

BILL NO. S-14-03-05

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving PRELIMINARY
ENGINEERING SERVICES CONTRACT FOR
MAPLECREST WIDENING FROM STATE BLVD
TO STELLHORN ROAD between A&Z
ENGINEERING and the City of Fort Wayne,
Indiana, in connection with the Board of Public
Works.

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

SECTION 1. That the PRELIMINARY ENGINEERING
SERVICES CONTRACT FOR MAPLECREST WIDENING FROM STATE
BLVD TO STELLHORN ROAD by and between A&Z ENGINEERING and the
City of Fort Wayne, Indiana, in connection with the Board of Public Works, is
hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power,
transportation, miscellaneous equipment, etc., necessary for
preliminary engineering services for the Maplecrest Road
widening project between State Blvd and Stellhorn Road to
4-lanes with a center left-turn lane. Where not needed, the
center left-turn lane will be designed as a landscaped
median. Project also includes a five-foot sidewalk on one
side with a ten-foot trail on the other, curb and gutter with
storm sewers, post mounted LED street lights, and traffic
signal modernizations at the intersections of Trier and
Stellhorn Roads:

involving a total cost of ONE MILLION, ONE HUNDRED EIGHTEEN
THOUSAND AND 00/100 DOLLARS - (\$1,118,460.00). A copy of said
Contract is on file with the Office of the City Clerk and made available for
public inspection, according to law.

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

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of February 19th, 2014 ("Effective Date") by and between The CITY OF FORT WAYNE, acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and A&Z ENGINEERING, LLC. (A&Z). ("the CONSULTANT [a limited liability company organized under the laws of the State of Indiana].

Des. No.: 1173162

Project Description: The Maplecrest Road Project begins at intersection of East State Blvd. and proceeds northerly along the corridor to the intersection with Stellhorn Road. The proposed project is an added travel lanes, which include widening and reconstructing the existing pavement from two travel lanes (one lane in each direction) to provide for two travel lanes in each direction with a center turn lane and landscaped median where applicable. The project will be designed as urban street with combined concrete curb and gutter and closed storm sewer system, sidewalk, multi-use pedestrian sidewalk and curb ramps. The other improvements include traffic signals, street lighting, landscaping, traffic signs and pavement markings. The project scope of work also includes the improvements along Stellhorn Road from the intersection of Stellhorn Road and Northwood Shopping Center main entrance to approximately 530 feet east of the centerline of Maplecrest Road. The improvements for Stellhorn Road will include reconfiguration of left-turn lane, mill and resurface existing pavement, new sidewalks, multi-use pedestrian sidewalk and curb ramps. The project improvement along Maplecrest Road is approximately 1.4 miles. The project length along Stellhorn Road is approximately 0.3 miles.

RECITALS

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

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

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

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

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

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

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

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

SECTION III TERM. The term of this Contract shall be from the date of the last signature affixed to this Contract to the completion of the construction contract which is estimated to be Summer 2017. A schedule for completion of the Services and deliverables is set forth in Appendix "C" which is herein attached to and made an integral part of this Contract.

prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT, the CONSULTANT has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

- i. No federal appropriated funds have been paid, or will be paid, by or on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contracts, 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.
 - ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - B. The CONSULTANT also agrees by signing this Contract 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.
6. **Changes in Work.** The CONSULTANT shall not commence any additional work or change the scope of the work until authorized in writing by the LPA. The CONSULTANT shall make no claim for additional compensation or time in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may be amended, supplemented or modified only by a written document executed in the same manner as this Contract. The CONSULTANT acknowledges that no claim for additional compensation or time may be made by implication, oral agreements, actions, inaction, or course of conduct.
7. **Compliance with Laws.**
- A. The CONSULTANT shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. If the CONSULTANT violates such rules, laws, regulations and ordinances, the CONSULTANT shall assume full responsibility for such violations and shall bear any and all costs attributable to the original performance of any correction of such acts. The enactment of any state or federal statute, or the promulgation of regulations thereunder, after execution of this Contract shall be reviewed by the LPA and the CONSULTANT to determine whether formal modifications are required to the provisions of this Contract.
 - B. The CONSULTANT represents to the LPA that, to the best of the CONSULTANT'S knowledge and belief after diligent inquiry and other than as disclosed in writing to the LPA prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT:
 - i. *State of Indiana Actions.* The CONSULTANT has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending and agrees that it will immediately notify the LPA of any such actions. During the term of such actions, CONSULTANT agrees that the LPA may delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.

applicable federal, state, local laws, ordinances, rules, and regulations. The LPA will not pay for work not performed to the LPA's reasonable satisfaction, inconsistent with this Contract or performed in violation of federal, state, or local law (collectively, "deficiencies") until all deficiencies are remedied in a timely manner.

