner. The Consultant shall further provide all documents and data at no cost to the Owner upon the Owner's request. The Consultant may retain reproduced copies of drawings and other documents. In the event that any patent rights or copyrights are created in any of the documents, data compilations, or any other work product, the Owner shall have an irrevocable license to use such documents, or data compilations, or work product. Any Owner use of the Consultant's work product for the purposes other than intended by this Agreement will be without risk to the Consultant.

## **22. PATENT AND COPYRIGHT INFRINGEMENT**

22.1. The Consultant shall report to the Owner, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Consultant has knowledge.

22.2. In the event of any claim or suit against the Owner on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, the Consultant shall furnish to the Owner, when requested by the Owner, all evidence and information in possession of the Consultant pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Consultant.

22.3. The Consultant agrees to include, and require inclusion of, the provisions of this Section in all subcontracts at any tier for supplies or services.

22.4. The Consultant shall indemnify the Owner and its officers, agents, and employees against liability, including costs and attorneys' fees, for infringement of any United States patent or copyright arising from the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Agreement, or out of the use or disposal by or for the account of the Owner of such supplies or construction work.

22.5. This indemnity shall not apply unless the Consultant has been informed within ten (10) business days following the Owner's receipt of legal notice of any suit alleging such infringement and shall be given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Owner directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by the Consultant, (2) an infringement resulting from addition to or change in supplies or

components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Consultant, unless required by final decree of a court of competent jurisdiction.

### **23. BANKRUPTCY**

23.1. In the event the Consultant enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Consultant agrees to furnish, by certified mail, written notice of the bankruptcy to the Owner. This notice shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notice shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of ARDOT job numbers and FAP numbers for all contracts with the Owner against which final payment has not been made. This obligation remains in effect until final payment under this Agreement.

### **24. FUNDING LIMITATIONS**

24.1. The Owner's obligations under this Agreement are contingent upon the availability of appropriated funds from which payments under the terms of this Agreement can be made in this and each subsequent fiscal year for the duration of the Agreement. No legal liability on the part of the Owner of any kind whatsoever under this Agreement shall arise until funds are made available to the Owner for performance of this Agreement, including those to be appropriated and provided by the State of Arkansas and those to be provided by the United States.

### **25. RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES**

25.1. The Consultant shall not be permitted to employ or make an offer of employment, for regular or part-time work related to this Project during the term of this Agreement, to any person who:

- is a present employee of the City of Tontitown or the Department;
- is a former employee of the City of Tontitown and/or the Department and at any time during the person's employment, the person participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, on any particular matter pertaining to this Agreement;
- is a former employee of the City of Tontitown and/or the Department within the twelve (12) months of employee cessation, and under this Agreement will knowingly act as a principal or as an agent in matters which were within this person's official responsibility;
- is a former employee of the City of Tontitown and/or the Department within the twelve (12) months of employment cessation and will engage in selling or attempting to sell commodities or services, including technical or professional consultant services, unless the former employee's last annual salary with the City and/or Department did not exceed ten thousand five hundred dollars (\$10,500);  
or

- is a former employee of the City of Tontitown and/or the Department and at any time was terminated with cause or allowed to resign/retire in lieu of termination with cause.

25.2. Any individual or entity acting as a principal or agent on behalf of any person disqualified pursuant to the terms of provision 25.1 shall not be permitted to perform any work related to any City of Tontitown project for the Consultant during the term of this Agreement.

25.3. This Section is not intended to preclude a former employee from accepting employment with the Consultant solely because the Consultant has entered into this Agreement with the Owner.

## **26. SUCCESSORS AND ASSIGNS**

26.1. This Agreement shall be binding upon the parties and their successors and assigns, and except as expressly set forth herein, neither the Owner nor the Consultant may assign, delegate, or transfer any benefit or obligation under this Agreement without the express written consent of the other party. Nothing herein shall be construed as a waiver of any immunity or as creating any personal liability on the part of any officer or agent of the Owner or any other governmental entity either made a party to, or having any interest in, this Agreement.

## **27. INDEMNITY AND RESPONSIBILITY FOR CLAIMS AND LIABILITY**

27.1. *Indemnity.* The Consultant shall hold harmless and indemnify the Owner and the ARDOT, their officers, employees and agents and all other governmental agencies with an interest in the Project, from and for all claims and liabilities stemming from any negligent acts, errors or omissions in the services performed in this Agreement on the part of the Consultant and its subconsultants, and their agents and employees.

27.2. *No Personal Liability.* No director, officer, manager, employee, agent, assign, or representative of the Owner or the ARDOT shall be liable to the Consultant in a personal or individual capacity under any term of this Agreement, because of any breach thereof, or for any act or omission in its execution or performance.

27.3. *Independent Consultant Relationship.* The parties intend that the Consultant shall be an independent consultant of the Owner and that the Consultant shall be liable for any act or omission of the Consultant or its agents, employees, or subconsultants arising under or occurring during the performance of this Agreement. No act or direction of the Owner shall be deemed to be an exercise of supervision or control of the Consultant's performance.

## **28. INSURANCE**

28.1. *Professional Liability Insurance Coverage.* The Consultant shall maintain at all times during the performance of services under this Agreement professional liability insurance coverage for errors, omissions, and negligent acts to the extent caused by the performance of professional services under this Agreement in an amount per claim of not less than five (5) times the original Contract Ceiling Price or \$2,000,000 per claim and aggregate, whichever is less. Such insurance shall extend to the Consultant and to its legal representatives in the event of death, dissolution, or bankruptcy, and shall cover the errors, omissions, or negligent acts of the Consultant's subconsultants, agents, and



employees. Such insurance shall extend to any errors, omissions, and negligent acts in the performance of services under this Agreement committed by the Consultant or alleged to have been committed by the Consultant or any person for whom the Consultant is legally responsible subject to the terms of the policy.

- 28.2. *Deductible.* The Consultant may maintain a professional liability insurance policy with a deductible clause in an amount approved by the Owner if, in the judgment and opinion of the Owner, the Consultant's financial resources are sufficient to adequately cover possible liability in the amount of the deductible. The Consultant shall submit promptly to the Owner, upon request as often as quarterly, detailed financial statements and any other information requested by the Owner to reasonably determine whether or not the Consultant's financial resources are sufficient to adequately cover possible liability in the amount of the deductible.
- 28.3. *Workers' Compensation Insurance.* The Consultant shall at all times during the Term of this Agreement maintain Workers' Compensation and Employer's Liability Insurance as required under Arkansas law.
- 28.4. *Automobile and General Liability Insurance.* The Consultant shall at all times during the term of this Agreement maintain commercial general liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000 per occurrence and aggregate, and comprehensive automobile liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000, which shall cover all owned, hired, and non-owned vehicles.
- 28.5. *Valuable Papers Insurance.* The Consultant shall at all times during the term of this Agreement maintain Valuable Papers Insurance, whether as part of the General Liability Insurance referenced above or as a separate insurance, in an amount sufficient to cover all cost associated with repairing, restoring, or replacing any plans, drawings, field notes, and other documents kept or created by the Consultant as part of the services under this Agreement, in the event of casualty to or loss or theft of such papers.
- 28.6. *Insurance Policies and Certificates.* The Consultant shall provide the Owner upon request copies of its insurance policies and evidence satisfactory to the Owner concerning the effectiveness and the specific terms of the insurance. Prior to the execution of this Agreement, the Consultant shall furnish to the Owner certificates of insurance reflecting policies in force, and it shall also provide certificates evidencing all renewals of any expiring insurance policy required hereunder within thirty (30) days of the expiration thereof. The Consultant's failure to provide and continue in force and effect any insurance required under this Article shall be deemed a Default for which Owner, in its sole discretion, may terminate this Agreement immediately or on such other terms as it sees fit.
- 28.7. *Additional Insurance Requirements.* All insurance maintained by the Consultant pursuant to this Section shall be written by insurance companies licensed to do business in Arkansas, in form and substance satisfactory to the Owner, and shall provide that the insurance will not be subject to cancellation, termination, or change during its term except upon thirty (30) days prior written notice to the Owner. In the event that the insurance is cancelled, terminated, or changed during its term and thirty (30) days written notice cannot be provided to the Owner, the Consultant shall provide any insurance required under this Article for continual coverage upon expiration of the existing policy or become financially responsible for any claims associated with the expired period.
- 28.8. *Duration of Insurance Obligations.* The Consultant shall maintain its professional insurance coverage required under this Agreement in force and effect for a period not less than five years after the final acceptance of the project or the completion of the Consultant's services under this Agreement, whichever comes later. Comprehensive General Liability

Insurance Coverage and Valuable Papers Insurance Coverage required under this Agreement shall be in full force and effect until the final acceptance or the completion of the Consultant's services, whichever comes later. All other insurance shall be maintained in full force and effect until final acceptance of the project or completion of the Consultant's services, whichever comes first.

28.9. *Consultant's Insurance Primary.* All insurance policies maintained by the Consultant pursuant to this Agreement shall provide that the consultant's insurance shall be primary and the Owner's own insurance shall be non-contributing.

28.10. *Additional Insured.* All liability insurance policies, except the professional liability policy, workers' compensation, and valuable papers policy, maintained by the Consultant pursuant to this Agreement shall be endorsed to include the Owner, its officers, directors, managers, employees, agents, assigns and representatives, individually and collectively, as additional insured, and all property damage insurance shall be endorsed with a waiver of subrogation by the insurer as to the Owner.

## **29. DISPUTES AND CLAIMS**

29.1. *Notice of Potential Claim.* Whenever a Consultant deems that any additional compensation is due, the Consultant shall notify the Owner in writing of its intention to make a claim for additional compensation ("Notice of Potential Claim") **before beginning the work that gives rise to the claim.**

29.2. *Time & Manner for Submitting Claim.* All disputes and claims shall first be submitted in writing to the Owner within 45 calendar days after the completion or termination date. **The Consultant hereby agrees that the failure to submit the dispute or claim to the Owner prior to 45 calendar days after the completion or termination date shall constitute a waiver of the dispute or claim.**

29.3. *Form.* All disputes and claims must be submitted in writing and in sufficient detail to permit the Owner to determine the basis for entitlement and the actual allowable costs incurred. Each claim must contain:

- A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected by the claim;
- The date the actions resulting in the claim occurred or conditions resulting in the claim became evident;
- A copy of the "Notice of Potential Claim";
- The name, title, and activity of each Owner's employee knowledgeable about facts that gave rise to such claim;
- The name, title, and activity of each Consultant, Subconsultant, or employee knowledgeable about the facts that gave rise to the claim;
- The specific provisions of the Agreement that support the claim and a statement why such provisions support the claim;
- The identification and substance of any relevant documents, things, or oral communications related to the claim;

- A statement whether the claim is based on provisions of the Agreement or an alleged breach of the Agreement;
- If an extension of time is sought, the specific number of days sought and the basis for the extension;
- The amount of additional compensation sought and a specific cost breakdown of the amount claimed; and,
- Any other information or documents that are relevant to the claim.

29.4. *Decision and Appeal.* The decision of the Owner shall be final and conclusive.

29.5. *Continued Performance.* Pending final resolution of a dispute or claim, unless the Owner has terminated this Agreement pursuant to Section 18 or issued a stop work order pursuant to Section 19, the Consultant shall proceed diligently with the performance of this Agreement in accordance with the Owner's decisions.

29.6. *Nonexclusive Remedies.* The rights and remedies of the Owner provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement, and shall not constitute a waiver of any other such right or remedy. If the Owner decides the facts justify the action, the Owner may, at its sole option and discretion, receive and act upon a proposal, dispute, or claim submitted at any time before final payment under this Agreement.

### **30. COVENANT AGAINST CONTINGENCY FEES**

30.1. The Consultant warrants that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Owner shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.

30.2. *Bona fide agency*, as used in this Section, means an established commercial or selling agency, maintained by the Consultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.

30.3. *Bona fide employee*, as used in this Section, means a person, employed by the Consultant and subject to the Consultant's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.

30.4. *Contingent fee*, as used in this Section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.

30.5. *Improper influence*, as used in this Section, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

### **31. TITLE VI ASSURANCES (NONDISCRIMINATION)**

During the performance of this Agreement, the Consultant, for itself, its successors, and its assigns, certifies and agrees as follows:

- 31.1. *Compliance with Regulations.* The Consultant shall comply with the Regulations relative to Title VI (Nondiscrimination in Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49 CFR Part 21, as amended, and hereinafter referred to as the Regulations). These regulations are herein incorporated by reference and made a part of this Agreement. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person shall, on the basis of race, color, or national origin be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.
- 31.2. *Nondiscrimination.* The Consultant, with regard to the work performed by it during the term of this Agreement, shall not discriminate on the basis of race, color, or national origin in the selection and retention of subconsultants, including procurements of material and leases of equipment. The Consultant shall not participate either directly or indirectly in any discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the USDOT Regulations.
- 31.3. *Solicitations for Subcontracts, Including Procurements of Material & Equipment.* In all solicitations, either by competitive bidding or negotiation, made by the Consultant for work to be performed under a subcontract, including procurements of material and leases of equipment, each potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 31.4. *Information and Reports.* The Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities by the Owner, the ARDOT, or the USDOT and its Affiliated Modes to be pertinent to ascertain compliance with such regulations and directives. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Owner, the ARDOT or the USDOT and its Affiliated Modes, as appropriate, and shall set forth the efforts it has made to obtain the records or information.
- 31.5. *Sanctions for Noncompliance.* In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Owner shall impose such contract sanctions as it, the ARDOT, or the USDOT and its Affiliated Modes may determine to be appropriate, including but not limited to, withholding of payments to the Consultant under the Agreement until the Consultant complies with the provisions and/or cancellation, termination, or suspension of the Agreement, in whole or in part.
- 31.6. *Incorporation of Provisions.* The Consultant shall include the terms and conditions of this Section in every subcontract including procurements of material and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the Owner, the ARDOT, or the USDOT and its Affiliated Modes may direct as a means of enforcing such provisions, including sanctions for noncompliance; *provided*, however that, in the event the Consultant becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of any direction, the Consultant may request the

Owner or the ARDOT to enter into the litigation to protect the interests of the State and litigation to protect the interests of the United States.

### **32. DBE CLAUSE**

- 32.1. The Consultant or subconsultant shall not discriminate on the basis of race, color, sex or in the performance of this Agreement. The Consultant shall comply with the applicable requirements of 49 CFR Part 26 and perform any actions necessary to maintain compliance in the award and administration of DOT-assisted contracts. Failure by the Consultant to comply with or perform these requirements is a material breach of this Agreement, which may result in the cancellation, termination, or suspension of this Agreement in whole or in part, or such other remedy that the Owner may determine appropriate.
- 32.2. The Consultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

### **33. COMPLIANCE WITH ALL OTHER LAWS REGARDING NONDISCRIMINATION**

- 33.1. The Consultant will comply with the provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Federal Aid Project Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.
- 33.2. The Consultant, during the term of this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion, disability, or any other protected classes, in admission or access to and treatment in programs and activities associated with this Agreement, or in the selection and retention of subconsultants, including procurements of material and leases of equipment. The Consultant shall not participate either directly or indirectly in any discrimination prohibited by the Regulations, including employment practices.
- 33.3. In accordance with Section 504 regulations 49 CFR Part 27.15, the Owner's Notice of Nondiscrimination is required in any bulletins, announcements, handbooks, pamphlets, brochures, and any other publications associated with this Agreement that are made available to the public, program participants, applicants or employees.

### **34. CERTIFICATION REGARDING LOBBYING**

- 34.1. The Consultant certifies, to the best of their knowledge and belief, that:
  - 34.1.1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 contract, 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 contract, grant, loan, or cooperative agreement.

34.1.2. 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying".

34.1.3. The Consultant shall require that the language of this certification be included in the agreement for all subcontracts and that all subconsultants shall certify and disclose accordingly.

**35. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

35.1. The Consultant certifies, to the best of its knowledge and belief, that—

35.1.1. The Consultant and any of its Principals—

35.1.1.1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal or state agency;

35.1.1.2. Have not, within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

35.1.1.3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in Subsection 35.1.1.2; and,

35.1.1.4. The Consultant has not within a 3-year period preceding this offer, had one or more contracts terminated for Default by any federal or state agency.

35.2. *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code, as well as any other applicable federal and state laws.

35.3. The Consultant shall provide immediate written notice to the Owner if, at any time prior to contract award, the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

35.4. The certification in Subsection 35.1 is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Consultant knowingly rendered an erroneous certification, the Owner may terminate the contract resulting from this solicitation for default in addition to any other remedies available to the Owner.

