

PROFESSIONAL SERVICE AGREEMENT
BETWEEN
Context, LLC
(ENGINEER)
AND THE CITY OF GREENFIELD BY AND THROUGH
ITS BOARD OF PUBLIC
WORKS AND SAFETY (OWNER)

WHEREAS, OWNER desires to obtain professional design engineering services for the City of Greenfield Project entitled **Depot Street Park** (PROJECT); and

WHEREAS, OWNER wishes to obtain these services according to time requirements which specify particular and definite deadlines; and

WHEREAS, OWNER wishes to limit its review role of these services; and

WHEREAS, ENGINEER has expressed its willingness to provide these services within the specified time requirements and with a limited review role by OWNER.

NOW, THEREFORE, in consideration of the mutual promises, representations, warranties, covenants and responsibilities, OWNER and ENGINEER agree as follows:

ARTICLE 1. AUTHORITY TO EXECUTE AGREEMENT

Each party represents and warrants to the other party that:

- 1.1 The party is duly organized and existing in good standing under the laws of Indiana and has all requisite power and authority to carry out the obligations set forth in this Agreement.
- 1.2 The party has the power, authority, and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery, and performance whereof, have been duly authorized by all necessary action.
- 1.3 This Agreement has been duly entered into and delivered and constitutes a legal, valid, and binding obligation of the party, enforceable in accordance with its terms.

ARTICLE 2. ATTACHMENTS

The Attachments which accompany and form a part of this Agreement as of the date hereof are:

- 2.1 "Attachment A" consisting of the described services to be performed by ENGINEER.
- 2.2 "Attachment B" consisting of a list of key professional staff and subcontractors ENGINEER

agrees to provide for the Project and the man-hours that will be devoted to the Project.

- 2.3 "Attachment C" consisting of a list of key staff OWNER agrees to provide for the Project.
- 2.4 "Attachment D" consisting of a schedule for completion of the milestone tasks of the Project.
- 2.5 "Attachment E" consisting of a mediation process to be utilized by the parties.
- 2.6 "Attachment F" consisting of information to be provided by OWNER to ENGINEER.
- 2.7 "Attachment G" consisting of compensation for ENGINEER's services under this Agreement.

ARTICLE 3. INTENT AND INTERPRETATION

- 3.1 The "Agreement", as referred to herein, shall mean this Agreement executed by OWNER and ENGINEER, and shall include these Terms and Conditions, the Attachments described in Article 2 and attached hereto, and any written supplemental agreement or modification entered into between OWNER and ENGINEER, in writing, after the date of this Agreement.
- 3.2 In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by ENGINEER or other rights or obligations of OWNER or ENGINEER, the document or provision thereof expressing the greater quantity, quality or scope of service or imposing the greater obligation upon ENGINEER and affording the greater right or remedy to OWNER, shall govern; otherwise, precedence shall be given in the following order: provisions of these Terms and Conditions, provisions contained in any Attachment hereto and required provisions contained in any governmental regulation incorporated herein by reference.
- 3.3 Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against OWNER solely by virtue of OWNER or OWNER's representatives having drafted all or any portion of this Agreement.
- 3.4 This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.

ARTICLE 4. ENGINEER'S RESPONSIBILITIES

- 4.1 ENGINEER shall serve as OWNER's professional representative in the design phase of the Project, and with respect to all services provided by ENGINEER hereunder and will give consultation and advice to OWNER during the performance of such services.

- 4.2 ENGINEER shall perform professional services as stated in "Attachment A" of this Agreement, including normal civil, structural, mechanical, electrical and architectural services incidental thereto.
- 4.3 ENGINEER shall perform all services under this Agreement in a skillful and competent manner in accordance with normally accepted standards of the architectural and engineering professions and with that degree of care and skill which a professional engineer or architect would exercise under the same or similar circumstance. Without modifying the above standard, ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by ENGINEER under this Agreement.
- 4.4 ENGINEER shall perform all professional services necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement and applicable local, state and federal requirements.
- 4.5 ENGINEER shall, without additional compensation, correct or revise any errors or omissions in its designs, drawings, specifications, reports, or any other services.
- 4.6 Acceptance by OWNER or approval by any governmental regulatory or funding agency of drawings, designs, specifications, reports, and incidental engineering work, services or materials furnished hereunder shall not in any way relieve ENGINEER of its liability to OWNER or others for negligent acts, errors, omissions, or other deficiencies in the performance of services. OWNER's monitoring or acceptance of, or payment for, any of ENGINEER's services shall not 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 by ENGINEER.
- 4.7 ENGINEER shall make all reasonable efforts to provide competent, capable, experienced and suitably qualified personnel for the performance of all services. Any employee or representative of ENGINEER who, in the opinion of OWNER, does not perform its work in a proper and skillful manner, or is disrespectful, or otherwise objectionable, shall, at the written request of OWNER, be removed from performing any further services on behalf of OWNER.
- 4.8 ENGINEER shall provide to OWNER the key staff and subcontractors listed in "Attachment B" and shall make each person and subcontractor available to the Project for the duration of the Project. In the event any of the staff and subcontractors listed in "Attachment B" is not available to the Project, ENGINEER shall provide replacement personnel to the satisfaction of OWNER. OWNER may not unreasonably withhold its consent. A failure by ENGINEER to provide professional staff and subcontractors as required by this Article shall be considered a material breach of the Agreement.
- 4.9 ENGINEER shall be fully responsible for all negligent acts, errors or omissions of

consultants and subcontractors and of persons and organizations directly or indirectly employed by ENGINEER, and of persons and organizations for whose acts any consultant may be liable to the same extent that ENGINEER is responsible for the negligent acts, errors or omissions of persons directly employed by ENGINEER. Nothing in this Agreement, nor any communication, directive, action or failure to act on the part of OWNER, shall create any contractual relationship between OWNER and any consultant or subcontractor having a contract with ENGINEER, nor shall it create any obligation on the part of OWNER to pay or to see to payment of any monies due any consultant or subcontractor to ENGINEER.

- 4.10 ENGINEER agrees to bind specifically every subcontractor and consultant to the applicable terms and conditions of this Agreement for the benefit of OWNER. ENGINEER shall obtain written acceptance from OWNER for all proposed subcontractors and subcontract agreements for any portion of the Scope of Work described in "Attachment A" and shall furnish copies of all executed subagreements.
- 4.11 ENGINEER shall include all subcontractors on "Attachment B". ENGINEER may not remove or otherwise substitute subcontractors indicated on "Attachment B" without consent of OWNER. A failure by ENGINEER to provide the subcontractors as required by this Article shall be considered a material breach of the Agreement.
- 4.12 To the extent the standard in Paragraph 4.3 is met, ENGINEER's responsibility under this Agreement shall not be diminished by new or advanced processes, methods, designs or technology recommended or utilized by ENGINEER for the Project.
- 4.13 ENGINEER's submittals are subject to prompt monitoring and acceptance by OWNER for general compliance with the services described in "Attachment A". In the event that any submittal is not accepted by OWNER, OWNER shall notify ENGINEER in writing of its reasons for non-acceptance and may make suggested revisions. Upon receipt of said notification, the non-acceptance submittal shall be revised appropriately by ENGINEER until accepted by OWNER. If ENGINEER does not agree with OWNER's suggested revisions, ENGINEER shall submit its reasons therefor to OWNER in writing.
- 4.14 In the event that the performance of any services described in this Article or in "Attachment A" under this Agreement by ENGINEER shall require ENGINEER to use, consider, complete, or evaluate any designs, specifications, contract documents, reports, studies or other services provided to OWNER or ENGINEER by another architect, engineer or consultant, ENGINEER shall take reasonable and prudent steps to verify the technical accuracy of such items and shall report in writing to OWNER any conflict, error or discrepancy which may be discovered by such investigation and verification. ENGINEER shall assume all risks and bear all costs associated with any conflict, error, inaccuracy or discrepancy in such items which are not discovered by ENGINEER due to its failure to conduct such reasonable and prudent inquiry and study, or which are discovered by ENGINEER but not reported in writing to OWNER provided, however, that ENGINEER shall not be barred from actions against third parties. At the written request of ENGINEER,

OWNER may assign to ENGINEER all or any portion of the rights which OWNER may possess to pursue remedies against the engineer, architect or consultant which provided the OWNER with said designs, specifications, contract documents, reports, studies, or other services. Such a request shall not be unreasonably denied.

- 4.15 ENGINEER shall fulfill the requirements of governing regulatory agencies as may be applicable to the work and services to be performed by ENGINEER described in this Article or in "Attachment A".
- 4.16 The liability of ENGINEER under this Article shall survive the expiration of this Agreement.

