

HWC ENGINEERING
135 N. Pennsylvania Street, Suite 2800
Indianapolis, IN 46204
(317) 347-3663

AGREEMENT TO PROVIDE SERVICES

This AGREEMENT TO PROVIDE SERVICES (“Agreement”) is recognized as being established the ___ day of _____, 2023 (the “Effective Date”), by and between HWC Engineering, Inc., of Indianapolis, Indiana (hereinafter referred to as “HWC”) and Town of Munster, Indiana (hereinafter referred to as “CLIENT”), concerning the following:

The Project name, location and address:

On-Call Planning Services
Munster, Indiana

The CLIENT’s name and address:

Town of Munster
1005 Ridge Road
Munster, IN 46321

The Project’s designated CLIENT representative and his/her contact information (including title, address, phone number and email address):

Town of Munster
Jill DiTommaso
Deputy Town Manager
1005 Ridge Road
Munster, IN 46321

The Project’s designated HWC representative and his/her contact information (including title, address, phone number and email address):

Rachel Christenson, AICP
Project Manager/Planner
HWC Engineering
135 N. Pennsylvania Street, Suite 2800
Indianapolis, IN 46204
Direct: 317-981-1284
Mobile: 317-519-8510
rchristenson@hwcengineering.com

The applicable HWC Project number: 2023-130-S

WITNESSETH

WHEREAS, the CLIENT desires to contract for certain professional services in connection with the following project (hereinafter the "Project"):

On-Call Planning Services

WHEREAS, HWC has expressed a willingness to provide the professional services for the Project; and

WHEREAS, the parties hereto agree that HWC shall provide the services and documents hereinbefore and hereinafter described in relation to the Project;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION I: SERVICES BY HWC

The services to be performed by HWC under this Agreement are set out in Appendix "A", attached to this Agreement, and made an integral part hereof (hereinafter the "Services").

SECTION II: INFORMATION AND SERVICES TO BE FURNISHED BY THE CLIENT

The information and services to be furnished by the CLIENT are set out in Appendix "B", attached to this Agreement and made an integral part hereof.

SECTION III: NOTICE TO PROCEED AND SCHEDULE

HWC shall begin the work to be performed under this Agreement upon receipt of the written notice to proceed from the CLIENT, and shall deliver the work to the CLIENT in accordance with the schedule contained in Appendix "C", attached to this Agreement, and made an integral part hereof. HWC shall not begin work prior to the date provided in the written notice to proceed.

HWC acknowledges the importance to the CLIENT of the project schedule and agrees to put forth reasonable efforts in performing the services with due diligence under this Agreement in a manner consistent with that schedule attached. The CLIENT understands, however, that HWC's performance must be governed by sound professional practices.

If in this Agreement, specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of HWC, for reasons including, but not limited to, delay of state or municipal agencies in approvals or other governmental decisions, or delay in site or land acquisition, the rates and amounts of compensation provided herein shall be subject to equitable adjustment.

SECTION IV: COMPENSATION

HWC shall receive payment for the work performed under this Agreement as set forth in Appendix "D", attached to this Agreement, and made an integral part hereof.

SECTION V: GENERAL PROVISIONS

1. Consultants and Subcontracting

HWC shall, with the ~~in its sole discretion and without~~ approval of the CLIENT, have the right to employ such subconsultants and consultants (collectively hereinafter "Subconsultants") as HWC deems necessary to assist in the performance of furnishing of the Services. HWC shall not be required to employ any Subconsultants unacceptable to HWC.

2. Use and Ownership

~~All reports, tables, figures, drawings, specifications, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents (hereinafter "Documents") prepared by HWC as instruments of service shall remain the property of HWC. The CLIENT shall be entitled to copies or reproducible sets of any of the Documents for information and reference in connection with use on the Project by CLIENT.~~

~~HWC will retain all pertinent records relating to the services performed for a period of five (5) years following performance of work, during which period the records will be made available to the CLIENT at all reasonable times for inspection or copying.~~

~~HWC agrees that the CLIENT is not required to use any plan, report, drawing, specifications, advice, map, document or study prepared by HWC and HWC waives all right of redress against the CLIENT if the CLIENT does not utilize same. Such Documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or any other project. Any such reuse or modification without written verification or adaptation by HWC, as appropriate for the specific purpose intended, shall be at CLIENT's sole risk and without liability or legal exposure to HWC. CLIENT shall indemnify and hold harmless HWC from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting there from.~~

~~CLIENT hereby acknowledges that due to the status of the Documents as instruments of professional service and the value associated therewith such designation, that HWC is entitled to enforce the prohibition against misuse of the Documents by CLIENT by obtaining an injunction to enjoin and restrain the unauthorized use of the Documents. Additionally, the improper utilization of the Documents hereunder shall be considered to be a breach of this Agreement and entitle HWC to all rights and remedies provided herein.~~

"Works" means works of authorship fixed in any tangible medium of expression by HWC or its officers, employees, agents or subcontractors in the course of performing the services under this Agreement, including, but not limited to, computer programs, electronic art, computer generated art, graphics, illustrations, notes, flow charts, memoranda, correspondence, records, notebooks, documentation, tables, maps, analyses, reports and charts, regardless of the medium in which they are fixed, and all copies thereof.