### **36. MISCELLANEOUS**

- 36.1. *General Compliance with Laws.* The Consultant shall comply with all Federal, State, and local laws, regulations, and ordinances applicable to the work, including but not limited to, the Americans with Disabilities Act and Occupational Safety and Health Act as amended.
- 36.2. *Registered Professional Engineer's Endorsement.* All plans, specifications, estimates, and engineering data provided by the Consultant shall be endorsed and recommended by an authorized representative of the Consultant, who shall be a registered Professional Engineer licensed in the State of Arkansas.
- 36.3. *Choice of Law.* This Agreement shall be governed by the laws of the State of Arkansas without consideration of its choice of law provisions.
- 36.4. *Choice of Forum.* The Consultant agrees that any cause of action stemming from or related to this Agreement, including but not limited to disputes or claims arising under this Agreement, for acts or omissions in the performance, suspension, or termination of this Agreement, whether sounding in contract or tort, equity or law, may only be brought in the appropriate forum within State of Arkansas.
- 36.5. *No Waiver of Immunity.* The Owner expressly does not waive any defense of immunity that it may possess under either federal or state law, and no provision in this Agreement shall be construed to constitute such a waiver in whole or in part.
- 36.6. *Conflicts Between Laws, Regulations, and Provisions.* In the event of conflicting provisions of law, the interpretation shall be governed by the following in this order, from most controlling to least: Federal law and regulations, Arkansas law and regulations, Department and FHWA Design Standards, and this Agreement.
- 36.7. *Severability.* If any term or condition of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, all remaining terms of this Agreement shall remain valid and enforceable unless one or both of the parties would be materially prejudiced.
- 36.8. *No-Waiver.* The failure of the Owner to strictly enforce any term of this Agreement shall not be construed as a waiver of the Owner's right to require the Consultant's subsequent performance of the same or similar obligation or duty.
- 36.9. *Modification and Merger.* This written Agreement and any provisions incorporated by reference reflect the entire agreement of the parties and may be modified only by the express written agreement of both parties.
- 36.10. *Force Majeure Clause.* Neither party to this Agreement shall be liable for any delay direct or indirect in performance caused by an unforeseen event such as acts of God, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party beyond such party's reasonable control. Each party will take reasonable steps to mitigate the impact of any force majeure.
- 36.11. *Authorization to Proceed.* Execution of this Agreement by the Owner will be made by written authorization to the Consultant. The Consultant and Subconsultants shall not seek reimbursement for work initiated prior to receiving notice to proceed or work order authorization.

**37. CERTIFICATION OF AUTHORIZED REPRESENTATIVES**

37.1. This Agreement and the certifications contained herein or attached hereto constitute the whole Agreement of the parties, and each party certifies that this Agreement and any attached certification have been executed by their duly authorized representatives.

**38. CERTIFICATION REGARDING CONFLICT OF INTEREST**

38.1. The Consultant certifies, that it has no financial interest in the proposed project or construction of the proposed project.

38.1.1. The Consultant nor any of its Principals have no known conflicts with any of the following:

38.1.1.1. No financial interest in work associated with this contract;

38.1.1.2. No ownership interest in work associated with this contract;

38.1.1.3. No financial interest in the results of any agency decisions regarding approvals for work associated with this project;

38.1.1.4. Policies and procedures (provided statutory framework permits) for a contracting agency to pursue a range of civil actions and penalties including fines, suspension, or debarment associated with fraud, waste, abuse, and identified conflict of interest which were not disclosed.

38.2. For the duration of the contract, except for work expressly defined in this contract, the Consultant shall not be party to third party agreements for design or construction on projects associated with contract.

38.3. For the duration of the contract, except for work expressly defined in this contract, the Consultant shall not be party to enforceable promises or guarantees of future work associated with this contract.

**39. NOTICE**

39.1. All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be addressed to either the Owner's Representative or the Consultant's Representative, and mailed or hand-delivered to:

39.1.1. To the Owner's Representative:

City of Tontitown  
235 E. Henri de Tonti Blvd.  
P.O. Box 305  
Tontitown, AR 72770  
Attn: Mark Latham

39.1.2. To the Consultant:

Burns & McDonnell Engineering Company, Inc.  
6576 Lynch's Prairie Cove, Suite B  
Springdale, AR 72762  
Attn: Jonathan Ely



**IN WITNESS WHEREOF**, the parties execute this Agreement, to be effective upon the date set out above.

Burns & McDonnell Engineering Company,  
Inc.

City of Tontitown, Arkansas

BY: \_\_\_\_\_  
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## **APPENDICES**

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**APPENDIX A-1**  
**Scope of Work**  
**ARDOT Job 040957**  
**HWY 412 / Barrington Road Intersection Improvements (Tontitown)**

**I. DESCRIPTION OF PROJECT**

The City of Tontitown is proposing to engage a design firm or a team of design firms to provide professional engineering services for improvements to the intersection of Highway (Hwy.) 412 and Barrington Road in Tontitown, AR.

The project limits extend north and south along Barrington Road and are expected to begin just south of E Bandini Avenue and extend north to the southwest corner of the United States Post office. Total footage of improvements is expected to be approximately 1,800 linear feet. Anticipated street improvements will consist of:

- Widened roadway sections to accommodate designated left and right turn lanes for northbound and southbound traffic on Barrington Road,
- Center turn lanes on Barrington Road (north and south of the intersection with Hwy. 412),
- Sidewalk along the west side of Barrington Road, and a shared-use path along the east side of Barrington Road,
- Accessible ramps and pedestrian signals at the intersection of Hwy. 412,
- Traffic Signal Modifications at the intersection of Hwy. 412,
- Drainage Improvements converting existing open ditches to enclosed storm sewer system of inlets and pipes,
- Access Management to reduce the number and length of curb cuts, and
- No improvements are proposed for Hwy. 412 as part of the project.

In addition to this, a shared-use path and tunnel under Hwy. 412 is also included as part of the project. The goal and purpose of the shared-use path is to provide a safe functional multimodal connection for pedestrians and cyclists between Harry Sbanotto Park, St. Joseph Catholic Church, Grape Festival Area, and the Future Heritage district to the north. Anticipated improvements for the shared-use path will consist of:

- A Precast RCB Tunnel Under Hwy. 412, with Cast In Place Headwalls,
- Modular large block retaining walls on each side of the trail leading in and out of the tunnel,
- Overhead lighting in the tunnel and on each end of the tunnel lighting the approaches,
- Drainage accommodations including sump pit and pump,
- Sidewalk and trail connections to Harry Sbanotto Park and Barrington Road, and
- Up to 3 alternative alignments will be studied.

The proposed project design will require surveys, geotechnical studies, environmental studies, hydraulic studies and ancillary drainage structures designs, traffic analysis, roadway and drainage design plans, maintenance of traffic and right of way plans. The Work Zone Policy impact is considered significant.

This project includes Surface Transportation Block Grant Program – Attributable (STBGP-A) funds and all work will be reviewed and approved by the Arkansas Department of Transportation (ARDOT). All work and contract requirements shall conform to the requirements of the Federal Highway Administration (FHWA), ARDOT, and the City of Tontitown.

The plans will be required to be prepared in standard ARDOT format as this is on the State Highway System including survey by a surveyor who has been approved by ARDOT to perform surveys on the State Highway System.

## **II. SERVICES PROVIDED BY THE CITY**

1. Review Design Documents and provide timely feedback.
2. Attend meetings with utility companies and stakeholders.
3. Attend Design Field Check meetings at 30% and 90%.
4. Provide Right of Entry (ROE) from public or private landowners to perform the Consultant's services.
5. Provide and coordinate the necessary public meetings.
6. Publish, and pay for public notices and legal notices.
7. Provide appropriate translation services at public meetings as necessary.
8. Provide existing right of way plans if available.
9. Provide right of way appraisal and acquisition.
10. Handle utility adjustments, as needed.
11. Handle relocates, as needed.

## **III. SERVICE PROVIDED BY ARDOT**

1. Provide sample environmental clearance documents.
2. Review environmental documentation for the project.
3. Coordinate with FHWA for tribal correspondence and document approvals.
4. Coordinate with the State Historic Preservation Office (SHPO) and other federal, state and local agencies as necessary.
5. Review plans and specifications at 30%, 60%, and 90% level.

## **IV. TITLE I SERVICES TO BE FURNISHED BY THE CONSULTANT**

### **ENVIRONMENTAL CLEARANCE DOCUMENTATION SUPPORT**

#### **A. ENVIRONMENTAL DATA COLLECTION**

Preliminary environmental data associated with the proposed project area will be collected to assess impacts to the social, economic, and natural environments. Data related to the following impact areas should be included:

1. Air Quality
2. Noise Quality
3. Hazardous Materials
4. Wetlands and Stream Impacts
5. Water Quality, including Public Drinking Supplies
6. Farmland
7. Land Use and Land Cover
8. Migratory Birds
9. Terrestrial and Aquatic Communities
10. Endangered and Threatened Species
11. Economic
12. Community
13. Relocations, including Homes, Businesses, Non-profit Organizations, and Tenants of all types
14. Environmental Justice and Title VI
15. Recreational Areas
16. Archeological Sites and Historic Structures
17. Visual
18. Section 4(f) / 6(f) Properties
19. Secondary and Cumulative Impacts

#### **B. ENVIRONMENTAL CONSTRAINTS MAP**

All environmental data collected will be transferred to appropriately scaled aerial photographs to produce a map that indicates all known environmentally sensitive areas and provided to the Designers for avoidance and minimization of impacts. Environmentally sensitive areas and recreational facilities will be provided to the Roadway Designers for avoidance, and/or minimization of impacts, and/or notation on the plans as a restraining condition of the Contractor, in accordance with Section 107.10 of the Standard Specifications for Highway Construction. Contract Special Provisions should be developed as necessary to provide protection for environmentally sensitive areas or features and to provide guidance to the Contractor.

#### **C. LOCATION AND/OR DESIGN ALTERNATIVES**

1. Prepare conceptual design of the preferred alignment for roadway improvements and up to three (3) schematic alternatives for shared use path and tunnel under Hwy. 412. Schematic and Concept designs will include major drainage structures, permanent and temporary easements, utility relocations and bicycle/pedestrian improvements. Development of the alternatives shall include early and continuous coordination with the City, ARDOT, FHWA, and appropriate resource agencies. Electronic copies of the design shall be furnished in AutoCad "DWG" format.
2. Prepare cost estimates for each alternative.

3. After the preferred alternative has been reviewed by the City, ARDOT, and FHWA, a final determination will be made by FHWA/ARDOT as to which type of NEPA environmental document (Environmental Impact Statement, Environmental Assessment, or Categorical Exclusion) is warranted. A Categorical Exclusion (CE) is anticipated and is the basis for the level of effort described below.

D. PUBLIC INVOLVEMENT MEETING – 1 Meeting is Anticipated.

1. Public Involvement Meeting anticipated near completion of 60% plans.
2. Plan, coordinate, participate in, and assist the City in conducting one Public Involvement Meeting near the project area. Identify the logistics involved in selecting the meeting location and time with the City and ARDOT. The City will subsequently secure/reserve and pay any rental costs for such site and any necessary equipment.
3. Prepare and submit the notice of public involvement meeting to the City and ARDOT for review and approval. Place the approved notice in a local newspaper in accordance with ARDOT policies and requirements. The City will be responsible for payment for the publication of legal notices and ads.
4. Prepare public involvement displays, sign-in sheets, comment sheets, and other materials for the Public Involvement Meeting as necessary, including information on Section 106, Section 4(f), and Section 6(f) processes to solicit specific input to satisfy regulatory requirements. Provide an adequate number of handouts and displays for the public involvement meeting and provide a sufficient number of personnel to support the Public Involvement Meeting by being prepared to answer questions and explain all concepts of the proposed project. Also, be prepared to pivot to virtual public involvement meetings if required.
5. Compile comments received at the Public Involvement Meeting and document the same in the form of a synopsis that will include comment cards, letters, attendance sheets, summary of input, response to public comments, etc. This will include photographs or copies of informational displays, handouts, etc., and submit a Title VI report.

E. CULTURAL RESOURCES AND HISTORIC PROPERTIES

1. Perform a desktop review of the Arkansas Archeological Survey Automated Management of Archeological Site Data in Arkansas database and the Arkansas Historic Preservation Program structure database to identify previously recorded cultural resources. The Archeological Survey will require no more than 30m shovel tests; no deep testing (trenching) is anticipated. It is anticipated that no archeological sites will be recorded and no artifacts will be collected.
2. Conduct surveys (historic structures and archeology), evaluate resources for eligibility in the National Register of Historic Places, and complete and submit a cultural resources report to ARDOT for review. Once comments are addressed, ARDOT shall submit the report to SHPO. Cultural resources clearance will be required for the final environmental documentation. The Architectural Resources Survey would include no more than 10 historic-age structures. This task excludes formal landscape assessments, intensive surveys, archival research, and any mitigation activities (e.g., coordination with ARDOT/SHPO, tribes, or other consulting parties, development of a Section 106 Memorandum of Agreement or Programmatic Agreement).
3. Coordinate with FHWA through ARDOT for tribal consultation and correspondence.

#### F. SECTION 4(f) AND 6(f) RESOURCES

1. Harry Sbanotto (Tontitown) Park received a Land and Water Conservation Fund (LWCF) grant in 1979. The proposed project would extend a section of trail (a presumed beneficial use) onto park property, connected to the sidewalk system to be constructed/extended as part of the proposed intersection improvements. Coordination with ARDOT, the Arkansas Department of Agriculture, Natural Resources Division (presumed state grant administrator) and the National Park Service (NPS) is anticipated to obtain a temporary impact (less than 6 months in duration) finding and support no land conversion to be required under Section 6(f) of the LWCF. The 6(f) analysis includes a narrative describing the needs to be met, alternatives considered, and measures to be taken for the action to be considered temporary and of beneficial use to the LWCF-funded resources. Coordination with the City is included to verify park funding and public use.
2. Harry Sbanotto (Tontitown) Park (owned by the City of Tontitown) and the St. Joseph Catholic Church property will be evaluated as Section 4(f) resources (public park and potential historic site). A *de minimis* Section 4(f) is anticipated for the church (if determined NRHP-eligible) and either a *de minimis* Section 4(f) or use of a FHWA Nationwide Section 4(f) Programmatic Evaluation such as “Net Benefit” or “Minor Involvement with Parks” for Harry Sbanotto Park. This task includes development of two Section 4(f) documents (as described), coordination and review by ARDOT, and coordination with the appropriate agencies outside of ARDOT. The anticipated *de minimis* documents are anticipated to discuss the significance of each resource, the need for the project, the avoidance and minimization alternatives considered, and all planning to minimize harm to the resources. No Section 4(f) analysis is anticipated for historic sites.
3. Develop an Official with Jurisdiction (OWJ) letter and coordinate with the City to obtain their concurrence on a *de minimis* (beneficial) level of impacts to the city-owned 4(f) property.

#### G. BIOLOGICAL INVESTIGATIONS

1. Wetland/WOTUS - Due to the developed nature of the project area, only a desktop analysis and windshield survey will be conducted. Based on a review of the National Wetland Inventory (NWI) mapping for the project area, no wetlands are present in the project area and the mapped streams are at least 300 feet outside of the proposed ROW or construction limits. This project does not require a Section 404 permit. No coordination with the USACE is anticipated.
2. Protected Species - Due to the developed nature of the project area, only a desktop analysis and windshield survey will be conducted. The Information for Planning and Consultation (IPaC) website will be used to identify federally listed threatened and endangered species, as well as their habitat potentially present within the vicinity of the project. No vegetation or tree removal is anticipated to be required for this project. No coordination with USFWS is anticipated.
3. Water Quality/NPDES/ADEQ Coordination - Construction of the project is anticipated to be covered under the General Permit No. ARR150000, Authorization to Discharge Stormwater Under the National Pollutant Discharge Elimination System and the Arkansas Water Pollution Control Act. No waters of the state should be affected so no Section 401 Water Quality Certification/Short-Term Activity Authorization will be required. Anticipated permits will be noted in the CE.

#### H. HAZARDOUS/REGULATED MATERIALS

Conduct a literature and database review and visual survey to identify potential hazardous/regulated material sites in the vicinity of the proposed project. The results of this effort shall be documented in the Environmental Documentation. The work shall include:

1. Overview and Summary of Hazardous Materials Sites within the Study Area – This initial screening will include a review and evaluation of applicable state and federal regulatory agency databases.
2. Identification of Sites of Concern – A review and evaluation of the following list will be performed for the reasonable and feasible alternatives: CERCLA, NPL, RCRA, RST, LRST, State Superfund, City Solid Waste Landfills.
3. Visual survey of study area.

#### I. ENVIRONMENTAL DOCUMENT

1. Prepare a Categorical Exclusion (CE) including appropriate supporting technical analyses and Section 4(f)/6(f) evaluations.
2. Submit draft CE and associated technical reports/memos in electronic format (pdf and MS Word) for review by the City and ARDOT.
3. Perform alterations necessary to respond to comments from the City and ARDOT made during the review. Assume 1 review by the City and 2 rounds of reviews by ARDOT for the CE and each technical report/memo.
4. Submit final draft CE to the City and ARDOT for submittal to the FHWA for approval.
5. All submittals will be in electronic form (PDF format); no paper deliverables anticipated.
6. Coordinate and obtain appropriate federal and state permits and clearances (Section 106, Section 404, STAA, etc.) necessary for environmental clearance and to design the proposed project in compliance with the City and ARDOT procedures. Provide environmental information needed for completion of the NPDES SWPPP to design team, including wetland locations and acres of impacts, endangered and threatened species, 303(d) waters, Total Maximum Daily Load (TMDL) waters, operator of local municipal separate storm sewer system (MS4), and special waters for 50-ft. buffer zone, if applicable.



## **FIELD SURVEYS AND MAPPING**

The Consultant shall be responsible for obtaining field surveys and for establishing project control within the project limits.