ARTICLE 5. OWNER'S RESPONSIBILITIES

Except to the extent that such responsibilities are otherwise waived or assumed by ENGINEER, OWNER shall take reasonable steps to:

- 5.1 Issue a written notice to proceed within 30 days of fully executed Agreement. If OWNER fails to so issue the Notice to Proceed OWNER shall:
- A. Extend the completion date as described in "Attachment D" one (1) day for each day past the above date that the Notice to Proceed was not issued;
 - B. Order ENGINEER to accelerate up to fifteen (15) days to maintain the schedule described in "Attachment D"; or
 - C. A combination of A and B;

provided, however, that ENGINEER has executed this Agreement and satisfactorily delivered to and had accepted by OWNER, the documents required in Paragraph 7.4 within seven (7) calendar days of the award of this Agreement by the appropriate authority. To the extent that ENGINEER has failed to so perform, OWNER's obligation to extend the completion date shall not arise.

OWNER shall notify ENGINEER of its decision in writing prior to, or at the latest, at the time of the issuance of the Notice to Proceed.

If OWNER orders acceleration under subsections 5.1.B or 5.1.C, OWNER shall compensate ENGINEER the amount of a mutually agreed upon amount per day for acceleration.

OWNER may not order acceleration under this section after the Notice to Proceed is issued.

ENGINEER agrees that said compensation for acceleration and/or said time extension shall be full accord and satisfaction for any and all expenses and damages ENGINEER may

experience resulting from the delay and/or the order to accelerate.

- 5.2 Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Subject to Article 22, such person will have authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to ENGINEER's services for the Project. Said person as well or other key personnel are indicated in "Attachment C".
- 5.3 Make available all information pertinent to the Project including previous reports and any other data relative to design and construction of the Project.
- 5.4 Furnish to ENGINEER, as required by ENGINEER for performance of its services, data prepared by or services of others.
- 5.5 Monitor all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER.
- 5.6 Pay cost for advertising and obtaining formal bids or proposals from contractors.
- 5.7 Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing service as OWNER may require to ascertain how or for what purpose any contractor has used the monies paid to it under the construction contract.
- 5.8 Subject to the provisions of Paragraph 4.14, and to the extent that persons providing reports, data and other information to OWNER which OWNER furnishes to ENGINEER under this Article are responsible for their accuracy and completeness, OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all said reports, data and other information.
- 5.9 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
- 5.10 Attend the pre-bid conference, bid opening and preconstruction conferences.

ARTICLE 6. COMPLETION SCHEDULE

- 6.1 The proposed schedule for the completion of the Project is presented in "Attachment D" and is made a part hereof.
- 6.2 ENGINEER shall adhere to all time limits stated in this Agreement or included in any accepted time schedule. All such time limits shall be of the essence to this Agreement.
- 6.3 In all events, the various stages and phases of ENGINEER's services are to be completed in such sequence and at such times, and within approved or agreed upon time limits, as may be

required to assure the timely, continuous, efficient and diligent prosecution of the work and services provided for by this Agreement.

- 6.4 OWNER may at any time, by written order, make changes within the general scope of the Agreement in the services of work to be performed. If ENGINEER believes that such a change justifies an increase in ENGINEER's contract time or contract price required to perform the services under this Agreement, it must assert such claim in writing within thirty (30) days of receipt of OWNER's written order giving rise to the claim. No claim for adjustment in the contract time or contract price will be valid if not submitted in accordance with this paragraph. No services for which ENGINEER will charge additional compensation shall be furnished without the written authorization of OWNER.
- 6.5 ENGINEER shall carry on all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with OWNER. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as permitted in Article 8, or as ENGINEER and OWNER may otherwise agree in writing.
- 6.6 If the commencement, prosecution or completion of the services under this Agreement, or of the construction of the Project is delayed by any act, omission, delay, neglect or default of ENGINEER, or anyone employed by ENGINEER, or by any damage or acts caused by the negligent acts or omissions by ENGINEER, then ENGINEER shall be liable to OWNER for any and all costs, assessments, expense, liabilities or damages caused thereby, in accordance with Paragraph 4.9.
- 6.7 ENGINEER shall not be responsible for any time delays in the Project, or in the performance of services under this Agreement, to the extent such delays are caused solely by any act, omission, neglect or default of OWNER or anyone employed by OWNER, or by the unreasonable delay of any review agency or utility, or for any delay or damage caused by fire or the combined action of workers and which are in no way chargeable, in whole or in part, to ENGINEER, or by any other conditions or circumstances beyond the control of ENGINEER, its employees, agents, or other persons for whose acts or omissions ENGINEER is responsible. In the event of such delay, ENGINEER shall be entitled to an adjustment in the scheduled or agreed time limitations for the performance of services, and this Agreement shall be modified in writing accordingly. Any claim of ENGINEER for adjustment under this clause must be asserted in writing within thirty (30) days from the date of the occurrence of the event giving rise to the claim, unless OWNER grants a further period of time before the date of final payment to ENGINEER. The adjustment of time for the performance of services, as provided in this paragraph, shall be ENGINEER's sole exclusive right, entitlement and remedy in the event of such delays, and ENGINEER shall have no claim against OWNER for adjustment for increase in costs of performance, or other damages occurred in connection therewith.

ARTICLE 7. INSURANCE

7.1 ENGINEER shall, as a condition precedent to this Agreement, purchase and thereafter maintain such insurance as will protect it and OWNER from the claims set forth below which may arise out of or result from ENGINEER's operations under this Agreement, whether such operations be by ENGINEER or by its subcontractors or by anyone directly or indirectly employed by any of them, or by anyone directly for whose acts any of them may be liable:

- A. Claims under Worker's Compensation and Occupational Disease Acts, and any other employee benefits acts applicable to the performance of the work;
- B. Claims for damages because of bodily injury and personal injury, including death, and;
- C. Claims for damages to property.

7.1.1 ENGINEER's commercial general liability insurance shall also provide coverage for the following:

- (a) Contractual liability insurance as applicable to any hold-harmless agreements in the contract;
- (b) Products and completed operations;
- (c) Broad form liability; and
- (d) Independent Contractors.

7.1.2 ENGINEER's insurance shall be not less than the amounts shown below:

- | | | |
|-----|--------------------------|----------------------------|
| (a) | Worker's Compensation | Statutory |
| (b) | Employer's Liability | |
| | Bodily Injury Accident | \$100,000
each accident |
| | Bodily Injury by Disease | \$500,000
policy limit |
| | Bodily Injury by Disease | \$100,000
each employee |

(c)	Commercial General Liability (Occurrence Basis)	
	Bodily injury, personal injury, property damage, contractual liability, products-completed operations.	
	General Aggregate Limit (Other Than Products/Completed Operations)	\$2,000,000
	Products/Completed Operations	\$2,000,000
	Personal & Advertising Injury Limit	\$1,000,000
	Each Occurrence Limit	\$1,000,000
	Damage to Rented Premises	\$100,000 each occurrence
	Medical Expense Limit	\$5,000
(d)	Comprehensive Auto Liability (single limit) (owned, hired & non-owned)	\$1,000,000
	Bodily injury & property damage	\$1,000,000 each accident
(e)	Umbrella Excess Liability	\$1,000,000 each occurrence and aggregate
(f)	Professional Liability	\$1,000,000 per claim and aggregate

7.2.1 Professional liability coverage shall be in effect from the effective date of this Agreement and shall remain in effect continuously until the applicable statute of limitations has run (Coverage Period). Coverage also shall extend to employees who may retire, transfer or otherwise cease employment with ENGINEER during the Coverage Period.

7.2.2 Professional liability policies may be either claims made or per occurrence.

7.2.3 Deductibles on professional liability policies may be either per claim or per occurrence.

7.2.4 Professional liability coverage shall only be limited by a maximum annual

aggregate. There shall be no limits on the number or amount of claims made against a specific Project.

- 7.3 With the prior approval of OWNER, ENGINEER may substitute different types of coverage for those specified as long as the total amount of required protection is not reduced.
- 7.4 Copies of all above insurance policies and Certificates of Insurance, naming the City of Greenfield as an "additional insured" (subsections 7.1.2(c) through (e) only), including proof of required Professional Liability Insurance, showing such coverage then in force (but not less than the amount shown above) shall be filed with OWNER within seven (7) calendar days of the effective date of this Agreement. These policies and Certificates shall contain a provision that coverages afforded under the policies will not be cancelled or not renewed until at least thirty (30) days after written notice has been given to OWNER.
- 7.5 Nothing in the above provisions shall operate as or be construed as limiting the amount of liability of ENGINEER to the above-enumerated amounts.
- 7.6 Regardless of the nature of the policy or whether the deductible is per claim or per occurrence, all deductibles shall be the responsibility of ENGINEER.
- 7.7 Notwithstanding any other provision of this Agreement, ENGINEER shall provide all insurance coverage required by the documents provided by OWNER.