9. Confidentiality of LPA Information.

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

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

11. DBE Requirements.

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

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

- B. The CONSULTANT shall make good faith efforts to achieve the DBE percentage goal that may be included as part of this Contract with the approved DBE SUB-CONSULTANTS identified on its Affirmative Action Certification submitted with its Letter of Interest, or with approved

subcontractors in their selection of subcontractors, lessors or material suppliers, who participate in construction, right-of-way clearance and related projects.

- G. The CONSULTANT shall take appropriate actions to correct any deficiency determined by itself and/or the Federal Highway Administration ("FHWA") within a reasonable time period, not to exceed ninety (90) days, in order to implement Title VI compliance in accordance with INDOT's assurances and guidelines.
- H. During the performance of this Contract, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees as follows:
- (1) Compliance with Regulations: The CONSULTANT shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
 - (2) Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
 - (3) Solicitations for SUBCONSULTANTS, Including Procurements of Materials and 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 materials or leases of equipment, each potential SUBCONSULTANT or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
 - (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 as may be determined by the LPA or INDOT to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the LPA, or INDOT as appropriate, and shall set forth what efforts it has made to obtain the information.
 - (5) Sanctions for Noncompliance: In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions of this contract, the LPA shall impose such contract sanctions as it or INDOT may determine to be appropriate, including, but not limited to:
 - (a) withholding of payments to the CONSULTANT under the Contract until the CONSULTANT complies, and/or
 - (b) cancellation, termination or suspension of the Contract, in whole or in part.
 - (6) Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

- iii. Notifying all employees in the statement required by subparagraph 14.B.i above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the CONSULTANT of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- iv. Notifying in writing the LPA within ten (10) days after receiving notice from an employee under subdivision 14.B.iii(2) above, or otherwise receiving actual notice of such conviction;
- v. Within thirty (30) days after receiving notice under subdivision 14.B.iii(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- vi. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs 14.B.i. through 14.B.v. above.

15. **Employment Eligibility Verification.** The CONSULTANT affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The CONSULTANT shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The CONSULTANT is not required to participate should the E-Verify program cease to exist. Additionally, the CONSULTANT is not required to participate if the CONSULTANT is self-employed and does not employ any employees.

The CONSULTANT shall not knowingly employ or contract with an unauthorized alien. The CONSULTANT shall not retain an employee or contract with a person that the CONSULTANT subsequently learns is an unauthorized alien.

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

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

16. **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of fire, natural disaster, acts of God, acts of war, terrorism, civil disorders, decrees of governmental bodies, strikes, lockouts, labor or supply disruptions or similar causes beyond the reasonable control of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give written notice to the other party of the occurrence of the Force Majeure Event (with a description in reasonable detail of the circumstances causing such Event) and shall do everything reasonably possible to resume performance. Upon receipt of such written notice, all obligations under this Contract shall be immediately suspended for as long as such Force Majeure Event continues and provided that the affected party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. If the period of nonperformance exceeds thirty (30) days from the receipt of written notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

- D. The CONSULTANT shall be required to maintain in full force and effect, insurance as described below from the date of the first authorization to proceed until the LPA's acceptance of the work product. The CONSULTANT shall list both the LPA and INDOT as insureds on any policies. The CONSULTANT must obtain insurance written by insurance companies authorized to transact business in the State of Indiana and licensed by the Department of Insurance as either admitted or non-admitted insurers.
- E. The LPA, its officers and employees assume no responsibility for the adequacy of limits and coverage in the event of any claims against the CONSULTANT, its officers, employees, sub-consultants or any agent of any of them, and the obligations of indemnification in Section 19 herein shall survive the exhaustion of limits of coverage and discontinuance of coverage beyond the term specified, to the fullest extent of the law.
- F. The CONSULTANT shall furnish a certificate of insurance and all endorsements to the LPA prior to the commencement of this Contract. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the CONSULTANT. Failure to provide insurance as required in this Contract is a material breach of Contract entitling the LPA to immediately terminate this Contract.