This project is on the State Highway System requiring an ARDOT qualified surveyor. Surveys will consist of performing design surveys and land surveys. All survey tasks will be performed under the supervision of an Arkansas Registered Professional Surveyor and in accordance with Arkansas minimum standards. The surveys to be conducted will consist of:

1. Design surveys tasks
2. Primary project horizontal control traverses
3. Elevation Control – Three Wire Level
4. Topography and Terrain Data Collection
5. Field Data Processing
6. Digital Terrain Modeling
7. Utility locations as marked by ARKUPS
8. Land Surveys
9. Title Search
10. Parcel Surveys and work sheets.

## ROADWAY DESIGN AND PLANS

Plans will be developed using Civil 3D software.

### A. SCHEMATIC DESIGN (15% Submittal)

1. Develop design criteria to be used in the design of the project.
  - a) Design vehicles, design speed, traffic volumes, growth factors, drainage criteria, etc.
2. Develop and Submit 15% Strip Map for Barrington Road to include:
  - a) The Title Sheet,
  - b) Typical sections,
  - c) Pavement Markings showing lane configuration,
  - d) Driveways, sidewalks, shared-use path,
  - e) Tentative limits of construction,
  - f) Preliminary property and easement information and aerial imagery.
3. Develop and Submit 15% Plan and Profile for up to 3 alternative alignments for shared-use trail and tunnel under Hwy. 412 to include:
  - a) Typical sections,
  - b) Proposed alignment and profile,
  - c) Tentative limits of construction, preliminary property and easement information and aerial imagery.
4. Develop vehicle turning exhibits to demonstrate design of truck turning movements.
5. Provide Opinion of Probable Construction Cost for each alternative.
6. Conduct Utility Coordination Kick Off meeting with all city and franchise utility providers to identify critical utility corridors within the project limits. Use this information to identify possible utility conflicts associated with proposed improvements.
7. Provide four (4) paper copies (half size 11x17), one electronic pdf, and AutoCAD/Civil 3D files for plan review by the City.
8. Attend up to 3 Meetings with City representatives and project stakeholders to share schematic designs and alternatives.
9. Review and respond to stakeholder meeting comments and provide synopsis of decisions/determinations made.
10. Provide recommendation for preferred alternative with the shared-use path and tunnel under Hwy. 412.

### B. CONCEPTUAL DESIGN (30% Submittal)

1. Prior to start of 30% design, City shall make determination regarding preferred alternative for the shared-use path and tunnel under Hwy. 412.
2. Address comments received during the 15% Schematic Design Review.
3. Progress the Design - Develop and submit 30% roadway plans for review by the City to include at a minimum:
  - a) The Title sheet,
  - b) Governing Specifications and General Notes,
  - c) Typical Sections,
  - d) Plan and Profile Sheets showing the proposed alignment with horizontal curve data, grades with vertical curve data,
  - e) Pavement markings, lane configuration and dimensions,
  - f) Location and width of greenspace sidewalks, shared-use path,
  - g) Location of preliminary drainage infrastructure,
  - h) Limits of construction,
  - i) Existing property lines and right of way,

- j) Existing aerial photography and topographic survey.
- 4. Progress the Design – Develop and submit 30% shared-use path plans following the preferred alternative. Plans to include:
  - a) Typical Sections,
  - b) Proposed alignment and profile,
  - c) Pavement markings,
  - d) Retaining wall profiles,
  - e) Limits of construction, property and easement information and aerial imagery.
- 5. Provide Opinion of Probable Construction Cost
- 6. Provide four (4) paper copies (half size 11x17), one electronic pdf, and AutoCAD/Civil 3D files for plan review by the City.
- 7. City shall submit the 30% Submittal for review by ARDOT.
- 8. ARDOT review of 30% submittal shall include electronic pdf of files and include items detailed in the Roadway Design Plan Development Guidelines.

C. PRELIMINARY ROADWAY DESIGN (60% Submittal)

- 1. Obtain soil borings for pavement design. Station and location to be provided.
- 2. Address comments received during the 30% Concept Design Review.
- 3. The preliminary roadway plans (60% submittal) shall show, as a minimum:
  - a) The title sheet
  - b) The typical sections will include notes pertaining to slopes, tolerances, leveling, and other items. The typical sections will contain information depicting the width of the subgrade, all lanes, shoulders, and clear zones. The side slopes (run/rise) and finished grade cross slopes (ft./ft.) will also be shown. The point of profile will be defined and the location of pipe underdrains, if needed, will be illustrated. The location and shape of all ditches will also be depicted. Based on traffic data and geotechnical investigations, pavement design recommendations will be delivered to the City and ARDOT for their review and approval. Pertinent data and design calculations will be provided as well as the actual pavement section recommendations. The approved pavement designs will be incorporated into the typical sections.
  - c) Control detail sheets of the survey baseline and design centerline with control point data.
  - d) Roadway Plan & Profile Sheets
    - 1) The plan sheets will contain information including the following in the plan view: proposed centerline and travel lanes, existing topography, existing utilities, horizontal geometry (curve data, PI's, bearings), north arrow, lane and shoulder dimensions, taper dimensions, proposed driveways, and side streets, proposed cross drains and related construction notes, turning radii, limits of existing and proposed right of way and control of access (including fence), permanent and temporary construction easements, construction limits, location of right of way points and benchmarks, and other data as required.
    - 2) The profile sheets will contain information including the following in the profile view: proposed vertical geometry (including VPIs, grades, and ditch grades), superelevation station limits, benchmarks, existing ground profile, and drainage information.
  - e) Shared-use Path Plan & Profile Sheets
    - 1) The plan sheets will contain information including the following in the plan view: proposed centerline and travel lanes, existing topography, existing utilities, horizontal geometry (curve data, PI's, bearings), north arrow, lane

and clear zone dimensions, and related construction notes, radii, limits of existing and proposed right of way, permanent and temporary construction easements, construction limits, location of right of way points and benchmarks, and other data as required.

- 2) The profile sheets will contain information including the following in the profile view: proposed vertical geometry (including VPIs, grades, and ditch grades), superelevation station limits, benchmarks, existing ground profile, and drainage information.
- f) Signing & Pavement Marking Plans and Details (60%)
4. Provide Opinion of Probable Construction Cost
  5. Provide Preliminary Drainage Report describing design of Storm Drainage Network including inlets, pipes and culverts.
  6. Provide four (4) paper copies (half size 11x17), one electronic pdf and AutoCad/Civil 3D files of plans for right of way review, and 60% plan review. The City shall submit 60% plans for ARDOT review.
  7. Attend preliminary field inspection. Provide sufficient number of plan copies for preliminary field inspection.
  8. Provide design information necessary for environmental documentation and environmental permits to be obtained by the Consultant.
  9. Public Meeting
    - a) Prepare design-related displays to be used at the public meeting when needed. This would include, color prints of the proposed improvements, drawings identifying any environmental resources and impacts, as well as exhibits showing proposed and existing right of way and easements. Assist the City at the meeting by being prepared to answer and explain all concepts of the proposed design. Develop a written synopsis of the public comments and provide written responses to each comment. This written synopsis shall be furnished to the City for the completion of the project certification.

## **TRAFFIC ANALYSIS**

### **A. TRAFFIC EVALUATION**

1. Perform traffic counts along the corridor and at the major intersection including peak hour turning movement counts to determine the current transportation demands within the study area.
2. Project the current traffic volumes based on an annual growth rate to a 20-year horizon to determine future traffic conditions.
3. Evaluate the proposed improvements utilizing *Synchro* software to evaluate delays and levels of service for the proposed improvement as well as the no-build conditions to inform the design decisions and the intersection performance improvements based on the scope of the project. Up to 3 lane configurations will be evaluated for level of service along with queue length and storage analysis for the chosen alternative.
4. Prepare a memo summarizing the traffic forecast volumes and level of service for the proposed improvements.

## **TRAFFIC SIGNAL DESIGN AND PLANS**

### **A. PRELIMINARY SIGNAL DESIGN**

1. Signalization Plans
2. Special details as needed
3. Plan sheets showing:
  - a) Alignment
  - b) Construction limits
  - c) Right of way, permanent and temporary construction easements (existing and proposed)
  - d) Roadside features within right of way
4. Signalization layout for permanent and temporary signal and permanent signal details

## **RIGHT OF WAY PLANS**

Provide Right of Way Plans per Attachment B - Stage Submittal of Right of Way Plans.

## **PROJECT MANAGEMENT**

1. The Consultant shall:
  - a) Notify the City and ARDOT of its schedule, in advance, for all activities.
  - b) Provide monthly updates to the detailed project schedule.
  - c) Project Controls: Prepare for and coordinate invoices and billing with the City and ARDOT.
  - d) Conduct an initial review and update of the preliminary project scope, detailed project schedule, and preliminary estimate using forms provided by the City and ARDOT and submit at major project milestones.
  - e) Recommend scope, schedule, and budget changes and submit supporting documentation including efforts to minimize or mitigate the changes in accordance with procedures outlined by the City and ARDOT.

- f) Client Coordination and Subconsultant Coordination: The Consultant shall maintain ongoing communication with the City and ARDOT and subconsultants for items such as work activities, billing, and miscellaneous coordination.

## **PROJECT CONDITIONS OF THE WORK**

The facility shall be designed in accordance with the City of Tontitown Master Street Plan, latest edition of AASHTO, "A Policy on Geometric Design of Highways and Streets"; the latest edition of NACTO, "Urban Bikeway Design Guide"; and ARDOT policies. Other appropriate AASHTO publications and guide specifications shall also be utilized. Upon completion of the contract, the Consultant shall furnish to the City all electronic files of the project design and plans, Adobe Acrobat PDF file format & AutoCAD/Civil 3D file format.

All plans and surveys shall be in U.S. Foot Units and based on Arkansas State Plane Grid, localized in the existing City of Tontitown Control Network, with ties to ARDOT control points.

In addition, all design surveys and/or land surveys required and agreed upon by the ARDOT, shall be performed to Arkansas minimum standards. All survey work shall be supervised and certified (stamped) by a Professional Land Surveyor registered in Arkansas.

All work performed by the Consultant shall be in compliance with all applicable Federal, State, and local laws, regulations, and ordinances.

Coordinate roadway, shared use path and signal design with franchise utility companies' relocations and/or new locations.

## **V. COORDINATION WITH THE CITY**

Coordination meetings will be conducted on an as-needed basis. These meetings shall include the Consultant, the City, ARDOT, and others, as appropriate. The Consultant shall schedule these meetings with the City and ARDOT concurrence, and compile and distribute meeting minutes, as required.

## **VI. TITLE I DELIVERABLES**

- A. Schematic Design (15%)
  - 1. Design Criteria
  - 2. Strip Map(s) for Roadway and Shared-use Path Design Alternatives
  - 3. Opinion of Probable Construction Cost for Roadway Improvements and Shared-Use Path Alternatives
  - 4. Vehicle Turning Exhibits
  - 5. Recommendations regarding shared-use path design alternatives
- B. Conceptual Design Phase (30%)
  - 1. Completed Survey Data
  - 2. 30% Roadway Plans
  - 3. 30% Shared-use Path Plans
  - 4. Opinion of Probable Construction Cost
- C. Preliminary Design Phase (60%)
  - 1. Geotechnical Report (Final Version)
  - 2. 60% Roadway Plans
    - a. The following sheets are not included in this scope, and will require scope and fee amendment:
      - i. Maintenance of Traffic
      - ii. Erosion Control
      - iii. Special Details
  - 3. 60% Shared-use Path Plans
    - a. The following sheets are not included in this scope, and will require scope and fee amendment:
      - i. Maintenance of Traffic
      - ii. Erosion Control
      - iii. Details for Shared Use Path Tunnel and Retaining Walls
      - iv. Special Details
  - 4. Opinion of Probable Construction Cost
  - 5. 60% Drainage Report stamped Preliminary
  - 6. 60% Right of Way Strip Map
  - 7. 90% and Final Right of Way Plans
  - 8. Warranty deed descriptions

**ATTACHMENT B**  
**STAGE SUBMITTAL OF RIGHT OF WAY PLANS**

Right of Way Plans shall be prepared and submitted to the City and ARDOT according to the following:

Stage 1: Submit 60% strip map with construction centerline, limits of construction, existing topography, and proposed right of way plotted on complete parcel surveys with property lines identified.

Stage 2: Prepare right of way plans to ARDOT specifications including a metes and bounds legal description of each parcel. Plan scale shall be adequate to clearly show all details, dimensions, bearings, distances and notes at 11"x17" sheet size (not smaller than 1"=50' unless approved in advance by City).

Stage 3: Perform a thorough "in-house" review of the right of way plans.

Stage 4: Submit 90% level right of way plans for review (11"x17"), legal descriptions, and "current owner" certificates of title with deeds attached, including an electronic file of the following:

1. Right of way plans (All designs and plans shall be compiled with AutoCAD/Civil 3D).
2. Right of Way and Easement acquisition documents (MS Word format).
3. Point numbers of all points with the coordinates, feature code and point descriptions. The format is: Point Number, Easting Coordinate (X), Northing Coordinate (Y), Elevation, Feature Code (Two-letter designation), Point Description.
4. Alignment report with point numbers used for the baseline, design alignment, and existing right of way alignment control.

Stage 5: Submit final right of way plans and electronic files with corrections requested by the City or ARDOT.

Stage 6: Consultant is responsible for right of way plans revisions due to design changes, plan change requests, or ownership revisions as requested by the City or ARDOT.

Stage 7: Consultant is responsible for preparing condemnation exhibits which include photos and updating legal descriptions as requested by the City or ARDOT.

Plan submittals shall include:

- Topography,
- Property lines with appropriate symbology, bearings and distances, Lot numbers, Subdivision Name, Block numbers,
- Proposed Right of Way (labeled) with bearings and distances,
- Station offsets,
- Construction Limits (labeled),
- Existing Right of Way if applicable,
- Highway, Street, bodies of water, and Railroad Names,



- Centerline (labeled), Centerline Bearings, Stations, and Delta Angles for PI's,
- Curve information,
- Scale,
- Quarter Calls, Section Numbers, Township and Range,
- Tract Number with Residual,
- Beginning and Ending ROW and Const. stations,
- North Arrow,
- Ownership information with correct spelling, certificate or parcel numbers, total parcel and area to acquire in Acres and Square feet, TCE or PCE information and page numbers for tracts,
- Subdivision information (Lot Schedule), and
- L and C Numbers.

**Additional information that should be included with submittals (when available)**

- Any documentation that establishes any existing right of way,
- Ownership Information, and
- Acquisition Documents (if any additional right of way is needed).

**Appendix A-2 - Justification of Costs and Fees**

December 10, 2024

Job No. 040957: Hwy 412 / Barrington Road Intersection Improvements (Tontitown)  
Washington County

**PROJECT SUMMARY**

<b>TITLE I SERVICES</b>	<b>HOURS</b>	<b>SALARY</b>	<b>FIXED FEE</b>	<b>FCCM</b>	<b>EXPENSES</b>	<b>TOTAL</b>
<b>PROJECT MANAGEMENT</b>	160	\$25,340	\$3,041	\$0	\$0	\$28,381
<b>PRELIMINARY TRAFFIC DESIGN &amp; PLANS</b>	266	\$37,857	\$4,543	\$0	\$3,900	\$46,300
<b>PRELIM. (60%) ROADWAY DESIGN &amp; PLANS</b>	743	\$106,745	\$12,809	\$0	\$553	\$120,107
<b>ROW DOCUMENTS &amp; PLANS</b>	192	\$26,669	\$3,200	\$0	\$0	\$29,869
<b>ENVIRONMENTAL CLEARANCE DOCUMENTATION</b>	732	\$112,464	\$13,496	\$0	\$3,540	\$129,500
<b>SUBTOTAL TITLE I</b>	<b>2,093</b>	<b>\$309,075</b>	<b>\$37,089</b>	<b>\$0</b>	<b>\$7,993</b>	<b>\$354,157</b>
<b>SUBCONSULTANTS TITLE I</b>						
Geotech - Terracon	119	\$17,856	\$2,143	\$19	\$11,875	\$31,893
Survey - Half	393	\$41,819	\$5,018	\$108	\$6,835	\$53,780
<b>SUBTOTAL SUBCONSULTANTS TITLE I</b>	<b>512</b>	<b>\$59,675</b>	<b>\$7,161</b>	<b>\$127</b>	<b>\$18,710</b>	<b>\$85,673</b>
<b>TOTAL TITLE I</b>	<b>2,605</b>	<b>\$368,750</b>	<b>\$44,250</b>	<b>\$127</b>	<b>\$26,703</b>	<b>\$439,830</b>
<b>TITLE II SERVICES - None</b>						
<b>TOTAL TITLE II</b>	<b>0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>TOTAL PROJECT</b>	<b>2,605</b>	<b>\$368,750</b>	<b>\$44,250</b>	<b>\$127</b>	<b>\$26,703</b>	<b>\$439,830</b>

Appendix A-2 - Justification of Costs and Fees  
 December 10, 2024  
 Job No. 040957: Hwy 412 / Barrington Road Intersection Improvements (Tontitown)  
 Washington County