ARTICLE 8. COMPENSATION TO ENGINEER

- 8.1 For the services described in this Agreement or in "Attachment A", OWNER agrees to pay ENGINEER as per the provisions of "Attachment G", unless modified by an amendment to this Agreement.
- 8.2 No payment request or statement made pursuant to this Article shall exceed the estimated amount in value of the work and services performed by ENGINEER under this Agreement, which estimates shall be prepared by ENGINEER and supplemented or accompanied by such supporting data as may be required by OWNER.
- 8.3 Payment requests by ENGINEER shall be submitted once monthly. The payment request shall be accompanied by a signed voucher and such supporting data as may be required by OWNER.
- 8.4 When progress payments are made to ENGINEER, OWNER may withhold Ten Percent (10%) of the amount and value of all work and services theretofore performed by ENGINEER, as shown by ENGINEER's payment request. If OWNER determines that ENGINEER's performance is satisfactory, OWNER, at its sole discretion, may reduce or eliminate retainage. OWNER's right to withhold retainage pursuant to this paragraph may be implemented at any time during ENGINEER's period of services and may relate back to

prior payments against which no retainage was withheld. Once the Project is completed in accordance with the terms of this Agreement, OWNER will pay ENGINEER promptly for the retainage withheld and the resulting interest.

- 8.5 OWNER shall have the right to withhold from payments due ENGINEER such sums as necessary to protect OWNER against any loss, claim or damage which may result from the negligence or unsatisfactory work by ENGINEER, failure by ENGINEER to perform its obligations and responsibilities under this Agreement, or claims filed against ENGINEER or OWNER relating to ENGINEER's services or work. OWNER shall provide ENGINEER written notification of its reason for so withholding payments. When the grounds or causes for such withholding are removed, payment shall be made for amounts withheld because of them.
- 8.6 OWNER shall pay ENGINEER for the professional services supported by invoices and documentation. OWNER will pay the amount of the invoice within thirty (30) days of OWNER's acknowledgement that invoice and documentation are acceptable. OWNER will give ENGINEER written notice within five (5) working days of receipt of the invoice and documentation if the invoice or documentation is not acceptable. OWNER is the sole judge as to the acceptability of the invoices and documentation. If OWNER fails to pay ENGINEER according to this paragraph, OWNER shall pay ENGINEER **0.0192%** of the unpaid amount per each day in excess of thirty (30) days.
- 8.7 If, prior to the satisfactory completion of services under this Agreement, the total costs incurred by ENGINEER are within 25% of the maximum amount payable, ENGINEER shall notify OWNER in writing. ENGINEER shall cease all work when the total costs incurred equal 95% of the maximum amount payable. Work will not recommence until ENGINEER receives written notice from OWNER and an adjusted maximum amount payable has been negotiated, if in the sole judgment of OWNER, such an adjustment is required. ENGINEER shall not be entitled to compensation for unauthorized work over the maximum amount payable. This section shall not apply when the method of compensation described in Article 8.1 is lump sum.
- 8.8 Upon satisfactory completion of all work and services to be performed hereunder, and prior to final payment under this Agreement for such services, or prior to settlement upon termination of this Agreement, and as a condition precedent thereto, ENGINEER shall execute and deliver to OWNER a release of all claims against OWNER arising under or by virtue of this Agreement. In all events, the making and acceptance of final payment shall be conclusive as to OWNER's performance of the Agreement and shall constitute a waiver of all claims by ENGINEER against OWNER.

ARTICLE 9. TERMINATION BY OWNER

- 9.1 If ENGINEER becomes insolvent, or if it refuses or fails to perform the work and services provided by this Agreement, or if it refuses to perform disputed work or services as directed

pending resolution of such dispute, or if it fails to make payments to subcontractors or consultants employed by it, or if it otherwise materially violates or fails to perform any term, covenant or provision of this Agreement, ENGINEER shall be considered in default, and OWNER may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part, in writing, provided that ENGINEER shall be given; (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested or by electronic mail with confirmation of delivery) of OWNER's intent to terminate; and (2) an opportunity for consultation with OWNER prior to termination, and a reasonable opportunity to cure the default as determined by OWNER. In determining the amount of final payment to be made to ENGINEER upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by OWNER to be incurred by reason of ENGINEER's default.

- 9.2 This Agreement may be terminated in whole or in part in writing by OWNER for OWNER's convenience; provided that ENGINEER is given: (1) not less than ten (10) calendar days written notice (delivered certified mail, return receipt requested or by electronic mail with confirmation of delivery) of intent to terminate; and (2) an opportunity for consultation with OWNER prior to termination. If termination for convenience is effected by OWNER, ENGINEER's compensation shall be equitably adjusted to include a reasonable profit for services or other work performed, and shall provide for payment to ENGINEER for services rendered and expenses incurred prior to the termination. No amount shall be allowed for anticipated profit on unperformed services or other work.
- 9.3 Upon receipt of a termination action for default or for the OWNER's convenience, ENGINEER shall: (1) promptly discontinue all services affected, unless the termination notice directs otherwise, and (2) deliver or otherwise make available to OWNER all data, drawings, specifications, reports, estimates, summaries, and such other information, materials or documents as may have been accumulated by ENGINEER in performing this Agreement, whether completed or in process.
- 9.4 If, after termination for ENGINEER's default, it is determined that ENGINEER was not in default, the termination shall be deemed to have been effected for the convenience of OWNER.

In such event, adjustment of the price provided for in this Agreement shall be made as provided in Paragraph 9.2 and the recovery of such price adjustment shall be ENGINEER's sole remedy and recovery.

- 9.5 Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by OWNER are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then OWNER shall have the right to terminate this Agreement without penalty by giving written notice documenting the lack of funding, in which instance unless otherwise agreed to by the parties, this Agreement

shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. OWNER agrees that it will make its best efforts to obtain sufficient funds, including, but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full.

ARTICLE 10. TERMINATION BY ENGINEER

- 10.1 If OWNER fails to pay ENGINEER within sixty (60) days after payment is due, ENGINEER may, after having given fifteen (15) days written notice, and if OWNER has not made payment, terminate this Agreement. In the event of such termination, OWNER shall compensate ENGINEER in accordance with the provisions of Paragraphs 8.6 and 9.2 of this Agreement.
- 10.2 If OWNER requests ENGINEER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed design professional, ENGINEER shall notify Director of OWNER of this request within three (3) days of the request being made. If Director renews request and request actually requires ENGINEER to act contrary to ENGINEER's responsibilities as a licensed design professional, ENGINEER may terminate this Agreement upon seven (7) days written notice to OWNER. In the event of such termination, OWNER shall compensate ENGINEER in accordance with the provisions of Paragraph 9.2 of this Agreement.
- 10.3 If ENGINEER loses the services of key personnel essential to the prosecution of this Agreement, ENGINEER has the following options:
- A. With the consent of OWNER, substitute other personnel (OWNER may not unreasonably withhold consent); or
 - B. Terminate the Agreement.

However, if ENGINEER terminates the Agreement, OWNER may complete PROJECT in any manner deemed appropriate. ENGINEER shall be liable to OWNER for the difference between the cost of completing the PROJECT after termination and the contract price together with any incidental and consequential damages, but less expenses saved in consequence of ENGINEER's termination.

ARTICLE 11. SUCCESSORS AND ASSIGNS

- 11.1 OWNER and ENGINEER each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to the promises, representations, acknowledgements, covenants and responsibilities contained in this Agreement.

11.2 Except as otherwise provided herein, ENGINEER shall not assign, sublet or transfer its interest in this Agreement without the written consent of OWNER.

11.3 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of OWNER.

ARTICLE 12. RECORDS; AUDITS

ENGINEER shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement in accordance with generally accepted accounting principles and practices consistently applied. ENGINEER shall also maintain the financial information and data used by ENGINEER in the submission or preparation of any cost submission, statement or summary submitted to OWNER or any funding agency. OWNER, or any agencies which have tendered grants for the Project, or any person so designated by a granting agency shall, until the expiration of THREE (3) years after final payment under this Agreement have access to and the right to examine, inspect, audit and copy directly pertinent books, documents, papers and records of ENGINEER involving any transaction related to this Agreement. To the extent that the person or entity which seeks to examine, inspect, audit and copy said documents is under the control of OWNER, said person or entity will provide ENGINEER with seventy-two (72) hours written notice. ENGINEER agrees to incorporate this provision into any subagreements executed by ENGINEER with others for work or services related to this Project. The periods of access and examination as described herein shall continue until any disputes, claims or litigation arising out of the performance of this Agreement have been disposed of.