I. Professional Liability Insurance

The CONSULTANT must obtain and carry professional liability insurance as follows: For INDOT Prequalification **Work Types** 1.1, 12.2-12.6 the CONSULTANTS shall provide not less than \$250,000.00 professional liability insurance per claim and \$250,000.00 aggregate for all claims for negligent performance. For **Work Types** 2.2, 3.1, 3.2, 4.1, 4.2, 5.5, 5.8, 5.11, 6.1, 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 - 10.4, 11.1, 13.1, 14.1 - 14.5, the CONSULTANTS shall carry professional liability insurance in an amount not less than \$1,000,000.00 per claim and \$1,000,000.00 aggregate for all claims for negligent performance. The CONSULTANT shall maintain the coverage for a period ending two (2) years after substantial completion of construction.

II. Commercial General Liability Insurance

The CONSULTANT must obtain and carry Commercial / General liability insurance as follows: For INDOT Prequalification **Work Types** 2.1, 6.1, 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 - 10.4, 11.1, 13.1, 14.1 - 14.5, the CONSULTANT shall carry \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate. Coverage shall be on an occurrence form, and include contractual liability. The policy shall be amended to include the following extensions of coverage:

1. Exclusions relating to the use of explosives, collapse, and underground damage to property shall be removed.
2. The policy shall provide thirty (30) days notice of cancellation to LPA.
3. The CONSULTANT shall name the LPA as an additional insured.

III. Automobile Liability

The CONSULTANT shall obtain automobile liability insurance covering all owned, leased, borrowed, rented, or non-owned autos used by employees or others on behalf of the CONSULTANT for the conduct of the CONSULTANT's business, for an amount not less than \$1,000,000.00 Combined Single Limit for Bodily Injury and Property Damage. The term "automobile" shall include private passenger autos, trucks, and similar type vehicles licensed for use on public highways. The policy shall be amended to include the following extensions of coverage:

Notices to the LPA shall be sent to:

Shan R. Gunawardena, P.E., PTOE
City Engineer – Fort Wayne
Citizens Square, 200 East Berry Street, Suite 210
Fort Wayne, IN 46802

Notices to the CONSULTANT shall be sent to:

Jamal T. Anabtawi, P.E.
A&Z Engineering, LLC
9017 Coldwater Road, Suite 500
Fort Wayne, IN 46825

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

24. **Order of Precedence; Incorporation by Reference.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract and attachments, (2) RFP document, (3) the CONSULTANT's response to the RFP document, and (4) attachments prepared by the CONSULTANT. All of the foregoing are incorporated fully by reference.
25. **Ownership of Documents and Materials.** All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the CONSULTANT prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the CONSULTANT assigns and transfers any ownership claim to the LPA and all such materials ("Work Product") will be the property of the LPA. The CONSULTANT agrees to execute and deliver such assignments or other documents as may be requested by the LPA. Use of these materials, other than related to contract performance by the CONSULTANT, without the LPA's prior written consent, is prohibited. During the performance of this Contract, the CONSULTANT shall be responsible for any loss of or damage to any of the Work Product developed for or supplied by INDOT and used to develop or assist in the Services provided herein while any such Work Product is in the possession or control of the CONSULTANT. Any loss or damage thereto shall be restored at the CONSULTANT's expense. The CONSULTANT shall provide the LPA full, immediate, and unrestricted access to the Work Product during the term of this Contract. The CONSULTANT represents, to the best of its knowledge and belief after diligent inquiry and other than as disclosed in writing prior to or contemporaneously with the execution of this Contract by the CONSULTANT, that the Work Product does not infringe upon or misappropriate the intellectual property or other rights of any third party. The CONSULTANT shall not be liable for the use of its deliverables described in Appendix "A" on other projects without the express written consent of the CONSULTANT or as provided in Appendix "A". The LPA acknowledges that it has no claims to any copyrights not transferred to INDOT under this paragraph.
26. **Payments.** All payments shall be made in arrears and in conformance with the LPA's fiscal policies and procedures.
27. **Penalties, Interest and Attorney's Fees.** The LPA will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, IC 5-17-5, I. C. 34-54-8, and I. C. 34-13-1.