**PROJECT MANAGEMENT**

MANHOURS							
TASK	PD	PM	Sn.CIV	PA			TOTAL
<b>General (160 Hours)</b>							
Internal Project Management & Reporting		20		80			100
Client Progress Reports and Invoicing		20		40			60
<b>TOTAL MH - PROJECT MANAGEMENT</b>	0	40	0	120	0	0	160
LABOR COSTS							
Category - Description	Rate	MH			Amount		
Project Director PD	\$87.00	0			\$0		
Project Manager PM	\$60.00	40			\$2,400		
Senior Civil Engineer Sn.CIV	\$52.00	0			\$0		
Project Assistant PA	\$41.00	120			\$4,920		
		0			\$0		
		0			\$0		
		0			\$0		
			Subtotal		\$7,320		
			Overhead 246.17%		\$18,020		
			Subtotal		\$25,340		
			Fixed Fee		\$3,041		
			FCCM 0.00%		\$0		
			Subtotal Labor Costs		<b>\$28,381</b>		
EXPENSES							
ITEM	Quantity	Unit	Rate	Amount			
Printing (8 1/2 x 11 B&W)		each	\$0.00	\$0.00			
Printing (11 x 17 B&W)		each	\$0.00	\$0.00			
Printing (8 1/2 x 11 color)		each	\$0.00	\$0.00			
Printing (11 x 17 Color)		each	\$0.00	\$0.00			
				Subtotal Expenses		\$0.00	
				Subtotal Expenses (rounded)		\$0	
<b>TOTAL COSTS - PROJECT MANAGEMENT</b>					<b>\$28,381</b>		

Appendix A-2 - Justification of Costs and Fees  
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**PRELIMINARY TRAFFIC DESIGN & PLANS**

MANHOURS								
TASK	PD	PM	Sn.CIV	Sf.CIV	CAD	PA	TOTAL	
<b>Design Criteria - Preliminary information</b>							0	
<b>30% Design Phase</b>							0	
Site visit			4				4	
Preliminary field check			4				4	
Signal notes sheet				6			6	
Traffic signal street name signs (2)				6	6		12	
Detail sheets			2	4	6		12	
Permanent Plan sheets (30', 60', Modified Charts)		4	32		32		68	
Traffic Modeling and Analysis		4	8	12			24	
Auto turn figures				6			6	
30% QA/QC		8	4		12		24	
<b>50% Design Phase</b>								
Address 30% comments		4		4	12		20	
Temp Plan sheets (60' x 3 stages)			16		16		32	
Permanent Plan Sheet Modifications (Based on Roadway and Drainage Design)			8	8	8		24	
Perm Wiring diagram			2	4	8		14	
Conduit fill calcs				2			2	
50% QA/QC		8	2		4		14	
							0	
<b>TAL MH - PRELIMINARY TRAFFIC DESIGN &amp; PLANS</b>	0	28	82	52	104	0	266	
LABOR COSTS								
Category - Description					Rate	MH	Amount	
Project Director	PD				\$87.00	0	\$0	
Project Manager	PM				\$60.00	28	\$1,680	
Senior Civil Engineer	Sn.CIV				\$52.00	82	\$4,264	
Staff Civil Engineer	Sf.CIV				\$40.00	52	\$2,080	
CAD	CAD				\$28.00	104	\$2,912	
Project Assistant	PA				\$41.00	0	\$0	
						Subtotal	\$10,936	
						Overhead 246.17%	\$26,921	
						Subtotal	\$37,857	
						Fixed Fee	\$4,543	
						FCCM 0.00%	\$0	
						Subtotal Labor Costs	<b>\$42,400</b>	
EXPENSES								
ITEM					Quantity	Unit	Rate	Amount
Traffic counts					26	Hr	\$150.00	\$3,900.00
							Subtotal Expenses	\$3,900.00
							Subtotal Expenses (rounded)	\$3,900
<b>TOTAL COSTS - PRELIMINARY TRAFFIC DESIGN &amp; PLANS</b>								<b>\$46,300</b>

Appendix A-2 - Justification of Costs and Fees

December 10, 2024

Job No. 040957: Hwy 412 / Barrington Road Intersection Improvements (Tontitown)  
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**PRELIM. (60%) ROADWAY DESIGN & PLANS**

MANHOURS									
TASK	PD	PM	Sn.CIV	Sf.CIV	DSNR	CAD	PA	TOTAL	
<b>15% Schematic Design Phase (248 Hours)</b>									
Site visit and orientation	2	4		4	4				14
Develop Design Criteria for the project		2		2	2				6
Prepare 15% roadway & shared use path strip map and alternatives		10		60	80	40			190
Prepare Quantities and 15% Opinion of Probable Construction Cost		8		8	8				24
Prepare Recommendations regarding shared use path alternatives	2	8		4					14
Attend stakeholder meetings, and respond to comments (up to 3)		12		12					24
<b>30% Concept Design Phase (196 Hours)</b>									
Prepare 30% roadway & shared use path plans		8	8	20	44	22			102
Preliminary drainage layout and modeling		2	10	24					36
Prepare Quantities and 30% Opinion of Probable Construction Cost		4		6	6				16
30% QA/QC	2	8	6		8	10			34
Attend preliminary field check		4		4					8
<b>60% Preliminary Design Phase (275 Hours)</b>									
Address 30% comments		2	2	4	6	8			22
Prepare Preliminary Drainage Report		2	4	22					28
Prepare 60% roadway & shared use path plans (No MOT, EC, or Details)		4	4	10	62	22			102
Prepare Quantities and 60% Opinion of Probable Construction Cost		2		10	10				22
60% QA/QC	2	8	4		6	6			26
Attend preliminary field check		4		4					8
Prepare Displays and Exhibits for Public Meeting		8		8	12	11			39
Attend Public Meeting (4 People, including setup)		4	4		4		4		16
Coordinate with ENV team on PI Synopsis		4		4			4		12
<b>TOTAL MH - PRELIM. (60%) ROADWAY DESIGN &amp; PLANS</b>	<b>8</b>	<b>108</b>	<b>42</b>	<b>206</b>	<b>252</b>	<b>119</b>	<b>8</b>		<b>743</b>
LABOR COSTS									
Category - Description						Rate	MH	Amount	
Project Director	PD					\$87.00	8	\$696	
Project Manager	PM					\$60.00	108	\$6,480	
Senior Civil Engineer	Sn.CIV					\$52.00	42	\$2,184	
Staff Civil Engineer	Sf.CIV					\$40.00	206	\$8,240	
Designer	DSNR					\$38.00	252	\$9,576	
CAD	CAD					\$28.00	119	\$3,332	
Project Assistant	PA					\$41.00	8	\$328	
							Subtotal	\$30,836	
							Overhead 246.17%	\$75,909	
							Subtotal	\$106,745	
							Fixed Fee	\$12,809	
							FCCM 0.00%	\$0	
							Subtotal Labor Costs	<b>\$119,554</b>	
EXPENSES									
ITEM	Quantity	Unit	Rate	Amount					
Printing (8 1/2 x 11 B&W)	200	each	\$0.12	\$24.00					
Printing (11 x 17 B&W)	178	each	\$0.25	\$44.50					
Printing (8 1/2 x 11 color)	50	each	\$0.35	\$17.50					
Printing (11 x 17 Color)	100	each	\$0.75	\$75.00					
Mileage (provide a basis for the estimate)	100	miles	\$0.670	\$67.00					
Display Boards for Public Meeting	5	each	\$35.00	\$175.00					
Roll Plots and Strip Maps For Stakeholder Meetings	15	each	\$10.00	\$150.00					
				Subtotal Expenses					
				\$553.00					
				Subtotal Expenses (rounded)					
				\$553					
<b>TOTAL COSTS - PRELIM. (60%) ROADWAY DESIGN &amp; PLANS</b>									<b>\$120,107</b>

Appendix A-2 - Justification of Costs and Fees  
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**ROW DOCUMENTS & PLANS**

<b>MANHOURS</b>					
TASK	PD	PM	Sf.CIV	DSNR	TOTAL
Stage 1 - 60% ROW Strip Map		2	4	16	22
Stage 2 - Prepare R/W Plans and Documents				100	100
Stage 3 - In-House QC Review and Revisions		8	8	8	24
Stage 4 - 90% ROW Plans		4	8	16	28
Stage 5 - Final ROW Plans		2	8	8	18
<b>TOTAL MH - ROW DOCUMENTS &amp; PLANS</b>	0	16	28	148	192
<b>LABOR COSTS</b>					
Category - Description		Rate	MH	Amount	
Project Director	PD	\$87.00	0	\$0	
Project Manager	PM	\$60.00	16	\$960	
Staff Civil Engineer	Sf.CIV	\$40.00	28	\$1,120	
Designer	DSNR	\$38.00	148	\$5,624	
			Subtotal	\$7,704	
			Overhead 246.17%	\$18,965	
			Subtotal	\$26,669	
			Fixed Fee	\$3,200	
			FCCM 0.00%	\$0	
			Subtotal Labor Costs	<b>\$29,869</b>	
<b>EXPENSES</b>					
ITEM	Quantity	Unit	Rate	Amount	
Printing (8 1/2 x 11 B&W)		each	\$0.00	\$0.00	
Printing (11 x 17 B&W)		each	\$0.00	\$0.00	
Printing (8 1/2 x 11 color)		each	\$0.00	\$0.00	
Printing (11 x 17 Color)		each	\$0.00	\$0.00	
Mileage (provide a basis for the estimate)		miles	\$0.670	\$0.00	
			Subtotal Expenses	\$0.00	
			Subtotal Expenses (rounded)	\$0	
<b>TOTAL COSTS - ROW DOCUMENTS &amp; PLANS</b>				<b>\$29,869</b>	

Attachment A-2 - Justification of Costs and Fees  
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 ARDOT JOB NO. 040957: Hwy 412 / Barrington Road Intersection Improvements (Tontitown)  
 Washington County

**ENVIRONMENTAL CLEARANCE DOCUMENTATION**

<b>MANHOURS</b>									
TASK	PD	PM	As.ENV	Sn.ENV	Sf.ENV	Ast.ENV	PA	TOTAL	
<b>Data Collection</b>					2			2	
<b>Constraints Map</b>					4			4	
<b>Location and/or Design Alternatives</b>			2	2				4	
<b>Public Involvement Meeting</b>									
Prepare meeting materials				4	4			8	
Meeting attendance and debriefings (one ENS)				8				8	
Develop PI Synopsis for ENV Doc				2		16		18	
<b>Cultural Resources/Historic Properties</b>									
Desktop review				8	16			24	
Archeo and Historic Resources Surveys				24	60	40		124	
Support tribal coordination				4				4	
<b>Section 4(f)/6(f) Resources</b>									
Section 6(f) Harry Sbanatto (Tontitown) Park			2	48	8	48		106	
Section 4(f) Park			2	24	8	40		74	
OWJ Coordination				4				4	
<b>Biological Investigations</b>									
Wetlands/Waters of the US Delineations				2	8	12		22	
T&E Species/Habitat Assessment				2	8	12		22	
Water Quality/NPDES/ADEQ Coordination				4		8		12	
<b>Hazardous/Regulate Materials</b>									
Hazardous Material Sites Summary (Memo)				2		36		38	
Identify Sites of Concern/Database Review					2	12		14	
Visual Survey of Area					4			4	
<b>Categorical Exclusion Document</b>									
Prepare Draft CE Document			4	32	16	60		112	
Section 4(f) (anticip. <i>de minimis</i> or Programmatic for park)				16		24		40	
Prepare Final CE Document			4	12	16	40		72	
Agency Coordination/Concurrences				16				16	
<b>Environmental Permitting - not included</b>									
<b>TOTAL MH - ENV. CLEAR. DOC.</b>	<b>0</b>	<b>0</b>	<b>14</b>	<b>214</b>	<b>156</b>	<b>348</b>	<b>0</b>	<b>732</b>	
<b>LABOR COSTS</b>									
Category - Description						Rate	MH	Amount	
Project Director	PD					\$87.00	0	\$0	
Project Manager	PM					\$60.00	0	\$0	
Associate Environmental Scientist	As.ENV					\$76.00	14	\$1,064	
Senior Environmental Scientist	Sn.ENV					\$62.00	214	\$13,268	
Staff Environmental Scientist	Sf.ENV					\$45.00	156	\$7,020	
Assistant Environmental Scientist	Ast.ENV					\$32.00	348	\$11,136	
Project Assistant	PA					\$41.00	0	\$0	
							Subtotal	\$32,488	
							Overhead	246.17%	\$79,976
							Subtotal	\$112,464	
							Fee	\$13,496	
							FCCM	0.00%	\$0
							Subtotal Labor Costs	<b>\$125,960</b>	
EDR database search					1	each	\$350.00	\$350	
Travel (Mileage, Rental Car, Airfare)					2	Allowance	\$650.000	\$1,300	
Travel - fleet vehicle					4	days	\$100.00	\$400	
Travel - lodging					5	nights	\$90.00	\$450	
Travel - per diem					5	days	\$65.00	\$325	
Public Meeting Exhibits (Large Format)						Allowance		\$0	
							Subtotal Expenses	\$3,540	
							<b>TOTAL COSTS - ENVIRONMENTAL CLEARANCE DOCUMENTATION</b>	<b>\$129,500</b>	
<b>BASIS OF ESTIMATE</b>									
Description								Number	
Public Meetings								1	
Alternatives Evaluations								1	
Description									
1. ARDOT will perform studies and analysis in support of and to prepare Environmental Clearance Documentation.									
2. ENGINEER will provide information about the project design to ARDOT as requested to support ARDOT's studies and analysis.									
3. ENGINEER will perform the scope of work identified under the headings of LOCATION AND/OR DESIGN ALTERNATIVES, PUBLIC INV. MEETING LOCATION AND DESIGN PUBLIC HEARING(S), and CONSTRUCTION PLAN AND SPECIFICATION DEVELOPMENT in support of the Env. Clearance and Documentation phase of the project and prepare permits for construction identified above.									

Appendix A-2 - Justification of Costs and Fees  
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**Geotechnical (SUBCONSULTANT -TERRACON)**

MANHOURS							
TASK	SR. PM II	SR. PM I	FS	Tech III	Driller	Ad. Asst.	TOTAL
<b>Drilling Program</b>							
Coordination/Supervision	1	4	4				9
Drilling and sampling (Bridge)	1	2	2	24	24		53
Access/Reconnaissance		2	2				4
Safety & Health Planning	2	2	4				8
<b>Report Preparation</b>							
Engineering Analysis/CAD	2	12					14
Report Preparation	2	12				2	16
Report Draft	2	4				2	8
Final Report	2	4				1	7
<b>TOTAL MH - Geotechnical (SUBCONSULTANT -TERRACON)</b>	<b>12</b>	<b>42</b>	<b>12</b>	<b>24</b>	<b>24</b>	<b>5</b>	<b>119</b>
LABOR COSTS							
Category - Description				Rate	MH		Amount
Sr. Project Manager II	Sr. PM II			\$87.55	12		\$1,051
Sr. Project Manager I	SR. PM I			\$63.86	42		\$2,682
Field Supervisor	FS			\$37.08	12		\$445
Technician III	Tech III			\$29.36	24		\$705
Driller	Driller			\$41.46	24		\$995
Administrative Assistant	Ad. Asst.			\$22.15	5		\$111
						Subtotal	\$5,989
				Overhead	198.14%		\$11,867
						Subtotal	\$17,856
						Fixed Fee	\$2,143
				FCCM	0.31%		\$19
						Subtotal Labor Costs	\$20,018
EXPENSES							
ITEM				Quantity	Unit	Rate	Amount
<b>Field Work (Geotechnical)</b>							
Track/Rubber - Tire ATV Drill Rig and Crew				50	mile	\$4.85	\$243
Survey Crew and Equipment				0	hour	\$275.00	\$0
Piezometer Installation				0	per foot	\$25.00	\$0
Traffic Control - Non-interstate				1	day	\$2,000.00	\$2,000
Private Utility Locate				1	day	\$2,500.00	\$2,500
Pavement Coring 6" Asphalt				4	per hole	\$150.00	\$600
Borings from ground surface to a depth of 150 ft.				85	foot	\$40.00	\$3,400
Disturbed (Bulk) sample				1	sample	\$40.00	\$40
Meals (3-man crew, 2 days)				0	day	\$59.00	\$0
<b>Laboratory Testing</b>							
Moisture Content				37	each	\$16.00	\$592
Atterberg Limits				10	each	\$120.00	\$1,200
Grain Size Analysis				10	each	\$130.00	\$1,300
Hydrometer				0	each	\$115.00	\$0
Unconfined compression (rock)				0	each	\$300.00	\$0
Shipping				0	cost	\$500.00	\$0
						Subtotal Expenses	\$11,875
<b>TOTAL COSTS - Geotechnical (SUBCONSULTANT -TERRACON)</b>							<b>\$31,893</b>



Appendix A-2 - Justification of Costs and Fees  
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**Field Surveys and Mapping (SUBCONSULTANT - HALFF)**