ARTICLE 13. OWNERSHIP OF DOCUMENTS

All drawings, specifications, computations, sketches, test data, survey results, models, photographs, renderings and other material relating to this Project, developed in the performance of this Agreement or prepared in connection therewith, are the property of OWNER and shall be delivered to OWNER, if requested by OWNER, upon completion of services or upon termination of this Agreement. With respect thereto, ENGINEER shall not assert or establish any right or claim under the design patent or copyright law. ENGINEER agrees that work done under this Agreement constitutes "work for hire" under copyright law, and OWNER shall retain the right to any design patent or copyright and may use any and all materials prepared by ENGINEER without reservation. In the event that any deliverables developed during this project are deemed not to be "works for hire" under copyright law, ENGINEER agrees, at no additional cost, to assign all right, title and interest, including copyright in and to such deliverables, to OWNER. OWNER will not change or reuse any document for any project or purpose other than as described in the Agreement without the written consent of ENGINEER. However, ENGINEER expressly acknowledges that OWNER is a public agency and is subject to public access, disclosure and distribution laws, regulations and policies. ENGINEER acknowledges that OWNER will not treat this Agreement as confidential information and will post the Agreement on OWNER website as required by law. Use by the public of any document or the information contained therein, shall not be considered an act of OWNER.

ARTICLE 14. NOTICES

When written notice is required by this Agreement, it shall be sufficiently given, in the absence of a specific provision to the contrary, when delivered or sent by United States first-class mail to ENGINEER at its business address, or to OWNER or OWNER's representative, or by personally delivering such notice to the party to be in receipt thereof.

ARTICLE 15. NONDISCLOSURE

Unless required by law, ENGINEER shall not divulge information concerning this Project to anyone, unless prior written approval is received from OWNER, and shall obtain similar agreements from persons and firms employed by it. OWNER reserves the right to release all information as well as to time its release, form and content. This requirement shall survive the expiration of this Agreement.

ARTICLE 16. OTHER CONSULTANTS

OWNER reserves the right to employ other engineers, architects and consultants in connection with the work or Project.

ARTICLE 17. REDUCTION FOR DEFECTIVE PRICING DATA

If OWNER determines that any price, including profit, negotiated in connection with this Agreement or any cost reimbursable under this Agreement was increased because ENGINEER or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified or represented in any submittal to OWNER or funding agencies, then such price or cost or profit shall be reduced accordingly and the Agreement shall be modified in writing to reflect such reduction.

ARTICLE 18. NON-CONTINGENT FEES

ENGINEER warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty, 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 such commission, percentage, brokerage, or contingent fee.

ARTICLE 19. CHOICE OF FORUM

Parties agree that any litigation associated with or arising from this Agreement shall be filed with a court of competent jurisdiction within the State of Indiana.

ARTICLE 20. NON-DISCRIMINATION

- 20.1 ENGINEER and subcontractor shall not discriminate against any employees or applicant for employment, to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this covenant may be regarded as a material breach of the Agreement.
- 20.2 ENGINEER shall include all covenants and certifications as are contained in this Article in all subagreements related to this Agreement.

ARTICLE 21. APPLICABLE LAWS

- 21.1 Subject to the provisions of the following paragraph, ENGINEER agrees to conform to all federal, state, and local laws, rules and regulations applicable to ENGINEER in performing work pursuant to this Agreement in force at the time of design, including, but not limited to, those relating to discrimination in employment, conflicts of interest, accounting records and requirements. Unless otherwise specified, this Agreement shall be governed by the laws of the State of Indiana, and all Municipal Ordinances and Codes of the City of Greenfield and Hancock County.
- 21.2 Compliance with any state or federal statute or local ordinance enacted or regulations promulgated thereunder after the effective date of this Agreement for which notice had been published prior to the execution by ENGINEER of this Agreement which affect the services of ENGINEER shall be the responsibility of ENGINEER without entitling ENGINEER to an increase in either time of performance or in contract price.

ARTICLE 22. AMENDMENTS

This Agreement may be amended only by written instrument and signed by both OWNER and ENGINEER.

ARTICLE 23. SEVERABILITY

In the event any provision of this Agreement is determined by a court of competent jurisdiction or by the laws of the State of Indiana to be null and void, such provision shall be stricken and all other provisions which can be given effect independently of the stricken provision shall remain in full force and effect.

ARTICLE 24. CONFLICT OF INTEREST

- 24.1 ENGINEER certifies and warrants to OWNER that neither it, nor its agents, representatives or employees who will participate in any way in the performance of ENGINEER's

obligations hereunder has, or will have during the Project, any conflict of interest relative to the Project, direct or indirect, with OWNER. ENGINEER shall immediately notify OWNER if a conflict of interest should arise during the Project. Upon being so notified, OWNER may either:

- A. Waive the conflict; or
- B. Terminate the Agreement according to Paragraph 9.1.

24.2 For purposes of compliance with IC 36-1-21, ENGINEER certifies and warrants to OWNER that ENGINEER, or a person who wholly or partially owns ENGINEER, is not a *relative*, as that term is defined by IC 36-1-21-3, of either the Mayor of Greenfield, Indiana, or a member of the City Council of Greenfield, Indiana.

ARTICLE 25. REQUIRED DOCUMENTATION

25.1 ENGINEER shall furnish OWNER any documentation, certification, authorization, license, permit or registration required by the laws or rules and regulations of the City of Greenfield, Hancock County, other units of local government, the State of Indiana, and the United States.

25.2 ENGINEER further represents that it is now and shall remain in good standing with such governmental agencies and that it will keep its license, permit, registration, authorization or certification in force during the term of this Agreement, to perform the services described in "Attachment A" and in this Agreement.

ARTICLE 26. INDEPENDENT CONTRACTOR STATUS

ENGINEER expressly understands and agrees that it is an independent contractor and that it is not an employee of OWNER, and OWNER is not to provide Worker's Compensation, health or accident insurance coverage or indemnification agreement of any kind which would cover ENGINEER or its employees, if any, in and under the terms of this Agreement.

ARTICLE 27. WAIVER

OWNER's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of OWNER's rights or remedies.

ARTICLE 28. USE OF GIS DATA

OWNER hereby grants to ENGINEER a nonexclusive, nontransferable license to that portion of the City of Greenfield GIS Database delivered to ENGINEER (the "Delivered Materials") under the terms of this Agreement, subject to the following terms and conditions: ENGINEER shall have the right to copy the Delivered Materials in digital form into computer memory or onto computer

storage devices and to prepare from them derivative works in digital form for the sole purpose of performing services under this Agreement. All Delivered Materials are provided "as-is" without warranty of any kind. ENGINEER's license shall terminate upon completion of the services under this Agreement.

ARTICLE 29. ALLOCATION OF RISK

ENGINEER agrees to indemnify and hold harmless the City of Greenfield, Indiana and its officers, agents, officials and employees for any and all claims, actions, causes of action, judgments and liens only to the extent they arise out of any negligent act or omission by ENGINEER or any of its officers, partners, agents, employees or subcontractors regardless of whether or not they are caused in part by the negligence of a party indemnified hereunder. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein.

ARTICLE 30. TAXES

OWNER is exempt from state, federal and local taxes. OWNER will not be responsible for any taxes levied on ENGINEER as a result of this Agreement.

ARTICLE 31. RESTRICTIONS ON LOBBYING

If federal funds are to be used in connection with this Agreement, ENGINEER certifies, by signing and submitting this Agreement, to the best of its knowledge and belief, that ENGINEER has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

- A. 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 any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal 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.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence of an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard **Form-LLL**, "Disclosure of Lobbying Activities" in accordance with its instructions.
- C. ENGINEER also agrees by signing this Agreement that it shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign

or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

ARTICLE 32. MAINTAINING A DRUG-FREE WORKPLACE

- 32.1 ENGINEER hereby covenants and agrees to make a good faith effort to provide and maintain during the term of this Agreement a drug-free workplace, and that it will give written notice to OWNER within ten (10) days after receiving actual notice that an employee of ENGINEER has been convicted of a criminal drug violation occurring in ENGINEER's workplace.
- 32.2 In addition to the provisions of subparagraph 32.1 above, if the total contract amount set forth in this Agreement is in excess of \$25,000.00, ENGINEER hereby further agrees that this Agreement is expressly subject to the terms, conditions and representations contained in the Drug-Free Workplace certification executed by ENGINEER in conjunction with this Agreement.
- 32.3 It is further expressly agreed that the failure of ENGINEER to in good faith comply with the terms of subparagraph 32.1 above, or falsifying or otherwise violating the terms of this certification reference in subparagraph 32.2 above, shall constitute a material breach of this Agreement, and shall entitle OWNER to impose sanctions against ENGINEER including, but not limited to, suspension of contract payments, termination of this Agreement and/or debarment of ENGINEER from doing further business with OWNER for up to three (3) years.