35. **Termination for Default.**

- A. With the provision of twenty (20) days written notice to the CONSULTANT, the LPA may terminate this Contract in whole or in part if
- (i) the CONSULTANT fails to:
 - 1. Correct or cure any breach of this Contract within such time, provided that if such cure is not reasonably achievable in such time, the CONSULTANT shall have up to ninety (90) days from such notice to effect such cure if the CONSULTANT promptly commences and diligently pursues such cure as soon as practicable;
 - 2. Deliver the supplies or perform the Services within the time specified in this Contract or any amendment or extension;
 - 3. Make progress so as to endanger performance of this Contract; or
 - 4. Perform any of the other provisions of this Contract to be performed by the CONSULTANT; or
 - (ii) if any representation or warranty of the CONSULTANT is untrue or inaccurate in any material respect at the time made or deemed to be made.
- B. If the LPA terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the LPA considers appropriate, supplies or services similar to those terminated, and the CONSULTANT will be liable to the LPA for any excess costs for those supplies or services. However, the CONSULTANT shall continue the work not terminated.
- C. The LPA shall pay the contract price for completed supplies delivered and Services accepted. The CONSULTANT and the LPA shall agree on the amount of payment for manufactured materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause (see Section 14). The LPA may withhold from the agreed upon price for Services any sum the LPA determine necessary to protect the LPA against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the LPA in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.
- E. **Default by the LPA.** If the CONSULTANT believes the LPA is in default of this Contract, it shall provide written notice immediately to the LPA describing such default. If the LPA fails to take steps to correct or cure any material breach of this Contract within sixty (60) days after receipt of such written notice, the CONSULTANT may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination, including reasonable attorney fees and expenses, provided that if such cure is not reasonably achievable in such time, the LPA shall have up to one hundred twenty (120) days from such notice to effect such cure if the LPA promptly commences and diligently pursues such cure as soon as practicable. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of such termination. The CONSULTANT agrees that it has no right of termination for non-material breaches by the LPA.

Non-Collusion.

The undersigned attests, subject to the penalties for perjury, that he/she is the CONSULTANT, or that he/she is the properly authorized representative, agent, member or officer of the CONSULTANT, that he/she has not, nor has any other member, employee, representative, agent or officer of the CONSULTANT, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

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

CONSULTANT

Signature

Jamal T. Anabtawi, Member

CITY OF FORT WAYNE

Honorables Thomas C. Henry, Mayor

Robert P. Kennedy, Chair

Signature

Kumar Menon, Member

Attest:

Signature

Warren J. Zwick, P.E., Member

Signature

Mike Avila, Member

Attest:

Patricia A. Roller, Controller

Date:

2/19/14

9. The CONSULTANT shall survey the project and provide the LPA with one set of original field notes for the topographic survey. The CONSULTANT shall obtain deeds of record, property owner names, mailing address, subdivision plats, and section or auditor plats for all properties located within project limits. The work shall be in accordance with I.C. 25-21.5; 865 I.A.C. 1.1-12; and the current INDOT Design Manual, Chapter 106 --Aerial/Ground Survey. The CONSULTANT shall prepare a location control route survey plat and record at the Allen County Recorder's Office.
10. The CONSULTANT shall provide Subsurface Utility Engineering (SUE) services to a Quality Level B following ASCE Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data including full horizontal utility location for all underground utilities within 15 feet beyond right-of-way.
11. The CONSULTANT shall assist the LPA with providing a preliminary engineering and investigation phase that includes any right-of-way (R/W) concerns and associated costs, environmental red flag and a preliminary opinion of probable construction cost estimate for initial project budgetary reasons.
12. The CONSULTANT shall assist the LPA in the following tasks: prepare presentation materials and participation in public informational meetings (2 meetings) and to schedule and attend individual neighborhood association meetings to provide updates on the project status (10 min. to 12 max.) and meet with individual property owner(s).
13. The CONSULTANT shall prepare construction plans for the added travel lanes on Maplecrest Road from East State Blvd. to Stellhorn Road, which consists of two travel lanes in each direction with a continuous left turn lanes and raised median as needed. The road improvements will include sidewalks, multi-use pedestrian sidewalks, curbs & gutter, streetscape features, decorative street lighting, traffic signal modernization, enclosed storm drainage system, possible storm detention facility and stormwater management to treat stormwater prior to discharging into Pierson Ditch.