MANHOURS									
TASK	PM	PS	ST	SCC	SCM	CAD	SR. CAD	AD. ASST.	TOTAL
<b>Field Surveys and Mapping</b>									
Design Surveys Task	18	25	16	20	20	12	12		123
Primary Project Horiz. Control Traverses				10	10				20
Elevation control - Three-Wire Level				6	6				12
Topography and terrain data collection				30	30				60
Field data processing			10						10
Digital Terrain Modeling						12	12		24
Utility locations as marked by ARKUPS			10	10	10				30
Utility locations as pot holed by utility companies				10	10				20
Land Surveys		12							12
Title Search	4							8	12
Parcel surveys and work sheets		12	12			20	10		54
Establish Project Control				8	8				16
<b>IH - Field Surveys and Mapping (SUBCONSULTANT - HALFF)</b>	<b>22</b>	<b>49</b>	<b>48</b>	<b>94</b>	<b>94</b>	<b>44</b>	<b>34</b>	<b>8</b>	<b>393</b>
LABOR COSTS									
Category - Description							Rate	MH	Amount
Project Manager	PM						\$ 59.62	22	\$1,312
Professional Surveyor	PS						\$ 64.00	49	\$3,136
Survey Technician	ST						\$ 30.00	48	\$1,440
Survey Crew Chief	SCC						\$ 31.00	94	\$2,914
Survey Crew Member	SCM						\$ 26.50	94	\$2,491
CADD/GIS/Geospatial Technician	CAD						\$ 36.06	44	\$1,587
Senior CADD/GIS/Geospatial Technician	SR. CAD						\$ 38.00	34	\$1,292
Administrative Assistant	AD. ASST.						\$ 29.50	8	\$236
								Subtotal	\$14,408
								Overhead 190.25%	\$27,411
								Subtotal	\$41,819
								Fixed Fee	\$5,018
								FCCM 0.75%	\$108
								Subtotal Labor Costs	\$46,945
EXPENSES									
ITEM				Quantity	Unit	Rate			Amount
Mileage (provide a basis for the estimate)				276	miles	\$0.670			\$185
Certificates of Title				1	each	\$6,650			\$6,650
								Subtotal Expenses	\$6,835
<b>TOTAL COSTS - Field Surveys and Mapping (SUBCONSULTANT - HALFF)</b>									<b>\$53,780</b>

**APPENDIX B-1**  
**SUBCONSULTANT AGREEMENT**  
**FOR**  
**SERVICES**  
(LOCAL VERSION)

**1. SUBCONSULTANT AGREEMENT**

- 1.1. The services to be performed under this Subconsultant Agreement will be performed in connection with the Agreement for Engineering Services ("Prime Agreement") between the Consultant and the City of Tontitown ("Owner"), dated \_\_\_\_\_, Burns & McDonnell Engineering Company, Inc. ("Consultant") and Terracon Consultants, Inc. ("Subconsultant") hereby agree that the Subconsultant shall perform the professional and related services as described herein. In consideration for the performance of the professional services, the Consultant agrees to compensate (and reimburse, if applicable) the Subconsultant in the manner and at the rate(s) provided herein.
- 1.2. The definitions of the Prime Agreement, and its provisions relating to the obligations, duties, and rights of subconsultants, *or which are otherwise required to be inserted into any subcontracting agreements*, are deemed to be part of, and are hereby incorporated by reference into, this Subconsultant Agreement and made binding upon the Subconsultant.
- 1.3. "Title I Services" are those services provided by the Subconsultant before the award of the contract for construction of the Project, consisting primarily of services for the planning or design of the Project.
- 1.4. "Title I Services Ceiling Price." The Title I Services Ceiling Price for this Subconsultant is \$31,893. The Title I Services Ceiling Price is the maximum aggregate amount of all payments that the Consultant may become obligated to make to the Subconsultant.
- 1.5. "Title II Services" are those services provided by the Subconsultant after the award of the contract for the construction of the Project, consisting primarily of services during the construction of the Project.
- 1.6. "Title II Services Ceiling Price." The Title II Services Ceiling Price for this Agreement is not applicable. The Title II Services Ceiling Price is the maximum aggregate amount of all payments that the Consultant may become obligated to make to the Subconsultant.
- 1.7. "Owner" means the City of Tontitown.
- 1.8. "Commission", "Department", or "ARDOT" means collectively, the Arkansas State Highway Commission and the Arkansas Department of Transportation regardless of how referenced.
- 1.9. "DOT" means the United States Department of Transportation.
- 1.10. "FAR" means the Federal Acquisition Regulations, codified in 48 Code of Federal Regulations (CFR).

1.11. "FHWA" means the Federal Highway Administration.

## **2. DESCRIPTION OF PROJECT AND SERVICES TO BE PROVIDED**

2.1. The City of Tontitown has programmed a project for the improvement of the intersection of Highway 412 and Barrington Road in Tontitown, Arkansas. The Subconsultant will perform the following tasks to prepare the geotechnical investigation for the project:

2.1.1. Subconsultant will visit the project alignment to observe site conditions. Published information on site geology and available information from prior geotechnical studies in the area will be reviewed.

2.1.2. Subconsultant will rely on owner to contact landowners to secure right of access in accordance with the Prime Agreement to the boring locations prior to mobilizing. If access cannot be secured, alternative boring locations will be evaluated. Underground utility locations will be determined prior to beginning drilling.

2.1.3. Access to boring locations will be provided as dictated by site conditions and permitted by property owners. Applicable permits will be obtained and traffic control will be provided by Subconsultant. This is anticipated to consist of advance warning signs and flagging operations to temporarily close one lane along Barrington Road while drilling operations are being performed. It is anticipated that all drilling operations along Barrington Road will be completed in one day, and that field services will be conducted during normal business hours (Monday through Friday between 7:00am and 5:00pm).

2.1.4. The following is a summary of borings planned and included in this scope of work:

Number of Borings	Planned Boring Depth (feet) <sup>1</sup>	Planned Location
4	10	Barrington Road (2 north / 2 south of 412)
2	20	One on each end of proposed trail tunnel
1	5	Along Shared Use Trail alignment

1. Although not anticipated based on the geology in the vicinity of the project site, borings would be terminated at shallower depths if refusal is encountered.

2.1.5. Prior to drilling, we will utilize geophysical methods to evaluate utility conflict within a 20-foot radius of our boring locations. We will advance borings with a truck-mounted drill rig using continuous flight augers (solid stem and/or hollow stem, as necessary, depending on soil conditions) and/or rotary wash boring techniques. Five samples will be obtained in the upper 10 feet of each boring and at intervals of 5 feet thereafter. Soil sampling is typically performed using split-barrel sampling procedures. The split-barrel samplers are driven in accordance with the standard penetration test (SPT). The samples will be placed in appropriate containers, taken to our soil

laboratory for testing, and classified by a Geotechnical Engineer. In addition, we will observe and record groundwater levels during drilling and sampling.

2.1.6. The Subconsultant will review field data and assign laboratory tests to understand the engineering properties of various soil strata. Exact types and number of tests cannot be defined until completion of fieldwork, but we anticipate the following laboratory testing may be performed:

- Water content
- Atterberg limits
- Grain size analysis
- Moisture-density relationship
- California Bearing Ratio (CBR)

The laboratory testing program often includes examination of soil samples by an engineer. Based on the results of our field and laboratory programs, we will describe and classify soil samples in accordance with the Unified Soil Classification System (USCS).

2.1.7. The results of our field and laboratory programs will be evaluated, and a geotechnical engineering report will be prepared under the supervision of a licensed professional engineer. The geotechnical engineering report will provide the following:

- Boring logs with field and laboratory data
- Stratification based on visual soil classification
- Groundwater levels observed during and after the completion of drilling
- Site Location and Exploration Plans
- Subsurface exploration procedures
- Description of subsurface conditions
- Recommended foundation options for the pedestrian tunnel and engineering design parameters
- Estimated settlement of foundations
- Seismic site classification
- Earthwork recommendations including site/subgrade preparation
- Lateral earth pressure recommendations
- Recommended pavement options and design parameters

### **3. COSTS, FEES, PAYMENTS, AND RATE SCHEDULES**

#### **Cost-Plus-Fixed-Fee Contract**

3.1. The Subconsultant is being hired to perform professional engineering services in connection with the Project as set forth herein. In consideration for Title I services performed, the Consultant will reimburse the Subconsultant for allowable direct and indirect costs, as defined herein, and pay the Subconsultant a fixed fee. If Title II services are to be performed, the Consultant will reimburse the Subconsultant for allowable direct costs and also pay the Subconsultant an amount determined by multiplying the salary rate of the individual(s) performing the Title II services, as shown on the Schedule of Salary Ranges, by the Title II Multiplier.

- 3.2. Under no circumstances shall the Department be liable for any amounts, including all costs, which exceed the Contract Ceiling Price.
- 3.3. *Salaries.* The following schedule covers the classification of personnel and the salary ranges for all personnel anticipated to be assigned to this project by the Subconsultant:

3.3.1. SCHEDULE OF SALARY RANGES

<b>Classification/Title</b>	<b>Min. Hourly</b>	<b>Max. Hourly through 2026</b>
Sr. Project Manager II	\$85.00	\$95.67
Sr. Project Manager I	\$62.00	\$69.78
Project Manager	\$43.00	\$48.40
Senior Engineer	\$68.00	\$76.53
Project Engineer	\$47.00	\$57.09
Staff Engineer	\$43.00	\$48.40
Field Engineer	\$33.00	\$37.14
Field Supervisor	\$36.00	\$40.52
Engineering Assistant	\$32.00	\$36.02
Technician III	\$26.00	\$32.08
Technician II	\$20.00	\$28.14
Technician I	\$35.00	\$24.20
Driller	\$22.00	\$45.30
Intern	\$21.00	\$27.01
Administrative Assistant	\$43.00	\$24.20
Senior Administrative Staff/Manager	\$85.00	\$48.40

3.3.2. OTHER ALLOWABLE NON-SALARY DIRECT RATES AND SCHEDULE OF UNIT RATES FOR SERVICES

<b>Reimbursable Items (Not All Inclusive)</b>	<b>Rate</b>
Track/Rubber Tire ATV Drill Rig and Crew	\$4.85/mile
Traffic Control – Non-Interstate	\$2,000.00/day
Private Utility Locate	\$2,500/day
Pavement Coring 6" Asphalt	\$150.00/hole
Borings from ground surface to a depth of 150 ft.	\$40.00/foot
Disturbed (bulk) sample	\$40.00/sample
Moisture content	\$16.00/each
Atterberg limits	\$120.00/each
Grain size analysis	\$130.00/each

3.3.3. The Consultant shall reimburse the Subconsultant for overtime costs only when the overtime has been authorized in writing by the Owner. When authorized, overtime shall be reimbursed at the rate of time and one-half for all nonexempt employees. Notwithstanding this provision, the Subconsultant must comply with all federal and state wage and hour laws and regulations, regardless of whether the overtime is considered reimbursable under this Agreement.

**4. COMPENSATION SUBJECT TO LIMITATIONS OF FEDERAL AND STATE LAW**

4.1. The Project (as defined in the Prime Agreement), part of which is to be performed under this Subconsultant Agreement, is a federally-assisted project, and federal funds will be used, in part, to pay the Consultant and Subconsultant. Therefore, notwithstanding any provision of this Subconsultant Agreement or the Prime Agreement, all payments, costs, and expenditures are subject to the requirements and limitations of 48 CFR Part 31, including those relating to determination of indirect cost rates, if applicable. The Subconsultant shall certify the accuracy of all invoices, requests for payment, and cost rates (if applicable), along with supporting documentation and any supporting information or records provided prior to, during, or after the term of this Subconsultant Agreement.

**5. COMMISSION, ARDOT, AND FHWA AS THIRD PARTY BENEFICIARIES**

5.1. This Subconsultant Agreement is between and binding upon only the Consultant and Subconsultant. The Owner, Commission, ARDOT, and FHWA are not parties to this Subconsultant Agreement, but are expressly made third-party beneficiaries of this Subconsultant Agreement and shall be entitled to enforce any obligation of the Subconsultant owed to the Consultant. No provision of this Subconsultant Agreement or the Prime Agreement, nor the exercise of any right thereunder, shall be construed as creating any obligation or any liability on the part of, or operating as a waiver of any immunity of, the Owner, the Commission, the ARDOT, the FHWA, or any of their employees, officers, or agents.

- 5.2. The Subconsultant's sole recourse, if any, for any injury arising under or related to this Subconsultant Agreement, the performance of services hereunder, or compensation or claims hereunder, shall be against the Consultant.
- 5.3. The Disputes and Claims provisions of the Prime Agreement shall not apply to this Subconsultant Agreement. However, the Subconsultant shall provide the Consultant all necessary information and assistance to enable the Consultant to comply with the Disputes and Claims provisions.

## **6. RECORDS & AUDITS**

- 6.1. Records includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- 6.2. Examination. The Subconsultant shall maintain, and the Owner, FHWA, and their authorized representatives shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs (direct and indirect) claimed to have been incurred or anticipated to be incurred in performance of this Agreement. This right of examination shall also include examination and audit of any records considered, relied upon, or relating to the determination of the Indirect Cost Rate or any certification thereof, including any CPA audit relied upon to establish the rate. This right of examination shall also include inspection at all reasonable times of the Subconsultant's offices and facilities, or parts of them, engaged in performing the Agreement.
- 6.3. Supporting Data. If the Subconsultant has been required to submit data in connection with any action relating to this Agreement, including the negotiation of or pre-negotiation audit of the Indirect Cost Rate, the negotiation of the Fee, request for cost reimbursement, request for payment, request for an adjustment, or assertion of a claim, the Owner, FHWA, or their authorized representatives, in order to evaluate the accuracy, completeness, and accuracy of the data, shall have the right to examine and audit all of the Subconsultant's records, including computations and projections, related to—
  - The determination or certification of the Indirect Cost Rate, including any independent CPA audit or certification thereof;
  - Any proposal for the Agreement, subcontract, or modification;
  - Discussions conducted on the proposal(s), including those related to negotiating;
  - Fees or allowable costs under the Agreement, subcontract, or modification;
  - Performance of the Agreement, subcontract or modification; or,
  - The amount and basis of any claim or dispute.

- 6.4. *Audit.* The Owner, FHWA, or their authorized representatives, shall have access to and the right to examine any of the Subconsultant's records involving transactions related to this Agreement or a subcontract hereunder.
- 6.5. *Reports.* If the Subconsultant is required to furnish cost, funding, or performance reports, the Owner, FHWA, or their authorized representatives shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Subconsultant's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- 6.6. *Availability.* The Subconsultant shall retain and make available at its office at all reasonable times the records, materials, and other evidence described in this section and Section 29, Disputes and Claims, for examination, audit, or reproduction, until five years after final payment under this Agreement, or for any longer period required by statute or by other clauses of this Agreement. In addition—
- 6.6.1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be retained and made available for five years after the termination; and,
- 6.6.2. Records relating to any claim or dispute, or to litigation or the settlement of claims arising under or relating to this Agreement shall be retained and made available until after any such claims or litigation, including appeals, are finally resolved.
- 6.7. The Subconsultant shall insert a clause containing all the terms of this section in all subcontracts under this Agreement.

## **7. PATENT AND COPYRIGHT INFRINGEMENT**

- 7.1. The Subconsultant shall report to the Consultant and Owner, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Subconsultant has knowledge.
- 7.2. In the event of any claim or suit against the Owner on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, the Subconsultant shall furnish to the Consultant and Owner, when requested, all evidence and information in possession of the Subconsultant pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Subconsultant.
- 7.3. The Subconsultant agrees to include, and require inclusion of, the provisions of this section in all subcontracts at any tier for supplies or services.
- 7.4. The Subconsultant shall indemnify the Consultant and Owner and its officers, agents, and employees against liability, including costs and attorneys' fees, for infringement of any United States patent or copyright arising from the manufacture



or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Agreement, or out of the use or disposal by or for the account of the Consultant or Owner of such supplies or construction work.

- 7.5. This indemnity shall not apply unless the Subconsultant has been informed within ten (10) business days following the Consultant's or Owner's receipt of legal notice of any suit alleging such infringement and shall be given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Consultant or Owner directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by the Subconsultant, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Subconsultant, unless required by final decree of a court of competent jurisdiction.

## **8. SUBCONTRACTING**

- 8.1. Unless expressly disclosed in Appendix B, the Subconsultant may not subcontract any of the services to be provided herein without the express written approval of the Consultant and Owner. All subconsultants, including those listed in Appendix B, shall be bound by the terms of this Agreement. All subconsultants shall be subject to all contractual and legal restrictions concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.
- 8.2. Unless the consent or approval specifically provides otherwise, neither consent by the Consultant or Owner to any subcontract nor approval of the Subconsultant's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Subconsultant of any responsibility, obligation, or duty under this Agreement.
- 8.3. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations of the FAR.
- 8.4. Furthermore, notwithstanding any other provision within this Agreement, no reimbursement or payment for any markup of the cost of any subcontract shall be considered by the Consultant or Owner without the express written agreement of the Consultant and Owner.
- 8.5. Prompt Payment. The Subconsultant shall pay subconsultants for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the Consultant to the Subconsultant. Any retainage payments held by the Subconsultant must be returned to the subconsultant within 30 days after the subconsultant's work is completed. Failure to comply with this provision shall be considered a Default by the Subconsultant. If the Subconsultant fails to comply

with this provision, in addition to any other rights or remedies provided under this Agreement, the Consultant, at its sole option and discretion, may:

- make payments directly to the subconsultant and offset such payments, along with any administrative costs incurred by the Consultant, against reimbursements or payments otherwise due the Subconsultant;
- notify any sureties; and/or,
- withhold any or all reimbursements or payments otherwise due to the Subconsultant until the Subconsultant ensures that the subconsultants have been and will be promptly paid for work performed.