ARTICLE 33. DISPUTE RESOLUTION

- 33.1 OWNER and ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to the Agreement or the breach thereof (DISPUTES) to mediation according to the provisions of "Attachment E".
- 33.2 Only after complying with the provisions of Paragraph 33.1, the parties may by mutual agreement in writing designate any DISPUTE, except for claims which have been waived by the making or acceptance of final payment, to be decided by arbitration. Such designation shall specifically identify and describe the DISPUTE. Arbitration proceedings shall be initiated only as to DISPUTES as so identified and described in such written agreement, and in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association and shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.
- 33.3 ENGINEER shall carry on the work and maintain the schedule for services during any mediation, arbitration or litigation proceedings, unless otherwise agreed by him and

OWNER in writing.

- 33.4 Any such arbitration may, at the option of OWNER, involve by joinder or otherwise, all parties or persons substantially involved in common questions of fact or law whose presence may be required. All consultant agreements, purchase orders and related construction agreements between ENGINEER and other parties shall provide for such arbitration and consolidation.
- 33.5 If OWNER shall be party to an arbitration of a DISPUTE which arises, in full or in part, from ENGINEER's negligence or failure to fulfill any obligation or responsibility under this Agreement, OWNER may, at its option, and by written notice, advise ENGINEER of such arbitration proceeding and afford ENGINEER the opportunity to participate therein. In such case, ENGINEER will be bound by any award rendered by the arbitrators to the extent that such award is adverse to OWNER.

ARTICLE 34. TERM OF AGREEMENT

This Agreement shall become effective upon completion of the following:

- A. delivery to OWNER and acceptance by OWNER, of the documents required in Paragraph 7.4; and
- B. latest date of execution by any required signatories;

and shall expire upon the successful completion and final acceptance of ENGINEER's services, as set forth in this Agreement or "Attachment A", and OWNER's payment therefore. In computing any period of time prescribed by this Agreement, the date of any notice to proceed shall not be included in such computation. The last day of any period of time prescribed in this Agreement shall be included unless it is a Saturday, Sunday or a legal holiday as established by ordinance of the City Council of Greenfield, Indiana. In such cases, the period of time shall run until the end of business hours of OWNER on the next day that is not a Saturday, Sunday, or a legal holiday as established by ordinance.

ARTICLE 35. NOTICE TO PROCEED

ENGINEER shall not begin work pursuant to this Agreement until it receives a Notice to Proceed from OWNER.

ARTICLE 36. INTEGRATION

This Agreement and the documents incorporated herein represent the entire understanding between and among the parties hereto. The signing of this Agreement by the parties constitutes their mutual recognition that no other contracts or agreements regarding any of the services to be provided herein, oral or written, except as attached hereto or specifically incorporated herein, exists between

them, and that if such oral or written contracts or agreements exist, such are hereby cancelled. Each party hereby represents to the other that it will not rely upon any agreement, contract or understanding not reduced to writing and incorporated in this Agreement prior to the execution thereof or not reduced to writing and incorporated in written amendments to this Agreement.

ARTICLE 37. DEBARMENT AND SUSPENSION

- 37.1 ENGINEER certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana. The term “principal” for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of ENGINEER.
- 37.2 ENGINEER shall not subcontract with any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana.
- 37.3 ENGINEER shall provide immediate written notice to OWNER if, at any time after entering into this Agreement, ENGINEER learns that its certifications were erroneous when submitted, or ENGINEER is debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded from or becomes ineligible for participation in any Federal assistance program. Any such event shall be cause for termination of this Agreement as provided herein.

ARTICLE 38. E-VERIFY PROGRAM

Pursuant to IC 22-5-1.7, ENGINEER shall enroll in and verify the work eligibility status of all newly hired employees of ENGINEER through the E-Verify Program (“Program”). ENGINEER is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.

- A. ENGINEER and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that ENGINEER or its subcontractor subsequently learns is an unauthorized alien. If ENGINEER violates this Article, OWNER shall require ENGINEER to remedy the violation not later than thirty (30) days after OWNER notifies ENGINEER. If ENGINEER fails to remedy the violation within the thirty (30) day period, OWNER shall terminate the contract for breach of contract. If OWNER terminates the contract, ENGINEER shall, in addition to any other contractual remedies, be liable to OWNER for actual damages. There is a

rebuttable presumption that ENGINEER did not knowingly employ an unauthorized alien if ENGINEER verified the work eligibility status of the employee through the Program.

- B. If ENGINEER employs or contracts with an unauthorized alien but OWNER determines that terminating the contract would be detrimental to the public interest or public property, OWNER may allow the contract to remain in effect until OWNER procures a new contractor.
- C. ENGINEER shall, prior to performing any work, require each subcontractor to certify to Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. ENGINEER shall maintain on file a certification from each subcontractor throughout the duration of the contract. If ENGINEER determines that a subcontractor is in violation of this Article, ENGINEER may terminate its contract with the subcontractor for such violation
- D. Pursuant to IC 22-5-1.7 a fully executed affidavit affirming that the business entity does not knowingly employ an unauthorized alien and confirming ENGINEER's enrollment in the Program, unless the Program no longer exists, shall be filed with OWNER prior to the execution of this Agreement. This Agreement shall not be deemed fully executed until such affidavit is filed with OWNER

ARTICLE 39. ADDITIONAL INFORMATION UPON REQUEST

ENGINEER shall, upon request of OWNER, make available its policies, practices and standards for the hiring of applicants, except as prohibited under Indiana Code 22-2-17-3, to the extent such information is related to the provision of services under this Agreement.

ARTICLE 40. WAGE THEFT/PAYROLL FRAUD

ENGINEER shall report, and shall require its subcontractors to report, all complaints or adverse determinations of Wage Theft or Payroll Fraud against ENGINEER or its subcontractors to the OWNER within thirty (30) days of notification of the complaint or adverse determination. If an adverse decision is rendered against ENGINEER with respect to services provided to OWNER, OWNER may terminate this Agreement, reduce the incentives or subsidies to be provided under this Agreement, or seek other remedies. ENGINEER shall provide a sworn statement on whether ENGINEER had any adverse determinations rendered against ENGINEER within the preceding three (3) years.

ARTICLE 41. FORCE MAJEURE

41.1 DEFINITION OF FORCE MAJEURE

Within this Agreement, an event of Force Majeure means an event beyond the control of the ENGINEER and the OWNER, which prevents a party from complying with any of its obligations under this Agreement, including the following:

- 41.1.1 An act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods);
- 41.1.2 War, hostilities (whether war be declared or not), invasion, active foreign enemies, mobilization, requisition or embargo;
- 41.1.3 Rebellion, revolution, insurrection, or military or usurped power, or Civil War;
- 41.1.4 Riot, commotion, strikes, lockouts or disorder, unless civilly restricted to employees of the Engineers or his subcontractors or vendors;
- 41.1.5 Acts or threats of terrorism.

41.2 Consequences of Force Majeure Event

- 41.2.1 Neither the OWNER nor ENGINEER shall be considered in breach of this Agreement to the extent that performance of their respective obligations is prevented by an Event of Force Majeure that arises after the Effective Date.
- 41.2.2 The Party (the "Affected Party") prevented from carrying out its obligations hereunder shall give notice to the other Party of and Event of Force Majeure upon it being perceived by or becoming known to the Affected Party.
- 41.2.3 If, and to the extent that, the ENGINEER is prevented from executing the services contemplated by the Agreement, by the Event of Force Majeure, while the ENGINEER is so prevented, the ENGINEER shall be relieved of its obligations to provide the effective service, but shall endeavor to continue to perform its obligations under the Agreement so far as reasonably practical [and in accordance with Good Operating Practices], provided that if and to the extent the engineer occurs additional expense in doing so, the Engineer shall be entitled to the amount of such increase cost [cost being defined as having no profit component] and the Engineer having taken reasonable steps to mitigate the additional cost.
- 41.2.4 If, and to the extent that, the ENGINEER suffers a delay in providing the services set forth in this Agreement as a result of the Event of Force Majeure then ENGINEER shall be entitled to an extension for the time of completion as deemed appropriate by OWNER.