City of Fort Wayne has completed a design of the relief storm sewer for Blackhawk Farm Subdivision located adjacent to Maplecrest Road. The flow from relief storm sewer will be added to the enclosed storm sewer system for the Maplecrest Road project.
14. The CONSULTANT shall prepare construction plans for Stellhorn Road from the intersection of Stellhorn Road and Northwood Shopping Center main entrance to approximately 530 feet east of the centerline of Maplecrest Road, which include extending the eastbound left-turn lane to provide for a longer storage length on the west approach, constructing new sidewalks, multi-use pedestrian sidewalks, decorative street lighting, milling and resurfacing.
15. The CONSULTANT shall prepare construction plans for replacement of the existing culvert pipe under Maplecrest Road at Pierson Ditch in accordance with INDOT Design Manual. Engineering design shall be coordinated with Allen County Surveyor's Office.
16. The CONSULTANT shall prepare landscape, planting specialty items. Any possible rain garden and/or green design applications or feasibility will be determined during project development with the LPA.
17. The CONSULTANT shall prepare landscape display plans and illustrative drawings including two perspective sketches, a streetscape section, an overall corridor plan, and an enlarged display plan. All

25. The CONSULTANT shall provide utility coordination following the 105 IAC 13 Utility Relocation Guidance and current INDOT Design Manual, Chapter 104, "Utility Coordination" to secure appropriate certifications and approvals necessary for construction of the project.
26. The CONSULTANT shall provide right-of-way engineering services in accordance with INDOT Right-of-Way Engineering Manual (1998) including property owner identification, property line determination, title work, title work updates as required, appraisal problem analysis (APAs), parcel plats and legal descriptions and right-of-way staking (for appraisal). An estimated quantity of parcels has been assumed for the initial extent of services. In the event of additional quantity of parcels than estimated, a supplemental agreement shall be executed to pay for the additional work.
27. The CONSULTANT shall review the contract bid package and coordinate any necessary corrections with the INDOT Technical Services Division and District.
28. The CONSULTANT shall review and approve all shop drawings for this contract during construction.
29. Following the award of a construction contract, the CONSULTANT will be responsible for attending the preconstruction meeting. During the course of construction, the CONSULTANT shall be available during normal working hours to respond to inquiries concerning the accuracy or intent of the CONSULTANT's plans. All such inquiries shall be made only by persons designated by the LPA for the benefit of the contractors and subcontractors performing the work.

APPENDIX "C"

SCHEDULE:

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

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

Engineering Design and Right-Of-Way Engineering Services:

1. Field Survey -- 3 months after Notice to Proceed
2. Hydraulic Submission (small structure) -- 2.5 months after completion of field survey
3. Stage I Plans -- 4 months after completion of field survey
4. Preliminary Field Check -- 4 months after approved Stage I
5. Public Hearing Approval -- 2 months after Stage II
6. Stage III Plans -- 10 months after Public Hearing Approval
7. Tracings -- 5 months after approved Stage III
8. Right-Of-Way Engineering -- 5 months after Preliminary Field Check

Environmental Services:

1. Draft Categorical Exclusion-Preliminary Submittal -- 9 months after notice to proceed
2. Revised Categorical Exclusion -- 2 months after receipt of comments from INDOT
3. Copies of Approved Categorical Exclusion -- 1 month after approval

3. The CONSULTANT shall receive payment for the work performed under this Contract on the specific cost per unit multiplied by the actual quantities or number of units of work performed in accordance with the following schedule:

	DESCRIPTION	QTY	UNIT PRICE	AMOUNT
a.	Right-of-Way Plans	1	\$30,078	\$30,078
b.	Title Work			
	Title Report (platted)	83	\$269.5	\$22,369
	Title Report (non-platted)	37	\$319	\$11,803
	Title Work Updates (per parcel)	40	\$110	\$4,400
c.	Right-of-Way Engineering			
	Parcel Plat (non-platted parcel) per parcel	25	\$1,100	\$27,500
	Parcel Plat (platted parcel) per parcel	67	\$770	\$51,590
	Legal Descriptions (non-platted parcel) Each	50	\$550	\$27,500
	Legal Descriptions (platted parcel) Each	128	\$330	\$42,240
d.	Appraisal Problem Analysis (per parcel)	120	\$220	\$26,400
e.	Right-of-Way Staking (per parcel)	120	\$247.5	\$29,700
Total Right-of-Way Engineering Fee				\$273,580

4. Should additional parcels exceeding the original quantity included with the schedule in item 3, the CONSULTANT will perform this work in accordance to the same schedule of fees for item 3. A supplemental agreement will be required prior to completing this work.

B. Method of Payment

1. The CONSULTANT may submit a maximum of one invoice voucher per calendar month for work covered under this Agreement. The invoice voucher shall be submitted to the LPA. The invoice voucher shall represent the value, to the LPA, of the partially completed work as of the date of the invoice voucher. The CONSULTANT shall attach thereto a summary of each pay item in Section A.2 and A.3 of this Appendix, percentage completed and prior payments.
2. The LPA for and in consideration of the rendering of the engineering services provided for in Appendix "A", agrees to pay the CONSULTANT for rendering such services the fee established above upon completion of the work hereunder and acceptance thereof by the LPA.
3. In the event of a substantial change in scope, character or complexity of the work on the project, the maximum fee payable and the specified fee shall be adjusted in accordance with Section VI General Provisions, Item 6 of this Agreement.

DIGEST SHEET

Department: Transportation Engineering

Resolution Number: N/A (W/O# 12269)

Title of Ordinance: Maplecrest Widening from State Blvd to Stellhorn Road --
Agreement for Preliminary Engineering Services

Awarded To: A&Z Engineering

Amount of Contract: \$ 1,118,460

Number of Bidders: Three

Description of Project (Be Specific):

Work associated with this contact shall be for the preliminary engineering services for the Maplecrest Road widening project between State Blvd and Stellhorn Road to 4-lanes with a center left-turn lane. Where not needed, the center left-turn lane will be designed as a landscaped median. Project also includes a five-foot sidewalk on one side with a ten-foot trail on the other, curb and gutter with storm sewers, post mounted LED street lights, and traffic signal modernizations at the intersections of Trier, and Stellhorn Roads

What Are The Implications If Not Approved:

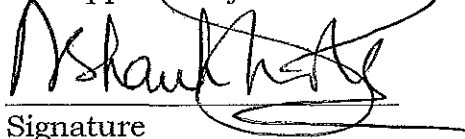
This is the last section of Maplecrest Road that requires widening. The area north of Stellhorn Road has been widened to 4-lanes with left-turn lanes and the area south of State Blvd has been designed for four lanes and will be under construction this spring. This section is already congested and is in need of the added capacity. Also there is currently no pedestrian infrastructure in the vicinity. Drainage is also a problem and is currently accommodated with some storm sewers but primarily side ditches. This project has been in the long range transportation plan for many years and we have received numerous requests for this widening from area residents. If this contract is not approved, existing and future traffic conditions will continue to deteriorate.

If Prior Approval Is Being Requested, Justify:

N/A

Additional Comments:

A&Z Engineering was selected to perform the preliminary engineering services on this project through INDOT's RFP process. The request for proposals was posted on INDOT's website and we received three proposals. These proposals were scored per INDOT's guidelines and A&Z Engineering was selected as the most responsive firm. They were responsible for the design of the section of Maplecrest Road between Lake Avenue and State Blvd, where they did a tremendous job of coordinating with area residents and stakeholders. They have been involved with designing many projects for the City of Fort Wayne and we have been very pleased with their services. The contract, including the overhead rates and man hour justifications have been reviewed and approved by INDOT.


Signature

02/17/14
Date