8.6. The Subconsultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

## **9. RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES**

9.1. The Subconsultant shall not be permitted to employ or make an offer of employment, for regular or part-time work related to this Project during the term of this Agreement, to any person who:

- is a present employee of the City of Tontitown or the Department;
- is a former employee of the City of Tontitown and/or the Department and at any time during the person's employment, the person participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, on any particular matter pertaining to this Agreement;
- is a former employee of the City of Tontitown and/or the Department within the twelve (12) months of employee cessation, and under this Agreement will knowingly act as a principal or as an agent in matters which were within this person's official responsibility;
- is a former employee of the City of Tontitown and/or the Department within the twelve (12) months of employment cessation and will engage in selling or attempting to sell commodities or services, including technical or professional consultant services, unless the former employee's last annual salary with the City and/or Department did not exceed ten thousand five hundred dollars (\$10,500); or
- is a former employee of the City of Tontitown and/or the Department and at any time was terminated with cause or allowed to resign/retire in lieu of termination with cause.

9.2. Any individual or entity acting as a principal or agent on behalf of any person disqualified pursuant to the terms of provision 9.1 shall not be permitted to perform

any work related to any City of Tontitown project for the Subconsultant during the term of this Agreement.

- 9.3. This section is not intended to preclude a former employee from accepting employment with the Subconsultant solely because the Subconsultant has entered into this Agreement with the Consultant.

## **10. INSURANCE**

- 10.1. *Professional Liability Insurance Coverage.* The Subconsultant shall maintain at all times during the performance of services under this Agreement professional liability insurance coverage for errors, omissions, and negligent acts to the extent caused by the performance of professional services under this Agreement in an amount per claim of not less than \$2,000,000 per claim and aggregate, whichever is less. Such insurance shall extend to the Consultant and to its legal representatives in the event of death, dissolution, or bankruptcy, and shall cover the errors, omissions, or negligent acts of the Subconsultant's subconsultants, agents, and employees. Such insurance shall extend to any errors, omissions, and negligent acts in the performance of services under this Agreement committed by the Subconsultant or alleged to have been committed by the Subconsultant or any person for whom the Subconsultant is legally responsible subject to the terms of the policy.
- 10.2. *Deductible.* The Subconsultant may maintain a professional liability insurance policy with a deductible clause in an amount approved by the Consultant if, in the judgment and opinion of the Consultant, the Subconsultant's financial resources are sufficient to adequately cover possible liability in the amount of the deductible. The Subconsultant shall submit promptly to the Consultant, upon request as often as quarterly, detailed financial statements and any other information requested by the Consultant to reasonably determine whether or not the Subconsultant's financial resources are sufficient to adequately cover possible liability in the amount of the deductible.
- 10.3. *Workers' Compensation Insurance.* The Subconsultant shall at all times during the Term of this Agreement maintain Workers' Compensation and Employer's Liability Insurance as required under Arkansas law.
- 10.4. *Automobile and General Liability Insurance.* The Subconsultant shall at all times during the term of this Agreement maintain commercial general liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000 per occurrence and aggregate, and comprehensive automobile liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000, which shall cover all owned, hired, and non-owned vehicles.
- 10.5. *Valuable Papers Insurance.* The Subconsultant shall at all times during the term of this Agreement maintain Valuable Papers Insurance, whether as part of the General Liability Insurance referenced above or as a separate insurance, in an amount sufficient to cover all cost associated with repairing, restoring, or replacing any plans, drawings, field notes, and other documents kept or created

by the Suconsultant as part of the services under this Agreement, in the event of casualty to or loss or theft of such papers.

- 10.6. *Pollution Liability Insurance.* The Subconsultant shall at all times during the term of this Agreement maintain pollution liability insurance coverage in the amount of \$5,000,000 per occurrence or claim and in the annual aggregate.
- 10.7. *Insurance Policies and Certificates.* The Subconsultant shall provide the Consultant upon request copies of its insurance policies and evidence satisfactory to the Consultant concerning the effectiveness and the specific terms of the insurance. Prior to the execution of this Agreement, the Subconsultant shall furnish to the Consultant certificates of insurance reflecting policies in force, and it shall also provide certificates evidencing all renewals of any expiring insurance policy required hereunder within thirty (30) days of the expiration thereof. The Subconsultant's failure to provide and continue in force and effect any insurance required under this Article shall be deemed a Default for which the Consultant, in its sole discretion, may terminate this Agreement immediately or on such other terms as it sees fit.
- 10.8. *Additional Insurance Requirements.* All insurance maintained by the Subconsultant pursuant to this Section shall be written by insurance companies licensed to do business in Arkansas, in form and substance satisfactory to the Consultant, and shall provide that the insurance will not be subject to cancellation, termination, or change during its term except upon thirty (30) days prior written notice to the Consultant. In the event that the insurance is cancelled, terminated, or changed during its term and thirty (30) days written notice cannot be provided to the Consultant, the Subconsultant shall provide any insurance required under this Section for continual coverage upon expiration of the existing policy or become financially responsible for any claims associated with the expired period.
- 10.9. *Duration of Insurance Obligations.* The Subconsultant shall maintain its professional insurance coverage required under this Agreement in force and effect for a period not less than five years after the final acceptance of the project or the completion of the Subconsultant's services under this Agreement, whichever comes later. Comprehensive General Liability Insurance Coverage and Valuable Papers Insurance Coverage required under this Agreement shall be in full force and effect until the final acceptance or the completion of the Subconsultant's services, whichever comes later. All other insurance shall be maintained in full force and effect until final acceptance of the project or completion of the Subconsultant's services, whichever comes first.
- 10.10. *Subconsultant's Insurance Primary.* All insurance policies maintained by the Subconsultant pursuant to this Agreement shall provide that the Subconsultant's insurance shall be primary and the Consultant's own insurance shall be non-contributing.
- 10.11. *Additional Insured.* All liability insurance policies, except the professional liability policy, workers' compensation, and valuable papers policy, maintained by the Subconsultant pursuant to this Agreement shall be endorsed to include the Consultant, its officers, directors, managers, employees, agents, assigns and representatives, individually and collectively, as additional insured, and all

property damage insurance shall be endorsed with a waiver of subrogation by the insurer as to the Consultant.

## **11. COVENANT AGAINST CONTINGENCY FEES**

- 11.1. The Subconsultant warrants that no person or agency has been employed or retained to solicit or obtain this Subconsultant Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the ARDOT and Consultant shall have the right to annul this Subconsultant Agreement without liability or, in its discretion, to deduct from the Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.
- 11.2. *Bona fide agency*, as used in this section, means an established commercial or selling agency, maintained by the Subconsultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.
- 11.3. *Bona fide employee*, as used in this Section, means a person, employed by the Subconsultant and subject to the Subconsultant's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.
- 11.4. *Contingent fee*, as used in this Section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.
- 11.5. *Improper influence*, as used in this Section, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

## **12. TITLE VI ASSURANCES (NONDISCRIMINATION)**

During the performance of this Subconsultant Agreement, the Subconsultant, for itself, successors, and assigns, certifies and agrees as follows:

- 12.1. *Compliance with Regulations*. The Subconsultant shall comply with the Regulations relative to Title VI (Nondiscrimination in Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49, Code of Federal Regulations, Part 21 and 23 Code of Federal Regulations, as amended, and hereinafter referred to as the Regulations). These regulations are herein incorporated by reference and made a part of this Subconsultant Agreement. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person shall, on the basis of race, color, or national origin be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity

by recipients of Federal financial assistance or their assignees and successors in interest.

- 12.2. *Nondiscrimination.* The Subconsultant, with regard to the work performed by it during the term of this Subconsultant Agreement, shall not discriminate on the basis of race, color, or national origin in the selection and retention of subconsultants, including procurements of material and leases of equipment. The Subconsultant shall not participate either directly or indirectly in any discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the USDOT Regulations.
- 12.3. *Solicitations for Subcontracts, Including Procurements of Material & Equipment.* In all solicitations, either by competitive bidding or negotiation, made by the Subconsultant for work to be performed under a subcontract, including procurements of material and leases of equipment, each potential subconsultant or supplier shall be notified by the Subconsultant of the Subconsultant's obligations under this Subconsultant Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 12.4. *Information and Reports.* The Subconsultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, and accounts, other sources of information, and its facilities by the Owner or the USDOT and its Affiliated Modes to be pertinent to ascertain compliance with such regulations and directives. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Subconsultant shall so certify to the Owner or the USDOT and its Affiliated Modes, as appropriate, and shall set forth the efforts made by the Subconsultant to obtain the records or information.
- 12.5. *Sanctions for Noncompliance.* In the event of the Subconsultant's noncompliance with the nondiscrimination provisions of this Subconsultant Agreement, the Owner shall impose such contract sanctions as it or the USDOT and its Affiliated Modes may determine to be appropriate, including but not limited to, withholding of payments to the Consultant or Subconsultant under the Agreement until the Subconsultant complies with the provisions and cancellation, termination, or suspension of the Subconsultant Agreement, in whole or in part.
- 12.6. *Incorporation of Provisions.* The Subconsultant shall include the terms and conditions of this Section in every subcontract including procurements of material and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Subconsultant shall take such action with respect to any subcontract or procurement as the Owner or USDOT and its Affiliated Modes may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, however that, in the event the Subconsultant becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of any direction, the Subconsultant may request the Owner or the United States to enter into the litigation to protect the interests of the State and the interests of the United States, respectively.

### **13. DBE CLAUSE**

- 13.1. The Subconsultant shall not discriminate on the basis of race, color, sex, or national origin in the performance of this Subconsultant Agreement. The Subconsultant shall comply with the applicable requirements of 49 CFR Part 26 and perform any actions necessary to maintain compliance in the award and administration of DOT-assisted contracts. Failure by the Subconsultant to comply with or perform these requirements is a material breach of this Subconsultant Agreement, which may result in the cancellation, termination, or suspension of this Subconsultant Agreement in whole or in part, or such other remedy that the Owner may determine appropriate.
- 13.2. The Subconsultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

### **14. COMPLIANCE WITH ALL OTHER LAWS REGARDING NONDISCRIMINATION**

- 14.1. The Subconsultant will comply with the provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Federal Aid Project Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.
- 14.2. The Subconsultant, during the term of this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion, disability, or any other protected classes, in admission or access to and treatment in programs and activities associated with this Agreement, or in the selection and retention of subconsultants, including procurements of material and leases of equipment. The Subconsultant shall not participate either directly or indirectly in any discrimination prohibited by the Regulations, including employment practices.
- 14.3. In accordance with Section 504 regulations 49 CFR Part 27.15, the Owner's Notice of Nondiscrimination is required in any bulletins, announcements, handbooks, pamphlets, brochures, and any other publications associated with this Agreement that are made available to the public, program participants, applicants or employees.

### **15. CERTIFICATION REGARDING LOBBYING**

- 15.1. The Subconsultant certifies, to the best of their knowledge and belief, that:
- 15.1.1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 contract, 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 contract, grant, loan, or cooperative agreement.

- 15.1.2. 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying".
- 15.1.3. The Subconsultant shall require that the language of this certification be included in the agreement for all subcontracts and that all subconsultants shall certify and disclose accordingly.

**16. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

16.1. The Subconsultant certifies, to the best of its knowledge and belief, that—

16.1.1. The Subconsultant and any of its Principals—

- 16.1.1.1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal or state agency;
- 16.1.1.2. Have not, within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 16.1.1.3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subsection 16.1.1.2; and,
- 16.1.1.4. The Subconsultant has not within a 3-year period preceding this offer, had one or more contracts terminated for Default by any federal or state agency.

16.2. Principals, for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001, title 18, United States Code, as well as any other applicable federal and state laws.

16.3. The Subconsultant shall provide immediate written notice to the ARDOT if, at any time prior to contract award, the Subconsultant learns that its certification was



erroneous when submitted or has become erroneous by reason of changed circumstances.

16.4. The certification in subsection 16.1 is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Subconsultant knowingly rendered an erroneous certification, the ARDOT may terminate the contract resulting from this solicitation for Default in addition to any other remedies available to the ARDOT.

## **17. CERTIFICATION REGARDING CONFLICT OF INTEREST**

17.1. The Subconsultant certifies that it has no financial interest in the proposed project or construction of the proposed project.

17.1.1. The Subconsultant nor any of its Principals have no known conflicts with any of the following:

17.1.1.1. No financial interest in work associated with this contract;

17.1.1.2. No ownership interest in work associated with this contract;

17.1.1.3. No Financial interest in the results of any agency decisions regarding approvals for work associated with this project;

17.1.1.4. Policies and procedures (provided statutory framework permits) for a contracting agency to pursue a range of civil actions and penalties including fines, suspension, or debarment associated with fraud, waste, abuse, and identified conflicts of interest which were not disclosed.

17.2. For the duration of the contract, except for work expressly defined in this contract, the Subconsultant shall not be party to third party agreements for design or construction on projects associated with contract.

17.3. For the duration of the contract, except for work expressly defined in this contract, the Subconsultant shall not be party to enforceable promises or guarantees of future work associated with this contract.

## **18. SAFETY**

18.1. The Subconsultant shall be solely responsible for the safety and protection of it's persons and property at the Project Site and shall comply with all applicable federal, state, and local safety laws and regulations, and the requirements of Appendix B-1A.

## **19. NOTICE**

19.1. All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be mailed or hand-delivered to:

19.1.1. To the Subconsultant:

Terracon Consultants, Inc.  
1003 Century Street  
Springdale, Arkansas 72762  
Attn: Michael Homan, PE

19.1.2. To the Consultant:

Burns & McDonnell Engineering Company, Inc.  
6576 Lynch's Prairie Cove, Suite B  
Springdale, AR 72762  
Attn: Jonathan Ely

**IN WITNESS WHEREOF**, the parties execute this Subconsultant Agreement, to be effective \_\_\_\_\_.

Burns & McDonnell Engineering  
Company, Inc.

Terracon Consultants, Inc.

BY: \_\_\_\_\_  
Michael S. DeBacker  
Vice President

BY: \_\_\_\_\_  
Michael H. Homan, PE  
Senior Principal

**APPENDIX B-2**  
**SUBCONSULTANT AGREEMENT**  
**FOR**  
**SERVICES**  
(LOCAL VERSION)

**1. SUBCONSULTANT AGREEMENT**

- 1.1. The services to be performed under this Subconsultant Agreement will be performed in connection with the Agreement for Engineering Services (“Prime Agreement”) between the Consultant and the City of Tontitown (“Owner”), dated \_\_\_\_\_. Burns & McDonnell Engineering Company, Inc. (“Consultant”) and Halff Associates, Inc. (“Subconsultant”) hereby agree that the Subconsultant shall perform the professional and related services as described herein. In consideration for the performance of the professional services, the Consultant agrees to compensate (and reimburse, if applicable) the Subconsultant in the manner and at the rate(s) provided herein.
- 1.2. The definitions of the Prime Agreement, and its provisions relating to the obligations, duties, and rights of subconsultants, *or which are otherwise required to be inserted into any subcontracting agreements*, are deemed to be part of, and are hereby incorporated by reference into, this Subconsultant Agreement and made binding upon the Subconsultant.
- 1.3. “Title I Services” are those services provided by the Subconsultant before the award of the contract for construction of the Project, consisting primarily of services for the planning or design of the Project.
- 1.4. “Title I Services Ceiling Price.” The Title I Services Ceiling Price for this Subconsultant is \$53,780. The Title I Services Ceiling Price is the maximum aggregate amount of all payments that the Consultant may become obligated to make to the Subconsultant.
- 1.5. “Title II Services” are those services provided by the Subconsultant after the award of the contract for the construction of the Project, consisting primarily of services during the construction of the Project.
- 1.6. “Title II Services Ceiling Price.” The Title II Services Ceiling Price for this Agreement is not applicable. The Title II Services Ceiling Price is the maximum aggregate amount of all payments that the Consultant may become obligated to make to the Subconsultant.
- 1.7. “Owner” means the City of Tontitown.
- 1.8. “Commission”, “Department”, or “ARDOT” means collectively, the Arkansas State Highway Commission and the Arkansas Department of Transportation regardless of how referenced.
- 1.9. “DOT” means the United States Department of Transportation.

1.10. "FAR" means the Federal Acquisition Regulations, codified in 48 Code of Federal Regulations (CFR).

1.11. "FHWA" means the Federal Highway Administration.

## **2. DESCRIPTION OF PROJECT AND SERVICES TO BE PROVIDED**

2.1. The City of Tontitown has programmed a project for the improvement of the intersection of Highway 412 and Barrington Road in Tontitown, Arkansas. The Subconsultant's scope of work consists of performing Design and Land Surveys associated with the engineering design of the intersection. The survey tasks shall be performed in accordance with ARDOT's requirements specified in the most current version of Requirements and Procedures for Control, Design, and Land Surveys. The surveys to be conducted will consist of:

- 2.1.1. Design survey tasks
- 2.1.2. Primary project horizontal control traverses
- 2.1.3. Elevation Control – Three Wire Level
- 2.1.4. Topography and terrain data collection
- 2.1.5. Field data processing
- 2.1.6. Digital terrain modeling
- 2.1.7. Utility locations as marked by ARKUPS
- 2.1.8. Land surveys
- 2.1.9. Title search
- 2.1.10. Parcel surveys and work sheets
- 2.1.11. Establish Project Control

## **3. COSTS, FEES, PAYMENTS, AND RATE SCHEDULES**

### **Cost-Plus-Fixed-Fee Contract**

3.1. The Subconsultant is being hired to perform professional engineering services in connection with the Project as set forth herein. In consideration for Title I services performed, the Consultant will reimburse the Subconsultant for allowable direct and indirect costs, as defined herein, and pay the Subconsultant a fixed fee. If Title II services are to be performed, the Consultant will reimburse the Subconsultant for allowable direct costs and also pay the Subconsultant an amount determined by multiplying the salary rate of the individual(s) performing the Title II services, as shown on the Schedule of Salary Ranges, by the Title II Multiplier.