[The remainder of this page left blank intentionally]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as follows:

ENGINEER
CONTEXT, LLC

OWNER
GREENFIELD BOARD OF PUBLIC
AND SAFETY

By: *Alyssa P. Prazeau*

Mayor Chuck Fewell

Printed: Alyssa P. Prazeau

Katherine Locke

Title: Managing Partner

Date: 08-05-2019

Larry Breese

Kelly McClarnon

Glenna Shelby

“ATTACHMENT A”

SERVICE BY ENGINEER

General Requirements

1. ENGINEER shall obtain on behalf of OWNER all approvals or consents from authorities having jurisdiction or agencies having facilities within the limits of the PROJECT.
2. ENGINEER shall prepare stamped sealed contract bid plans, special provisions for the specifications, contract document book, plus the final construction cost estimates by quantity and unit price. All work shall be in accordance with current editions of:

City of Greenfield:

- Public Improvement Design Standards & Specifications Manual
- Stormwater Technical Standards Manual
- Greenfield Comprehensive Plan
- Greenfield Thoroughfare Plan

Indiana Department of Transportation (INDOT):

- Indiana Design Manual
- INDOT Standard Specifications
- INDOT Standard Drawings

American Association of State Highway and Transportation Officials (AASHTO):

- AASHTO A Policy on Geometric Design of Highways and Streets
- AASHTO LRFD Bridge Design Specifications
- AASHTO LRFD Guide Specifications for the Design of Pedestrian Bridges
- AASHTO Guide for the Development of Bicycle Facilities

National Association of City Transportation Officials (NACTO):

- NACTO Urban Street Design Guide
- NACTO Urban Bikeway Design Guide

Where City of Greenfield and INDOT storm water design criteria conflict, the more stringent design will be used.

3. ENGINEER shall identify in all plans and specifications data which is measured and data which is assumed.
4. ENGINEER shall be available during construction to interpret the contract documents, the checking of shop drawings, and consultation in the event of unforeseen conditions. ENGINEER shall prepare to serve as an ENGINEER or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the PROJECT.
5. ENGINEER shall be responsible for keeping OWNER currently advised as to the status of

any claims made for damages against ENGINEER resulting from services performed under this contract. ENGINEER shall send notice of claims related to work under this contract to:

City Engineer
City of Greenfield
10 S. State Street
Greenfield, Indiana 46140

6. In performance of its services herein, ENGINEER shall comply with IC 5-22-15-21, related to the purchase of supplies manufactured in the United States. "Supplies" shall include equipment, goods and materials.

Coordination and Quality Control

1. ENGINEER shall submit monthly progress reports to OWNER. The report shall include an updated project schedule in chart form and shall be superimposed over the initial schedule of work.
2. ENGINEER shall attend pre-bid conferences, bid openings, prepare bid tab sheets and assist OWNER in evaluating bids, alternatives or proposals and in assembling and awarding contracts.
3. ENGINEER shall conduct conferences with OWNER's representatives as may be required. ENGINEER will prepare and issue minutes of all meetings and will distribute within one week of meeting.
4. ENGINEER shall schedule, prepare exhibits, advertise and conduct public information meetings. ENGINEER shall prepare minutes or transcriptions, if required of the meetings. All citizen inquiries regarding the project will be addressed in writing by ENGINEER. A copy of citizen correspondence shall be forwarded to OWNER.
5. ENGINEER shall coordinate with utilities.
6. ENGINEER agrees that if subsequent relocation(s) by the utilities after the above notification is necessary and is caused by the negligent act or delay of ENGINEER, ENGINEER shall be responsible for reimbursing or compensating the affected utilities for any expense they incurred in relocating a subsequent time or times.
7. ENGINEER shall schedule and moderate with City staff a Value Engineering session to investigate and discuss all options related to the design, schedule and cost estimates of the project. The meeting shall be scheduled to occur within two (2) weeks of the 50% submittal. ENGINEER shall prepare meeting minutes and a summary report within five (5) business days. The invitees and size of the value engineering meeting will be determined by City staff based upon the size and complexity of the project.

Design Related Services

1. OWNER shall provide and plot the design survey in accordance with the Indiana Design Manual. ENGINEER shall prepare a complete preliminary design based upon the Comprehensive Engineer's Report and/or Scope Document (if available) and shall conduct a field check.
2. The formal design criteria, preliminary drawings, an outline of the specifications and a written description of the project with probable construction costs are to be furnished to OWNER for a scope compliance and construct-ability review. The milestone deliverables shall include the following:
 - Preliminary Design Drawings and Engineers Estimate
 - 60% Final Design Drawings, Technical Specs, Engineers Estimate, Field Check with OWNER
 - 100% Drawings, Contract Documents, Engineers Estimate
 - Addendum 1 after Pre-Bid Meeting
3. ENGINEER shall provide OWNER with the estimates of probable construction costs of the PROJECT. ENGINEER shall advise OWNER of any adjustments to the probable construction costs and provide design options, if any, to remain within budget.
4. ENGINEER shall identify in all plans and specifications a list of all Engineering and/or testing reports provided by OWNER or obtained by ENGINEER as a product of this Agreement.
5. ENGINEER shall reestablish the Survey Center Line in the field immediately prior to utility relocation activities.
6. ENGINEER shall deliver to the representative of OWNER the following items that shall become the property of OWNER:
 - a. Two (2) compact discs containing as-built electronic plans in Adobe Acrobat (PDF) format. Field revisions to the as-bid construction drawings will be provided by construction staff via the OWNER in order for the ENGINEER to create an as-built set of drawings in accordance with the current "Digital Data Submission Standards." The compiled PDF as-built plan set shall note in revision clouds any and all field adjustments to the as-bid plans. A scan containing handwritten notes on the as-bid plan set is not acceptable. The labeling on the submitted electronic media shall include the following:
 - The Project Name
 - The Department of Engineering project number
 - The ENGINEER's company name and address
 - The date of the submittal
 - The file format(s) used
 - The term "As-built Drawings" clearly indicated

- b. ENGINEER shall also provide an overall site drawing, in electronic format, of the project area, showing existing and as-built infrastructure. The overall site drawing shall be in AutoCAD (.dwg) or (.dxf) format and shall be included on the same media as the design drawing files. The attribute table files shall be in dBase (.dbf) or Excel (.xls) file format and shall be included on the same media as the design drawing files. OWNER will provide, upon request, the existing GIS map data of the project area, and all associated files, to aid in the preparation of the site drawing. ENGINEER shall deliver to OWNER two (2) compact discs of all electronic format submittals.
 - c. Up to 15 printed sets of bid plans, and 15 final contract books.
 - d. Bid tab sheets in Excel format
 - e. Set of design calculations used to prepare the Itemized Proposal and ENGINEER's Estimate.
7. ENGINEER shall prepare Addenda as appropriate to clarify, correct, or change the bidding documents.

Geo-technical Services

1. ENGINEER shall analyze pavement core data supplied by the City for the project area to determine which streets may require resurfacing and/or reconstruction due to construction.
2. OWNER shall provide soil boring services to include furnishing all labor, materials, and equipment necessary for the complete and satisfactory construction of the PROJECT. ENGINEER shall submit names of sub consultants for geo-technical work to OWNER for approval prior to issuing a notice-to-proceed.

Soil borings shall be taken at distances specified by OWNER and shall be staked for location by ENGINEER prior to boring. OWNER shall deliver complete geo-technical report of all soil boring data with preliminary plans for review. Soil boring data shall be included on plans and with contract bid documents.

Additional Scope as defined in letter dated May 8, 2019 and attached hereto as Exhibit "A".

EXHIBIT A



May 8, 2019

Ms. Ellen Kuker, Superintendent
Greenfield Parks and Recreation
280 North Apple Street
Greenfield, IN 46140

RE: **Depot Street Park**
Preliminary Design, Final Design, Construction Documents, and Construction Phase Support

Dear Ellen:

Thank you for the opportunity to provide this Design Services proposal for Preliminary Design, Final Design, Construction Documents, and Construction Phase Support at Depot Street Park in Greenfield, Indiana.

Context is very excited about the impact this reinvestment will have in our local community! Based upon experiences that our staff have in managing Stellar Program efforts in Wabash, Delphi, Huntingburg, and Fortville, we are confident that Depot Street Park will be a valuable catalyst project.

Core Tenets to be included inside Fee Basis

*Integrated delivery of Site-Civil-Architectural design services
Band Shell, Restroom, Civic Green, and related Amenities
Inclusion of On-Site Utility Services and Stormwater Mgmt
Integration of Public Art with Indiana Sculptor
Single Permitting & Approval Package
Construction Phase Support*

Services to be outside Fee Basis

*Off-site Infrastructure or Utilities
Topographic Surveying
Geotechnical Investigation
Wetland Delineation/Mitigation (none expected)
Regulatory or Jurisdictional review and/or filing fees*

If we have misinterpreted any of your priorities, please let us know. This project is very important to our team. We are happy to negotiate in good faith toward a refined scope.

