



CITY OF SOUTH BEND

BOARD OF PUBLIC WORKS

February 24, 2026

Mr. David L. McCormick
McCormick Engineering
234 N. Ironwood Drive
South Bend, IN 46615
david@mccormickeng.com

RE: Professional Services Agreement

Dear Mr. McCormick:

At its February 24, 2026 meeting, the Board of Public Works approved the above referenced Agreement for Site Design for The Yard Project, Project No. 126-020 in the amount of \$20,300.

Enclosed please find a copy of the Agreement for your records.

If you have any further questions, please call this office at (574) 235-9251.

Sincerely,

/s/ Hillary Horvath

Hillary Horvath, Clerk

Enclosures
HH/cb

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of [REDACTED] (“Effective Date”) between

Board of Public Works, City of South Bend, Indiana (“Owner”) and

McCormick Engineering, LLC of South Bend, Indiana (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Hill Street Parking Lot Improvement Project (“Project”).

Engineer’s Services under this Agreement are generally identified as follows:

- Provide topographic survey of the project site shown in Figure 1 via subconsultant [REDACTED]
- Analyze proposed detention requirements for site and incorporate detention feature into proposed parking lot features.
- Perform site design for proposed parking lot improvements to address layout, grading, paving, striping of proposed parking lots.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: N/A
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding **3** months. If the actual time to complete construction exceeds the

number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within ~~30~~ **35** days of receipt. ~~If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day.~~ In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all **non-disputed** claims against Engineer for any such suspension. ~~Payments will be credited first to interest and then to principal.~~

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

 - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all **non-disputed** services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. The Owner acknowledges the Engineer's construction documents, including all electronic files, as instruments of professional services. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties. Nevertheless, the final construction documents, including all electronic files, prepared under this agreement shall become the property of the Owner upon completion of services and payment in full of all monies due to the Engineer.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability

for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

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

7.01 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
 - 1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
 - 2. Engineer's Standard Hourly Rates are attached as Appendix 1.
 - 3. The total compensation for services and reimbursable expenses including survey subconsultant is estimated to be **\$20,300**.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

Attachments: Appendix 1, Engineer's Standard Hourly Rates

Figure 1 – Survey Map

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

**CITY OF SOUTH BEND, INDIANA
BOARD OF PUBLIC WORKS**

Elizabeth A. Maradik, President

Joseph R. Molnar, Vice President

Murray L. Miller, Member

Breana M. Micou, Member

Abigail E. Magas, Member

Attest:

Hillary R. Horvath, Clerk

Date: February 24, 2026

Address for giving notices:
215 S Dr Martin Luther King Jr Blvd
South Bend, Indiana 46601

Designated Representative (Paragraph 8.03.A):

Abigail Magas, P.E.

Title: City Engineer

Phone Number: (574) 235-9206

Facsimile Number: (574) 235-9171

E-Mail Address: amagas@southbendin.gov

Engineer:
McCormick Engineering, LLC

By: _____
Title: Tracy A. McCormick, Managing Partner

Date: February 11, 2026

Engineer License or Firm's Certificate No. 19800331
State of: Indiana

Address for giving notices:
234 N. Ironwood Drive
South Bend, IN 46615

Designated Representative (Paragraph 8.03.A):

David L. McCormick, PE, BC WRE

Title: Partner

Phone Number: 574-232-6800

Facsimile Number: 574-232-6868

E-Mail Address: david@mccormickeng.com

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated _____, _____.

Engineer's Standard Hourly Rates

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 7.01 and 7.02, and are subject to annual review and adjustment.