3.2. Under no circumstances shall the Department be liable for any amounts, including all costs, which exceed the Contract Ceiling Price.

3.3. *Salaries*. The following schedule covers the classification of personnel and the salary ranges for all personnel anticipated to be assigned to this project by the Subconsultant:

### **3.3.1. SCHEDULE OF SALARY RANGES**

<b>Classification/Title</b>	<b>Min. Hourly</b>	<b>Max. Hourly through 2026</b>
Project Director	\$90.00	\$139.25
Project Manager	\$45.00	\$82.00
Professional Surveyor	\$33.50	\$69.75
LSIT	\$22.00	\$40.75
Survey Technician	\$15.00	\$35.00
Survey Crew Chief	\$20.00	\$35.00
Survey Crew Member	\$15.00	\$29.00
CADD/GIS/Geospatial Technician	\$25.00	\$40.75
Senior CADD/GIS/Geospatial Technician	\$35.00	\$52.25
Administrative Assistant	\$15.00	\$35.00
Graduate Engineer	\$30.00	\$46.50
Engineer I	\$35.00	\$58.00

3.3.2. OTHER ALLOWABLE NON-SALARY DIRECT RATES AND SCHEDULE OF UNIT RATES FOR SERVICES

<b>Reimbursable Items (Not All Inclusive)</b>	<b>Rate</b>
None	None

3.3.3. The Consultant shall reimburse the Subconsultant for overtime costs only when the overtime has been authorized in writing by the Owner. When authorized, overtime shall be reimbursed at the rate of time and one-half for all nonexempt employees. Notwithstanding this provision, the Subconsultant must comply with all federal and state wage and hour laws and regulations, regardless of whether the overtime is considered reimbursable under this Agreement.

**4. COMPENSATION SUBJECT TO LIMITATIONS OF FEDERAL AND STATE LAW**

4.1. The Project (as defined in the Prime Agreement), part of which is to be performed under this Subconsultant Agreement, is a federally-assisted project, and federal funds will be used, in part, to pay the Consultant and Subconsultant. Therefore, notwithstanding any provision of this Subconsultant Agreement or the Prime Agreement, all payments, costs, and expenditures are subject to the requirements and limitations of 48 CFR Part 31, including those relating to determination of indirect cost rates, if applicable. The Subconsultant shall certify the accuracy of all invoices, requests for payment, and cost rates (if applicable), along with supporting documentation and any supporting information or records provided prior to, during, or after the term of this Subconsultant Agreement.

**5. COMMISSION, ARDOT, AND FHWA AS THIRD PARTY BENEFICIARIES**

5.1. This Subconsultant Agreement is between and binding upon only the Consultant and Subconsultant. The Owner, Commission, ARDOT, and FHWA

are not parties to this Subconsultant Agreement, but are expressly made third-party beneficiaries of this Subconsultant Agreement and shall be entitled to enforce any obligation of the Subconsultant owed to the Consultant, as well any obligation of the Consultant owed to Subconsultant. No provision of this Subconsultant Agreement or the Prime Agreement, nor the exercise of any right thereunder, shall be construed as creating any obligation or any liability on the part of, or operating as a waiver of any immunity of, the Owner, the Commission, the ARDOT, the FHWA, or any of their employees, officers, or agents.

- 5.2. The Subconsultant's sole recourse, if any, for any injury arising under or related to this Subconsultant Agreement, the performance of services hereunder, or compensation or claims hereunder, shall be against the Consultant.
- 5.3. The Disputes and Claims provisions of the Prime Agreement shall not apply to this Subconsultant Agreement. However, the Subconsultant shall provide the Consultant all necessary information and assistance to enable the Consultant to comply with the Disputes and Claims provisions.

## **6. RECORDS & AUDITS**

- 6.1. Records includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- 6.2. Examination. The Subconsultant shall maintain, and the Owner, FHWA, and their authorized representatives shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs (direct and indirect) claimed to have been incurred or anticipated to be incurred in performance of this Agreement. This right of examination shall also include examination and audit of any records considered, relied upon, or relating to the determination of the Indirect Cost Rate or any certification thereof, including any CPA audit relied upon to establish the rate. This right of examination shall also include inspection at all reasonable times of the Subconsultant's offices and facilities, or parts of them, engaged in performing the Agreement.
- 6.3. Supporting Data. If the Subconsultant has been required to submit data in connection with any action relating to this Agreement, including the negotiation of or pre-negotiation audit of the Indirect Cost Rate, the negotiation of the Fee, request for cost reimbursement, request for payment, request for an adjustment, or assertion of a claim, the Owner, FHWA, or their authorized representatives, in order to evaluate the accuracy, completeness, and accuracy of the data, shall have the right to examine and audit all of the Subconsultant's records, including computations and projections, related to—
  - The determination or certification of the Indirect Cost Rate, including any independent CPA audit or certification thereof;
  - Any proposal for the Agreement, subcontract, or modification;
  - Discussions conducted on the proposal(s), including those related to negotiating;

- Fees or allowable costs under the Agreement, subcontract, or modification;
- Performance of the Agreement, subcontract or modification; or,
- The amount and basis of any claim or dispute.

6.4. *Audit.* The Owner, FHWA, or their authorized representatives, shall have access to and the right to examine any of the Subconsultant's records involving transactions related to this Agreement or a subcontract hereunder.

6.5. *Reports.* If the Subconsultant is required to furnish cost, funding, or performance reports, the Owner, FHWA, or their authorized representatives shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Subconsultant's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

6.6. *Availability.* The Subconsultant shall retain and make available at its office at all reasonable times the records, materials, and other evidence described in this section and Section 29, Disputes and Claims, for examination, audit, or reproduction, until five years after final payment under this Agreement, or for any longer period required by statute or by other clauses of this Agreement. In addition—

6.6.1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be retained and made available for five years after the termination; and,

6.6.2. Records relating to any claim or dispute, or to litigation or the settlement of claims arising under or relating to this Agreement shall be retained and made available until after any such claims or litigation, including appeals, are finally resolved.

6.7. The Subconsultant shall insert a clause containing all the terms of this section in all subcontracts under this Agreement.

## **7. PATENT AND COPYRIGHT INFRINGEMENT**

7.1. The Subconsultant shall report to the Consultant and Owner, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Subconsultant has knowledge.

7.2. In the event of any claim or suit against the Owner on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, the Subconsultant shall furnish to the Consultant and Owner, when requested, all evidence and information in possession of the Subconsultant pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Subconsultant.

- 7.3. The Subconsultant agrees to include, and require inclusion of, the provisions of this section in all subcontracts at any tier for supplies or services.
- 7.4. The Subconsultant shall indemnify the Consultant and Owner and its officers, agents, and employees against liability, including costs and attorneys' fees, for infringement of any United States patent or copyright arising from the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Agreement, or out of the use or disposal by or for the account of the Consultant or Owner of such supplies or construction work.
- 7.5. This indemnity shall not apply unless the Subconsultant has been informed within ten (10) business days following the Consultant's or Owner's receipt of legal notice of any suit alleging such infringement and shall be given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Consultant or Owner directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by the Subconsultant, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Subconsultant, unless required by final decree of a court of competent jurisdiction.

## **8. SUBCONTRACTING**

- 8.1. Unless expressly disclosed in Appendix B, the Subconsultant may not subcontract any of the services to be provided herein without the express written approval of the Consultant and Owner. All subconsultants, including those listed in Appendix B, shall be bound by the terms of this Agreement. All subconsultants shall be subject to all contractual and legal restrictions concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.
- 8.2. Unless the consent or approval specifically provides otherwise, neither consent by the Consultant or Owner to any subcontract nor approval of the Subconsultant's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Subconsultant of any responsibility, obligation, or duty under this Agreement.
- 8.3. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations of the FAR.
- 8.4. Furthermore, notwithstanding any other provision within this Agreement, no reimbursement or payment for any markup of the cost of any subcontract shall be considered by the Consultant or Owner without the express written agreement of the Consultant and Owner.



8.5. Prompt Payment. The Subconsultant shall pay subconsultants for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the Consultant to the Subconsultant. Any retainage payments held by the Subconsultant must be returned to the subconsultant within 30 days after the subconsultant's work is completed. Failure to comply with this provision shall be considered a Default by the Subconsultant. If the Subconsultant fails to comply with this provision, in addition to any other rights or remedies provided under this Agreement, the Consultant, at its sole option and discretion, may:

- make payments directly to the subconsultant and offset such payments, along with any administrative costs incurred by the Consultant, against reimbursements or payments otherwise due the Subconsultant;
- notify any sureties; and/or,
- withhold any or all reimbursements or payments otherwise due to the Subconsultant until the Subconsultant confirms that the subconsultants have been and will be promptly paid for work satisfactorily performed.

8.6. The Subconsultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

## **9. RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES**

9.1. The Subconsultant shall not be permitted to employ or make an offer of employment, for regular or part-time work related to this Project during the term of this Agreement, to any person who:

- is a present employee of the City of Tontitown or the Department;
- is a former employee of the City of Tontitown and/or the Department and at any time during the person's employment, the person participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, on any particular matter pertaining to this Agreement;
- is a former employee of the City of Tontitown and/or the Department within the twelve (12) months of employee cessation, and under this Agreement will knowingly act as a principal or as an agent in matters which were within this person's official responsibility;
- is a former employee of the City of Tontitown and/or the Department within the twelve (12) months of employment cessation and will engage in selling or attempting to sell commodities or services, including technical or professional consultant services, unless the former employee's last annual salary with the City and/or Department did not exceed ten thousand five hundred dollars (\$10,500); or

- is a former employee of the City of Tontitown and/or the Department and at any time was terminated with cause or allowed to resign/retire in lieu of termination with cause.
- 9.2. Any individual or entity acting as a principal or agent on behalf of any person disqualified pursuant to the terms of provision 9.1 shall not be permitted to perform any work related to any City of Tontitown project for the Subconsultant during the term of this Agreement.
- 9.3. This section is not intended to preclude a former employee from accepting employment with the Subconsultant solely because the Subconsultant has entered into this Agreement with the Consultant.

## **10. INSURANCE**

- 10.1. *Professional Liability Insurance Coverage.* The Subconsultant shall maintain at all times during the performance of services under this Agreement professional liability insurance coverage for errors, omissions, and negligent acts to the extent caused by the performance of professional services under this Agreement in an amount per claim of not less than \$2,000,000 per claim and aggregate, whichever is less. Such insurance shall extend to the Consultant and to its legal representatives in the event of death, dissolution, or bankruptcy, and shall cover the errors, omissions, or negligent acts of the Subconsultant's subconsultants, agents, and employees. Such insurance shall extend to any errors, omissions, and negligent acts in the performance of services under this Agreement committed by the Subconsultant or alleged to have been committed by the Subconsultant or any person for whom the Subconsultant is legally responsible subject to the terms of the policy.
- 10.2. *Deductible.* The Subconsultant may maintain a professional liability insurance policy with a deductible clause in an amount approved by the Consultant if, in the judgment and opinion of the Consultant, the Subconsultant's financial resources are sufficient to adequately cover possible liability in the amount of the deductible. The Subconsultant shall submit promptly to the Consultant, upon request as often as quarterly, detailed financial statements and any other information requested by the Consultant to reasonably determine whether or not the Subconsultant's financial resources are sufficient to adequately cover possible liability in the amount of the deductible.
- 10.3. *Workers' Compensation Insurance.* The Subconsultant shall at all times during the Term of this Agreement maintain Workers' Compensation and Employer's Liability Insurance as required under Arkansas law.
- 10.4. *Automobile and General Liability Insurance.* The Subconsultant shall at all times during the term of this Agreement maintain commercial general liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000 per occurrence and aggregate, and comprehensive automobile liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000, which shall cover all owned, hired, and non-owned vehicles.

- 10.5. *Valuable Papers Insurance.* The Subconsultant shall at all times during the term of this Agreement maintain Valuable Papers Insurance, whether as part of the General Liability Insurance referenced above or as a separate insurance, in an amount sufficient to cover all cost associated with repairing, restoring, or replacing any plans, drawings, field notes, and other documents kept or created by the Subconsultant as part of the services under this Agreement, in the event of casualty to or loss or theft of such papers.
- 10.6. *Insurance Policies and Certificates.* The Subconsultant shall provide the Consultant upon request copies of its insurance policies and evidence satisfactory to the Consultant concerning the effectiveness and the specific terms of the insurance. Prior to the execution of this Agreement, the Subconsultant shall furnish to the Consultant certificates of insurance reflecting policies in force, and it shall also provide certificates evidencing all renewals of any expiring insurance policy required hereunder within thirty (30) days of the expiration thereof. The Subconsultant's failure to provide and continue in force and effect any insurance required under this Article shall be deemed a Default for which the Consultant, in its sole discretion, may terminate this Agreement immediately or on such other terms as it sees fit.
- 10.7. *Additional Insurance Requirements.* All insurance maintained by the Subconsultant pursuant to this Section shall be written by insurance companies licensed to do business in Arkansas, in form and substance satisfactory to the Consultant, and shall provide that the insurance will not be subject to cancellation, termination, or change during its term except upon thirty (30) days prior written notice to the Consultant. In the event that the insurance is cancelled, terminated, or changed during its term and thirty (30) days written notice cannot be provided to the Consultant, the Subconsultant shall provide any insurance required under this Section for continual coverage upon expiration of the existing policy or become financially responsible for any claims associated with the expired period.
- 10.8. *Duration of Insurance Obligations.* The Subconsultant shall maintain its professional insurance coverage required under this Agreement in force and effect for a period not less than five years after the final acceptance of the project or the completion of the Subconsultant's services under this Agreement, whichever comes later. Comprehensive General Liability Insurance Coverage and Valuable Papers Insurance Coverage required under this Agreement shall be in full force and effect until the final acceptance or the completion of the Subconsultant's services, whichever comes later. All other insurance shall be maintained in full force and effect until final acceptance of the project or completion of the Subconsultant's services, whichever comes first.
- 10.9. *Subconsultant's Insurance Primary.* All insurance policies maintained by the Subconsultant pursuant to this Agreement shall provide that the Subconsultant's insurance shall be primary and the Consultant's own insurance shall be non-contributing.
- 10.10. *Additional Insured.* All liability insurance policies, except the professional liability policy, workers' compensation, and valuable papers policy, maintained by the Subconsultant pursuant to this Agreement shall be endorsed to include the Consultant, its officers, directors, managers, employees, agents, assigns and

representatives, individually and collectively, as additional insured, and all property damage insurance shall be endorsed with a waiver of subrogation by the insurer as to the Consultant.

## **11. COVENANT AGAINST CONTINGENCY FEES**

- 11.1. The Subconsultant warrants that no person or agency has been employed or retained to solicit or obtain this Subconsultant Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the ARDOT and Consultant shall have the right to annul this Subconsultant Agreement without liability or, in its discretion, to deduct from the Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.
- 11.2. *Bona fide agency*, as used in this section, means an established commercial or selling agency, maintained by the Subconsultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.
- 11.3. *Bona fide employee*, as used in this Section, means a person, employed by the Subconsultant and subject to the Subconsultant's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.
- 11.4. *Contingent fee*, as used in this Section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.
- 11.5. *Improper influence*, as used in this Section, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

## **12. TITLE VI ASSURANCES (NONDISCRIMINATION)**

During the performance of this Subconsultant Agreement, the Subconsultant, for itself, successors, and assigns, certifies and agrees as follows:

- 12.1. *Compliance with Regulations*. The Subconsultant shall comply with the Regulations relative to Title VI (Nondiscrimination in Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49, Code of Federal Regulations, Part 21 and 23 Code of Federal Regulations, as amended, and hereinafter referred to as the Regulations). These regulations are herein incorporated by reference and made a part of this Subconsultant Agreement. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person shall, on the basis of race, color, or national origin be excluded from participation in,

denied the benefits of, or subject to discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.