Assumptions

We have made the following assumptions regarding our work on this project:

- Context will coordinate any necessary survey and geotechnical proposals on behalf of Greenfield Parks, then utilize relevant base information as our working base. All preliminary and final drawings will be developed within a Context Team title block at 24" x 36" format.
- Our design scope includes the RFP's desired program elements for an urban park and plaza. Amenities include features such as a band shell, restroom facilities, a programmable civic green, potential sensory elements, and various pathways, shade opportunities, landscape development, and irrigation. Overhead power poles on the site are understood to remain.
- Context shall contract within our Base Services prime fee all required design subconsultants. CEC shall provide civil engineering services; BigCar shall facilitate public discussions regarding art integration strategies; Tom Fansler shall provide constructability review and cost evaluation.
- As described within our RFP response, Context recommends architectural support through custom product manufacturers rather than a traditional architect. Due to the labor market shortages in Central Indiana, traditional building/architectural construction is frequently securing no bids at building values under \$2m. To facilitate our proposed methodology for architectural features, Context is carrying an allowance within our Base Services to cover customary design stipends requested by manufacturers.
- The Context Team will coordinate regulatory reviews of the Site Development Plan with the City of

Greenfield, the Hancock County Surveyor's Office, DNR and IDEM.

Scope of Services

The Context Team anticipates the following design and engineering services:

PRELIMINARY DESIGN

- a) Incorporate the site survey into an AutoCAD working base showing structures, property lines, easements, topography, and utility information impacting project development.
- b) Meet with stakeholders, elected officials, and Steering Committee members that will inform the project.
- c) Develop a refined program criteria list and relationship matrix to summarize initial feedback.
- d) Prepare for and meeting with neighbors to listen to patron goals and priorities (June).
- e) Generate development strategies for consideration by the Steering Committee.
- f) Conduct a two (2) day Design Charrette Workshop with City-invited attendees to brainstorm and explore design principles and creative possibilities.
- g) Refine and hybridize concepts based upon ongoing feedback from City Council, Parks Board, and Staff.
- h) Explore options for site grading, site utilities, drainage, hardscape elements, site furnishings, and planting design.
- i) Produce a summary update and appropriate graphic support to present to Parks Board (July).
- j) Prepare preliminary Site Preparation, Grading and Drainage, Erosion Control, and Utility plans for discussion with local agencies.
- k) Prepare preliminary
- l) Generate a preliminary Drainage Report and calculations that respond to local storm water management requirements.
- m) Produce a preliminary order of magnitude cost analysis.
- n) Provide sample materials and prototypical "storyboard" images for Client review.
- o) Provide one (1) rendered site plan, material recommendations, sketches and other information to convey design ideas for City Council consideration (August).
- p) Provide one (1) rendered birds-eye illustration (August) to convey design ideas for press-ready publication.
- q) Finalize OCRA submittal (August).
- r) Attend up to four (4) Owner review meetings and/or conference calls.

FINAL DESIGN AND CONSTRUCTION DOCUMENTS

- a) Provide complete working drawings and specifications for the construction scope described above. This document package will include the following:
 - i. Anticipated Deliverable List
 - a. Title sheet
 - b. Existing conditions/demolition plan
 - c. Dimensioned site key plan
 - d. Grading and drainage plan
 - e. On-site utility plan
 - f. Erosion and sediment control plan
 - g. Stormwater pollution prevention plan
 - h. Landscape development plan
 - i. Irrigation development plan
 - j. Band Shell amenity plans and elevations
 - k. Restroom amenity plans and elevations
 - l. Construction details necessary to construct above items
 - m. Written specifications necessary to construct above items
 - n. Drainage computations & summary report
 - b) Research and develop an availability list of selected plant materials.
 - c) Produce detailed front-end specifications and bidding requirements manual in booklet format.
 - d) Produce detailed technical specifications in booklet format.
 - e) Attend up to four (4) Owner review meetings and/or conference calls.

BIDDING ASSISTANCE

- a) Conduct Pre-Bid meeting to orient contractors to the project opportunity.
- b) Respond to addendum items as required to clarify design intent and resolve contractor questions.
- c) Receive and analyze bids.
- d) Provide a written recommendation to Parks Staff following bid analysis.
- e) Present bids to the Parks Board and City Council.
- f) Author construction documents in City's preferred format

CONSTRUCTION PHASE SUPPORT

- a) Conduct Pre-Construction Conference with the Owner and Contractor.
- b) Review shop drawings and submittals.
- c) Respond to contractor requests for additional information.
- d) Participate in bi-weekly Contractor progress meetings during active construction periods.
- e) Provide site visits to review the progress and quality of work.
- f) Issue field reports outlining observations made during each site visit.
- g) Review payment applications between Owner and Contractor.
- h) Conduct inspection to establish final completion and provide final written list of punch list items.

PERMITTING

- A. City of Greenfield:
 1. Technical Advisory Committee review
 2. Site plan/construction document approval
 3. Drainage and erosion control approval
 4. Fire Department approval
- B. Hancock County Surveyor's Office for:
 1. Outlet request approval (if required)
- C. City of Greenfield Utilities for:
 1. Sanitary lateral approval (if required)
 2. Water lateral approval (if required)
- D. Indiana Department of Environmental Management (IDEM) for:
 1. Erosion permit (Rule 5)
- E. Coordination with utility companies for roadway water, gas, electric, and telephone (when required)
- F. Anticipating one (1) TAC meeting
- G. Conformed Set of construction plans shall be submitted to the City of Greenfield and Client

Fee Schedule - Refer to Exhibit G of the prime agreement

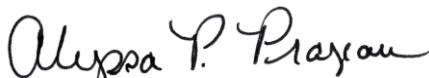
Terms of Agreement

Payment in full will be due upon completion of the work, or upon receipt of a monthly invoice for work to date.

Should Context's status as a Woman-Owned Business Enterprise (WBE) or Disadvantaged Business Enterprise (DBE) be relevant to the Contract, please advise and all appropriate documentation and certificates will be made available to the City.

Thank you again for the opportunity to be involved in this exciting endeavor! We look forward to working with you on this and future projects.

Respectfully,



CONTEXT, LLC
Alyssa P. Prazeau, PLA, ASLA, IPRA
Managing Partner

SUPPLEMENTAL SERVICES

We do not anticipate the need for the following services at this time, but we are available to provide them for a Supplemental Fee if such a need should arise.

- Phased construction plans.
- Zoning or Rezoning services.
- Off-site infrastructure improvement plans or details (road, sewer, water, sanitary, utility, or drainage), any unforeseen utility relocation plans, major improvements to public roads such as adding or reconfiguring turning lanes and traffic control devices, and LEED® certified design and administration.
- Traffic impact studies, traffic signal warrant analysis, and traffic signal design.
- Wetlands or “waters of the US” assessment, delineation or mitigation design, submittal to US Army Corps of Engineers (Section 404) and IDEM (Section 401), floodplain or floodway analysis, and modeling and submittals to IDNR and FEMA.
- Preparations of permit applications to agencies other than noted above, providing services relative to future facilities, systems, and equipment not intended to be constructed during the construction phase.
- Making revisions to drawings, specifications, or other documents when such revisions are inconsistent with prior approvals or instructions or are required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of such documents, or are due to other causes not solely within the control of the design team.
- Any other work as requested by the City of Greenfield and not described herein.

"ATTACHMENT B"

KEY STAFF AND SUBCONTRACTORS OF ENGINEER

ENGINEER shall include all subcontractors on "Attachment B". ENGINEER may not remove or otherwise substitute subcontractors indicated on "Attachment B" without consent of OWNER. A failure by ENGINEER to provide the subcontractors as required by this Article shall be considered a material breach of the Agreement.

Alyssa Prazeau, Project Manager, Context
Brian McNerney, Landscape Architect, Context
Liz Mooney, Landscape Architect, Context
Civil and Environmental Consultants (CEC) – Civil Engineering

Jim Walker, Big Car – Economic Development through art and design
Tom Fansler, Smock Fansler – Project Costs

"ATTACHMENT C"

KEY STAFF OF OWNER

City of Greenfield
Department of Engineering
10 S. State Street
Greenfield, Indiana 46140

Jason Koch, City Engineer - (317) 325-1322
Joan Fitzwater, City Planning Director – (317) 325-1329
Ellen Kuker, City Parks Superintendent – (317) 477-4340

"ATTACHMENT D"

SCHEDULE

All design work by ENGINEER under this Agreement shall be completed and delivered to the GREENFIELD DEPARTMENT OF ENGINEERING (OWNER) no later than 180 calendar days after the written notification to proceed from OWNER (Design Completion Date).

For the purpose of contract control, the phases of work will be submitted by ENGINEER to OWNER for a compliance of scope check on **the following dates:**

Preliminary Design Drawings: September 25, 2019

60% Final Design Drawings: November 15, 2019

100% Final Design Drawings: December 29, 2020

OWNER estimates the construction costs of the Project to be \$1,300,000.

This Agreement shall expire on 12/31/2020.