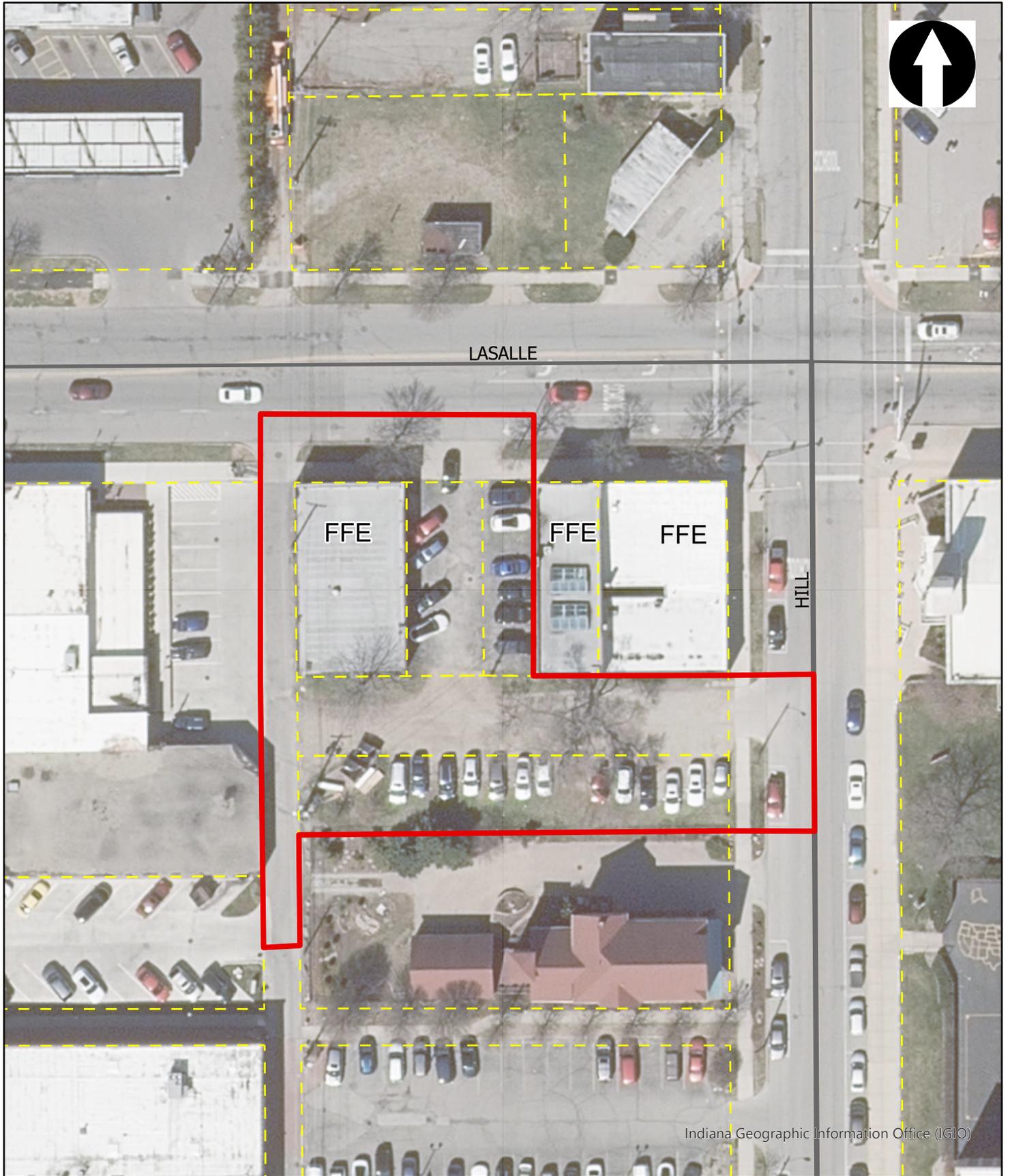
B. *Schedule of Hourly Rates:*

Hourly rates for services performed on or after the Effective Date are:

Professional Engineer	\$	<u>200</u> /hour
Senior Civil Engineer (Staff)	\$	<u>160</u> /hour

C. *Schedule of Lump Sum Subconsultant Fees (Survey):*

Topographic Survey	\$	4,300 LSUM
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Indiana Geographic Information Office (IGIO)

Prepared by:

Prepared for:

McCormick Engineering
 McCormick Engineering, LLC
 234 N. Ironwood Drive
 South Bend, IN 46615
 P: 574.232.6800



City of South Bend Dept of Public Works
 215 S Dr. Martin Luther King Jr. Blvd.
 South Bend, IN 46601
 P: 574.233.0311

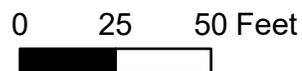


Figure 1
Survey Extent

Date Saved: 2/11/2026

**BOARD OF PUBLIC WORKS
AGENDA ITEM REVIEW REQUEST FORM**

Date: 2/13/2026
 Name: Caitlin Wyant Department of Public Works – Engineering Division
 BPW Date: 2/24/2026 Phone Extension: 7483

Required Prior to Submittal to Board

BPW Attorney Attorney Name _____
 Dept. Attorney Attorney Name _____
 Purchasing _____

Check the Appropriate Item Type – Required for All Submissions

<input checked="" type="checkbox"/> Professional Services Agreement	<input type="checkbox"/> Contract	<input type="checkbox"/> Proposal
<input type="checkbox"/> Open Market Contract	<input type="checkbox"/> Amendment/Addendum	<input type="checkbox"/> Special Purchase, QPA
<input type="checkbox"/> Bid Opening	<input type="checkbox"/> Bid Award	<input type="checkbox"/> Req. to Advertise <input type="checkbox"/> Title Sheet
<input type="checkbox"/> Quote Opening	<input type="checkbox"/> Quote Award	<input type="checkbox"/> Reject Bids/Quotes
<input type="checkbox"/> Proposal Opening	<input type="checkbox"/> C/O & PCA No. _____	<input type="checkbox"/> PCA
<input type="checkbox"/> Chg. Order, No. _____	<input type="checkbox"/> Traffic Control	<input type="checkbox"/> Resolution
<input type="checkbox"/> Other: _____		<input type="checkbox"/> Ease./Encroach

Required Information

Company or Vendor Name McCormick Engineering
 New Vendor Yes If Yes, Approved by Purchasing
 No
 MBE/WBE Contractor MBE WBE Completed E-Verify Form Attached Yes No
 Project Name The Yard
 Project Number 126-020
 Funding Source River East Development TIF
 Account No. PR-00046206
 Amount \$20,300
 Terms of Contract _____
Special Contract Provisions
 Purpose/Description Site design for parking lot at Hill St/ LaSalle St

For Change Orders Only

Amount of Increase \$ _____
 Decrease (\$ _____)
 Previous Amount \$ _____
 Increase _____ %
 Current Percent of Change: Decrease (_____ %)
 New Amount \$ _____
 Increase _____ %
 Total Percent of Change: Decrease (_____ %)
 Time Extension Amount: _____
 New Completion Date: _____