- 12.2. *Nondiscrimination.* The Subconsultant, with regard to the work performed by it during the term of this Subconsultant Agreement, shall not discriminate on the basis of race, color, or national origin in the selection and retention of subconsultants, including procurements of material and leases of equipment. The Subconsultant shall not participate either directly or indirectly in any discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the USDOT Regulations.
- 12.3. *Solicitations for Subcontracts, Including Procurements of Material & Equipment.* In all solicitations, either by competitive bidding or negotiation, made by the Subconsultant for work to be performed under a subcontract, including procurements of material and leases of equipment, each potential subconsultant or supplier shall be notified by the Subconsultant of the Subconsultant's obligations under this Subconsultant Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 12.4. *Information and Reports.* The Subconsultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, and accounts, other sources of information, and its facilities by the Owner or the USDOT and its Affiliated Modes to be pertinent to ascertain compliance with such regulations and directives. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Subconsultant shall so certify to the Owner or the USDOT and its Affiliated Modes, as appropriate, and shall set forth the efforts made by the Subconsultant to obtain the records or information.
- 12.5. *Sanctions for Noncompliance.* In the event of the Subconsultant's noncompliance with the nondiscrimination provisions of this Subconsultant Agreement, the Owner shall impose such contract sanctions as it or the USDOT and its Affiliated Modes may determine to be appropriate, including but not limited to, withholding of payments to the Consultant or Subconsultant under the Agreement until the Subconsultant complies with the provisions and cancellation, termination, or suspension of the Subconsultant Agreement, in whole or in part.
- 12.6. *Incorporation of Provisions.* The Subconsultant shall include the terms and conditions of this Section in every subcontract including procurements of material and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Subconsultant shall take such action with respect to any subcontract or procurement as the Owner or USDOT and its Affiliated Modes may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, however that, in the event the Subconsultant becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of any direction, the Subconsultant may request the Owner or the United States to enter into the litigation to protect the interests of the State and the interests of the United States, respectively.

### **13. DBE CLAUSE**

- 13.1. The Subconsultant shall not discriminate on the basis of race, color, sex, or national origin in the performance of this Subconsultant Agreement. The Subconsultant shall comply with the applicable requirements of 49 CFR Part 26 and perform any actions necessary to maintain compliance in the award and administration of DOT-assisted contracts. Failure by the Subconsultant to comply with or perform these requirements is a material breach of this Subconsultant Agreement, which may result in the cancellation, termination, or suspension of this Subconsultant Agreement in whole or in part, or such other remedy that the Owner may determine appropriate.
- 13.2. The Subconsultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

### **14. COMPLIANCE WITH ALL OTHER LAWS REGARDING NONDISCRIMINATION**

- 14.1. The Subconsultant will comply with the provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Federal Aid Project Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.
- 14.2. The Subconsultant, during the term of this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion, disability, or any other protected classes, in admission or access to and treatment in programs and activities associated with this Agreement, or in the selection and retention of subconsultants, including procurements of material and leases of equipment. The Subconsultant shall not participate either directly or indirectly in any discrimination prohibited by the Regulations, including employment practices.
- 14.3. In accordance with Section 504 regulations 49 CFR Part 27.15, the Owner's Notice of Nondiscrimination is required in any bulletins, announcements, handbooks, pamphlets, brochures, and any other publications associated with this Agreement that are made available to the public, program participants, applicants or employees.

### **15. CERTIFICATION REGARDING LOBBYING**

- 15.1. The Subconsultant certifies, to the best of their knowledge and belief, that:
- 15.1.1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 contract, 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 contract, grant, loan, or cooperative agreement.

- 15.1.2. 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying".
- 15.1.3. The Subconsultant shall require that the language of this certification be included in the agreement for all subcontracts and that all subconsultants shall certify and disclose accordingly.

**16. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

16.1. The Subconsultant certifies, to the best of its knowledge and belief, that—

16.1.1. The Subconsultant and any of its Principals—

- 16.1.1.1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal or state agency;
- 16.1.1.2. Have not, within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 16.1.1.3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subsection 16.1.1.2; and,
- 16.1.1.4. The Subconsultant has not within a 3-year period preceding this offer, had one or more contracts terminated for Default by any federal or state agency.

16.2. Principals, for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001, title 18, United States Code, as well as any other applicable federal and state laws.

16.3. The Subconsultant shall provide immediate written notice to the ARDOT if, at any time prior to contract award, the Subconsultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

16.4. The certification in subsection 16.1 is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Subconsultant knowingly rendered an erroneous certification, the ARDOT may terminate the contract resulting from this solicitation for Default in addition to any other remedies available to the ARDOT.

## **17. CERTIFICATION REGARDING CONFLICT OF INTEREST**

17.1. The Subconsultant certifies that it has no financial interest in the proposed project or construction of the proposed project.

17.1.1. The Subconsultant nor any of its Principals have no known conflicts with any of the following:

17.1.1.1. No financial interest in work associated with this contract;

17.1.1.2. No ownership interest in work associated with this contract;

17.1.1.3. No Financial interest in the results of any agency decisions regarding approvals for work associated with this project;

17.1.1.4. Policies and procedures (provided statutory framework permits) for a contracting agency to pursue a range of civil actions and penalties including fines, suspension, or debarment associated with fraud, waste, abuse, and identified conflicts of interest which were not disclosed.

17.2. For the duration of the contract, except for work expressly defined in this contract, the Subconsultant shall not be party to third party agreements for design or construction on projects associated with contract.

17.3. For the duration of the contract, except for work expressly defined in this contract, the Subconsultant shall not be party to enforceable promises or guarantees of future work associated with this contract.

## **18. SAFETY**

18.1. The Subconsultant shall be solely responsible for the safety and protection of it's persons and property at the Project Site and shall comply with all applicable federal, state, and local safety laws and regulations.

## **19. NOTICE**

19.1. All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be mailed or hand-delivered to:

19.1.1. To the Subconsultant:



Halff Associates, Inc.  
5704 Euper Lane, Suite 200  
Fort Smith, AR 72903  
Attn: Travis Brisendine, PE

19.1.2. To the Consultant:

Burns & McDonnell Engineering Company, Inc.  
6576 Lynch's Prairie Cove, Suite B  
Springdale, AR 72762  
Attn: Jonathan Ely

**IN WITNESS WHEREOF**, the parties execute this Subconsultant Agreement, to be effective \_\_\_\_\_.

Burns & McDonnell Engineering  
Company, Inc.

Halff Associates, Inc.

BY: \_\_\_\_\_  
Michael S. DeBacker  
Vice President

BY: \_\_\_\_\_  
Travis Brisendine., P.E.  
Operations Manager

**APPENDIX C-1**  
**CERTIFICATION OF CONSULTANT**

I hereby certify that I, Michael DeBacker, am the Vice President and duly authorized representative of the firm Burns & McDonnell Engineering Company, Inc., whose headquarters address is 9400 Ward Parkway, Kansas City, MO 64114, and that neither I nor the above firm I here represent has:

- (a) employed or retained for a commission, brokerage, contingent fee, or other considerations, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract;
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract;
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me) any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract; or
- (d) included any costs which are not expressly allowable under the cost principles of the FAR of 48 CFR 31, whether direct or indirect. All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Furthermore, as a recipient of Federal Aid Highway Funds, I certify and hereby agree to the conditions of Assurances as outlined in Section 31 of this Agreement and shall insert the Notice of Nondiscrimination Statement as shown below in all solicitation of work or procurements of material or equipment. I certify and hereby agree to the conditions of Certification Regarding Lobbying as outlined in Section 34 of this Agreement and shall insert the Certification Regarding Lobbying in all solicitation of work or procurements of material or equipment. I certify and hereby agree to the conditions of Certification Regarding Conflict of Interest as outlined in Section 38 of this Agreement and shall insert the Certification Regarding Conflict of Interest in all solicitation of work or procurement of materials or equipment.

**NOTICE OF NONDISCRIMINATION STATEMENT**

Burns & McDonnell Engineering Company, Inc. ("Consultant") complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in programs and activities receiving federal financial assistance. Therefore, the Consultant does not discriminate on the basis of race, sex, color, age, national origin, or disability, in the admission, access to and treatment in the Consultant's programs and activities, as well as the Consultant's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Consultant's nondiscrimination policies may be directed to Renee Gartelos (Vice President), 9400 Ward Parkway, Kansas City, MO 64114, (816) 822-3962, or the following e-mail address: [rgartelos@burnsmcd.com](mailto:rgartelos@burnsmcd.com).

\_\_\_\_\_  
Authorized Firm Representative

\_\_\_\_\_  
Date

**APPENDIX C-2**  
**CERTIFICATION OF CITY OF TONTITOWN, ARKANSAS**

I, Angela Russell, hereby certify that I am the Mayor of the City of Tontitown, Arkansas and that the aforementioned consulting firm or its representative has not been required, directly or indirectly, as an expressed or implied condition in connection with obtaining or carrying out this contract to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fees, contributions, donations, or consideration of any kind:

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal-Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Angela Russell, Mayor

\_\_\_\_\_  
Date

**APPENDIX C-3**  
**CERTIFICATION OF SUBCONSULTANT**

I hereby certify that I, David Hopkins am the Regional Manager and duly authorized representative of the firm Terracon Consultants, Inc. whose headquarters address is 10841 S. Ridgeview Rd., Olathe, KS, 66061, and that neither I nor the above firm I here represent has:

(a) employed or retained for a commission, brokerage, contingent fee, or other considerations, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract;

(b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract;

(c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me) any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract; or

(d) included any costs which are not expressly allowable under the cost principles of the FAR of 48 CFR 31, whether direct or indirect. All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Furthermore, as a recipient of Federal Aid Highway Funds, I certify and hereby agree to the conditions of Title VI Assurances as outlined in Section 12 of this Agreement and shall insert the Notice of Nondiscrimination Statement as shown below in all solicitation of work or procurements of material or equipment. I certify and hereby agree to the conditions of Certification Regarding Lobbying as outlined in Section 15 of this Agreement and shall insert the Certification Regarding Lobbying in all solicitation of work or procurement of materials or equipment. I certify and hereby agree to the conditions of Certification Regarding Conflict of Interest as outlined in Section 17 of this Agreement and shall insert the Certification Regarding Conflict of Interest in all solicitation of work or procurements of material or equipment.

**NOTICE OF NONDISCRIMINATION STATEMENT**

Terracon Consultants, Inc. ("Subconsultant"), complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in programs and activities receiving federal financial assistance. Therefore, the Consultant does not discriminate on the basis of race, sex, color, age, national origin, or disability, in the admission, access to and treatment in the Consultant's programs and activities, as well as the Consultant's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Consultant's nondiscrimination policies may be directed to Sarah Gilliland, 10841 S. Ridgeview Rd., Olathe, KS, 66061, or the following e-mail address: Sarah.Gilliland@Terracon.com.

\_\_\_\_\_  
Authorized Firm Representative

\_\_\_\_\_  
Date

**APPENDIX C-4**  
**CERTIFICATION OF SUBCONSULTANT**

I hereby certify that I Travis Brisendine, am the Operations Manager and duly authorized representative of the firm Halff Associates, Inc. whose headquarters address is 120 North Bowser Road, Richardson, TX 75081-6200, and that neither I nor the above firm I here represent has:

(a) employed or retained for a commission, brokerage, contingent fee, or other considerations, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract;

(b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract;

(c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me) any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract; or

(d) included any costs which are not expressly allowable under the cost principles of the FAR of 48 CFR 31, whether direct or indirect. All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Furthermore, as a recipient of Federal Aid Highway Funds, I certify and hereby agree to the conditions of Title VI Assurances as outlined in Section 12 of this Agreement and shall insert the Notice of Nondiscrimination Statement as shown below in all solicitation of work or procurements of material or equipment. I certify and hereby agree to the conditions of Certification Regarding Lobbying as outlined in Section 15 of this Agreement and shall insert the Certification Regarding Lobbying in all solicitation of work or procurement of materials or equipment. I certify and hereby agree to the conditions of Certification Regarding Conflict of Interest as outlined in Section 17 of this Agreement and shall insert the Certification Regarding Conflict of Interest in all solicitation of work or procurements of material or equipment.

**NOTICE OF NONDISCRIMINATION STATEMENT**

Halff Associates, Inc. ("Subconsultant"), complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in programs and activities receiving federal financial assistance. Therefore, the Consultant does not discriminate on the basis of race, sex, color, age, national origin, or disability, in the admission, access to and treatment in the Consultant's programs and activities, as well as the Consultant's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Consultant's nondiscrimination policies may be directed to Joni Caldwell, Employee Relations Leader, 1201 N. Bowser Rd., Richardson TX, 75081-2275, 214-346-6310, or the following e-mail address: [humanresources@halff.com](mailto:humanresources@halff.com).

\_\_\_\_\_  
Authorized Firm Representative

\_\_\_\_\_  
Date

**APPENDIX D - PROJECT SCHEDULE**  
**ARDOT Job 040957 – HWY 412 / Barrington Road Intersection Improvements (Tontitown)**



Project Task	2024		2025												2026		
	November	December	January	February	March	April	May	June	July	August	September	October	November	December	January	February	March
<b>Environmental Clearance Documentation</b>																	
Project Data Review		■															
Constraints Map and Research		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Environmental Data Collection		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Field Assessments & Reports		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Agency Coordination																	
Section 4(f) / 6(f) Coordination																	
Public Meetings/Hearings																	
Environmental Document Development																	
FHWA Review of Env. Document																	
<b>COMMENTS:</b>	1. We are expecting the Section 4(f) and Section 6(f) coordination for the project to be significant due to potential impacts to Harry Sbanoto Park, because the park received a Land and Water Conservation Fund (LWCF) Grant in 1979. Due to the unknowns and potential coordination efforts required, the total duration of this task is currently estimated at 12 - 14 months. However, depending on the specifics of the grant, project impacts and cooperation with the regulatory authority, this timeframe could be reduced. 2. Public Input portion of schedule aligns with completion of 60% documents below.																
<b>Traffic Analysis</b>																	
Traffic Data Collection & Analysis			■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Develop Traffic Forecast			■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Develop Traffic Models and Alternatives			■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Traffic/Alternatives Analysis Report Prep & Review			■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>COMMENTS:</b>	1. Timing of Traffic Counts will be the key driver of schedule for this portion of the work. With Holidays and School being out in Mid/Late December, the traffic counts will need to be completed by the second week of December, or will need to be postponed to the second week of January. Due to uncertainty if the contract and notice to proceed can be issued in time for December counts, we are anticipating the second week of January. However, if the contracts are approved and NTP issued by the end of November, it could be possible to get the counts scheduled earlier.																
<b>Schematic Design (15%)</b>																	
Preparation & Approval of Design Criteria																	
Kick Off Utility Coordination																	
Develop Strip Map(s) for Roadway Alternatives																	
Develop P&P's for Shared Use Path Alternatives																	
Develop OPCC for Alternatives																	
Review Alternatives																	
Refine Alternatives																	
City and ARDOT Review of Alternatives																	
<b>COMMENTS:</b>	1. This work will occur concurrent with the early environmental and the traffic analysis phases of the project in an effort to reduce overall schedule duration and progress the design and alternatives to a point where the future scope of work and associated funding necessary to complete that work can be determined. 2. It will likely be possible to begin schematic design earlier on certain portions of the project such as the shared-use path and tunnel alternatives as this will not be tied to the traffic analysis. However, the configuration of alternatives and traffic lanes at the intersection will not be able to begin until some traffic models and analysis have been completed.																
<b>Field Surveys and Mapping</b>																	
Perform Field Surveys and Mapping																	
<b>COMMENTS:</b>	1. Survey work will begin as soon as possible pending the notice to proceed. While some alternative analysis will likely begin prior to this using available GIS and Aerial imagery, we'll need to wait until survey is complete to completely understand the various impacts, cost, schedule and risks associated with each alternative.																
<b>Concept Design (30%)</b>																	
Address comments and feedback from 15%																	
Progress the Design - Develop 30% Plans																	
Develop OPCC for 30% design																	
Perform Utility coordination																	
City and ARDOT Review of Alternatives																	
<b>COMMENTS:</b>	1. This work will occur sequentially directly after the completion of the Schematic Design Phase.																
<b>Geotechnical Investigation</b>																	
Project Coordination and Field Exploration																	
Laboratory testing																	
Engineering Report																	
<b>COMMENTS:</b>	1. Geotechnical work will begin at completion of Schematic Design Phase, and decision on the preferred alternatives, so borings can be planned and placed in areas of most benefit.																
<b>Preliminary Design (60%)</b>																	
Address comments and feedback from 30%																	
Progress the Design - Develop "reduced" 60% Plans																	
Develop OPCC for 60% Design																	
Develop Preliminary Drainage Report																	
Perform Utility Coordination																	
City and ARDOT Review of Alternatives																	
<b>COMMENTS:</b>	1. This schedule minimizes redesign and delay risk by placing the beginning of 30% plan development after the first public meeting so that an apparent Preferred Alternative can be identified. 30% design can begin sooner, if desired, but if the NEPA process identifies changes that must be made, redesign may be required and the duration of the 30% design phase may be lengthened. We are happy to discuss these options in more detail if selected and refine the schedule to meet your goals.																
<b>Right of Way Documents</b>																	
ROW Document Preparation																	
ROW Document Q-Review & Revision																	
City and ARDOT Review of ROW Documents																	
<b>COMMENTS:</b>	1. Right-of-way would occur sequentially with the development of 60% documents, with the intention that right-of-way documents are submitted for review at the same time as the 60% deliverables.																
<b>COMMENTS:</b>	1. This schedule presents the design phase (Title I) services from notice to proceed through submission of 60% "Reduced" Plan, Right of Way and Environmental Clearance. 2. Final design and Title II Services are not included in the current scope. 3. This schedule assumes these improvements will be constructed under one contract. 4. This schedule is based on a typical project team size. Requests to expedite the schedule may require additional resources and modification to the design contract. 5. Schedule is based on 2-week durations for plan review. Consultant will be entitled to additional schedule as a result of delays in reviews or progress on the Environmental Documentation that delay design activities.																