"ATTACHMENT E"

MEDIATION PROCESS

1. Purpose of Mediation. This clause provides for the use of Mediation as an alternative means of resolving disputes which may arise under this Agreement. Mediation allows parties to make an educated assessment of their respective cases, and then engage in a negotiated settlement discussion. Such a procedure can save both parties valuable time, resources, and legal costs. Should Mediation be utilized, a Mediation Agreement shall be drafted and adopted which will set forth the governing procedures and terms.
2. When to Invoke Mediation. If a dispute arises under the Agreement, either party may invoke this Mediation clause which will compel participation in Mediation for the purpose of resolving the dispute, provided all of the following conditions have been fulfilled:
 - a. The amount in controversy exceeds **Ten Thousand and 00/100 Dollars (\$10,000.00)**, or other such amount as may be agreed to by the parties in writing, such amount having been determined by both parties as being the minimum disputed claim to justify use of the Mediation procedure;
 - b. Personnel from each party who were directly involved in the dispute at the operational level met and discussed the claim in good faith but were unable to resolve the matter. The personnel of each party shall prepare and forward to the persons identified in the subparagraph 2(c) memorandum detailing the areas of dispute, why impasse was reached and that it is beyond their ability to resolve the dispute;
 - c. After complying with the subparagraph above, personnel from each party at a higher management level who were not directly involved in the dispute met and discussed the claim in good faith but were unable to resolve the matter. The personnel of each party shall prepare and forward to the persons identified in paragraph 3 a memorandum detailing the areas of dispute, why impasse was reached and that it is beyond their ability to resolve the dispute; and
 - d. Written notice was given to the other party stating that the above subparagraphs were complied with, and that the Mediation procedure is being invoked for the purpose of resolving the dispute.
3. Notice of Mediation. Notice of Mediation shall identify the dispute at issue and designate an executive officer or other management official who will represent the party at the proceeding. The designated official must possess the authority to settle the matter and have not been involved in the underlying facts in dispute.

4. Response to Notice of Mediation. Within ten (10) business days, the other party shall designate an appropriate official with authority to settle the dispute who will be its representative at the Mediation.
5. Scheduling. No later than thirty (30) days from the date of the notice of the Mediation, the parties' designated representatives and/or their attorneys shall meet to discuss the following:
 - a. Settlement status of the dispute;
 - b. Schedule by which drafts of a Mediation Agreement are to be submitted, and a date by which the Mediation Agreement will be finalized;
 - c. Schedule for Mediation discovery and other preparatory matters the parties deem necessary;
 - d. Whether a neutral advisor shall be employed in the Mediation and, if so, by what means he shall be selected; and
 - e. Time, place, and schedule of the Mediation.

The Mediation Agreement will be finalized and executed by both parties no later than sixty (60) days after the notice of the Mediation. The Mediation will be held within one hundred twenty (120) days after the notice of the Mediation unless extended by mutual consent of the parties.

6. Mediation as Condition Precedent to Arbitration or Litigation. Submission of a dispute under this Agreement to a Mediation procedure shall be a condition precedent to filing arbitration or litigation on any dispute exceeding the amount specified above. Failure to comply with this condition precedent shall be in contravention of the parties' express intention to implement this alternative means of dispute resolution and constitute a breach of this clause.
7. Refusal to Participate in Mediation. Refusal of a party to participate in mediation in good faith shall not be established unless:
 - a. All of the specified conditions set forth in paragraph 2 herein have been fulfilled;
 - b. Thirty (30) days have lapsed since initial written notice of the Mediation was given without an affirmative response; and
 - c. Refusal to participate in the Mediation shall be in contravention of the parties' express intention to implement this alternative means of dispute resolution and constitutes a breach of this clause.

8. Filing Arbitration or Litigation. No litigation or arbitration or any other binding action shall be initiated by either party unless:
 - a. The amount in controversy is less than or equal to the amount specified paragraph 2 above;
 - b. Despite compliance with this Mediation clause, one party is deemed to have refused (paragraph 7 above) to participate in the Mediation;
 - c. Both parties agree in writing that they intend not to implement the Mediation for the particular dispute in question;
 - d. The Mediation procedure has been completed and thirty (30) days have elapsed since the actual Mediation; or
 - e. Litigation must be filed before the Mediation to comply with the Statute of Limitations on a disputed issue.

9. Dismissal/Stay of Litigation. If one party has filed litigation on a dispute which is otherwise covered by this Mediation clause and which does not meet the exceptions set forth in paragraph 8 herein, the other party may properly seek to dismiss the litigation at its discretion for the purpose of conducting the Mediation as a condition precedent to litigation. If litigation was filed for the purpose set forth in subparagraph 8(e) herein, the filing party shall seek a stay for the purpose of conducting a Mediation. The stay provided for in this Paragraph shall continue for a period of thirty (30) days after completion of the Mediation. The purpose of this thirty (30) day period is to permit the parties full opportunity to discuss settlement.

"ATTACHMENT F"

INFORMATION PROVIDED BY OWNER TO ENGINEER

1. Comprehensive Engineering Report to include:
 - a. Project identification and description, GIS data
 - b. Funding sources
 - c. Traffic Data
 - d. Capacity and Level of Service Analysis
 - e. Number of Travel Lanes, Intersection Configurations, Turn Lanes, Median Treatment, Shoulders, Sidewalks, etc.
 - f. Alignment and Grade recommendation
 - g. Approximate Bridge Structure, Size and Type
 - h. Pavement Design, Type and Final Pavement Section
 - i. Signal Warrants/Traffic Controls, Street Lighting, Signs, and Pavement Markings
 - j. Phase 1 Environmental Assessment
 - k. Anticipated right-of-way identifying width, type, quantity, and estimated number of parcels
 - l. Utilities and Underground facilities information
 - m. Maintenance of Traffic Analysis
 - n. Estimated Project Budget; construction, right-of-way, and construction inspection
 - o. Bidding and Construction Schedule
2. Provide an OWNER's Representative with decision-making authority on all inquiries.
3. OWNER to provide ENGINEER with the current procedures for preparation of the Contract Document Book.
4. OWNER shall provide ENGINEER with the current version of the standard Contract Documents.

ATTACHMENT "G"

COMPENSATION TO ENGINEER

Final Design Invoice must be submitted by no later than 90 Days from the bid/letting date. Invoice must be marked final. Any invoices sent outside of this timeframe will not be paid.

Final Design Construction Administration Invoice must be submitted by no later than 90 Days from Final Construction Completion date. Invoice must be marked final. Any invoices sent outside of this timeframe will not be paid.

Fee Schedule

Professional Fees for the services outlined above shall be Lump Sum Not to Exceed amounts as follows, including customary reimbursable expenses of mileage, meals, postage, and in-house plotting. We understand that online plan room fees, out-of-house large scale plotting, permitting fees, any reports deemed required by local jurisdictions, utility connection fees, and tap fees will be directly paid by the City.

Preliminary Design	\$25,000
Constructability and Cost Analysis	\$4,500
Art Integration	\$4,500
Final Design and Construction Documents	\$40,000
Permitting	\$3,000 Hourly Not to Exceed based on hourly rates
Bidding Assistance	\$2,000
Construction Phase Support	\$12,500 Hourly Not to Exceed based on hourly rates
Total Base Services	\$91,500
Customary Reimbursable Expenses	\$1,500
Total Services with Reimbursables	\$93,000

Hourly Rates for services not included in this Agreement shall be provided on an as-needed basis, upon your written direction, calculating additional compensation using the table below. Rates indicated are in effect through December 31, 2019.

Principal	\$150.00/hour
Project Manager	\$140.00/hour
Project Landscape Architect or Engineer	\$130.00/hour
Senior Designer	\$125.00/hour
Junior Designer	\$115.00/hour
Production Support	\$95.00/hour
Administrative Support	\$70.00/hour

Hourly rates would be held to these amounts through 2020.

REIMBURSABLE EXPENSES: Reimbursable expenses include actual expenditures made by the Consultant, his employees or his sub-consultants on behalf of the project. Reimbursable expenses include, but are not necessarily limited to, the following: (a) expenses of transportation and living when traveling in connection with a project; long distance telephone calls; overnight or express mail; photographic development and supplies; couriers and fees paid for testing and/or for securing approval of authorities having jurisdiction over this Project; (b) expenses of printing, reproduction, postage and handling of drawings and specifications; (c) expenses related to sub-consultants and specialists when authorized by the Client. Mileage shall be billed at the federal standard rate determined by the IRS. All reimbursable expenses shall be billed as a multiple of 1.1 times the cost incurred by the Consultant.

In-house plotting, printing and reproduction will be billed as follows:

Drawing Plots	18 x 24 bond	\$1.00
	24 x 36 bond	\$1.50
	30 x 42 bond	\$2.25
	36 x 48 bond	\$3.00
Color Prints	8.5 x 11 bond	\$0.75
	11 x 17 bond	\$1.25