All Works made or created by HWC, either solely or jointly with CLIENT, in the course of HWC's performance of services under this Agreement shall be deemed to be Works for hire and upon complete payment for such services by the CLIENT, such Works are and shall be the exclusive property of CLIENT. At CLIENT's request, HWC will execute all documents reasonably required to confirm or perfect ownership of such Works and any corresponding copyright rights in and to such Works in CLIENT.

CLIENT grants to HWC an unlimited and irrevocable license to use and copy all Works on all projects subject to the terms of this Agreement.

HWC shall not be responsible for any reuse or modification of the Works without written verification or adaptation by HWC, as appropriate for the specific purpose intended. Such use shall be at CLIENT's sole risk and without liability or legal exposure to HWC. CLIENT shall indemnify and hold harmless HWC from all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting therefrom.

3. Compliance with State and Other Laws

HWC specifically agrees that in performance of the services herein enumerated by HWC or by Subconsultants or anyone acting on behalf of either, that each will comply with all state, federal, and local statutes, ordinances and regulations in effect as of the effective date of this Agreement (the "Laws and Regulations"). Changes to these laws and regulations after the effective date of this Agreement may be the basis for modifications to CLIENT's responsibilities as provided in Appendix B or to HWC's Services (as provided in Appendix A), times of performance (as provided in Appendix C), or compensation (as provided in Appendix D).

4. Professional Responsibility

HWC will exercise reasonable skill, care, and diligence in the performance of services and will carry out all responsibilities in accordance with customarily accepted professional engineering practices.

Neither the professional activities of HWC, nor the presence of HWC or its employees and sub-consultants at a construction/project site, shall relieve the construction professional or company contracted (hereinafter "CONTRACTOR") with the CLIENT to provide construction services of its obligations, duties and responsibilities, including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. HWC and its personnel have no authority to exercise any control over the CONTRACTOR or its employees in connection with their work or any health and safety programs or procedures. The CLIENT agrees that the CONTRACTOR shall be solely responsible for job site safety and warrants that this intent shall be carried out in the CLIENT's contract with the CONTRACTOR. The CLIENT also agrees that the CLIENT, HWC and HWC's sub-consultants shall be indemnified by the CONTRACTOR and shall be made additional insureds under the CONTRACTOR's policies of general liability insurance.

HWC shall not be required to sign any documents, no matter by whom requested, that would result in HWC having to certify, guarantee or warrant the existence of conditions whose existence HWC cannot ascertain. The CLIENT also agrees not to make resolution of any dispute with HWC or payment of any amount due to HWC in any way contingent upon HWC's signing any such certification.

HWC shall not be responsible for errors, omissions or deficiencies in the designs, drawings, specifications, reports or other services of the CLIENT or other consultants, including, without limitation, surveyors and geotechnical engineers, who have been retained separately by CLIENT. HWC shall have no liability for errors or deficiencies in its designs, drawings,

specifications and other services that were caused, or contributed to, by errors or deficiencies (unless such errors, omissions or deficiencies were known or should have been known by HWC) in the designs, drawings, specifications and other services furnished by the CLIENT, or other consultants retained by the CLIENT. Additionally, HWC shall not be responsible for the use of the Documents by CLIENT, or consultants retained by the CLIENT, for any purposes other than in conjunction with the Project.

HWC's opinions of probable construction costs provided under this Agreement are to be made on the basis of HWC's experience and qualifications and represent HWC's best judgment as an experienced and qualified professional within the industry. However, since HWC has no control over the cost of labor (including but not limited to wage scales for public works projects), materials (or changes in materials requested by CLIENT), equipment or services furnished by others, changes in applicable laws (including, but not limited to, building codes, flood plain designation, etc.) or over the CONTRACTOR's methods of determining prices or over competitive bidding or market conditions, HWC cannot and does not guarantee that proposals, bids or actual construction cost will not vary from opinions of probable construction costs prepared by HWC.

5. Status of Claims

HWC shall be responsible for keeping the CLIENT currently advised as to the status of any known claims made for damages against HWC resulting from services performed under this Agreement. HWC shall send notice of claims related to work under this Agreement to the CLIENT.

6. Insurance

HWC shall at its own expense maintain in effect during the term of this contract the following insurance with limits as shown or greater:

- General Liability (including automobile) with a combined single limit of \$1,000,000.00. The CLIENT shall be named as an Additional Insured. HWC's insurance shall be written on a "primary" basis and the CLIENT's insurance program shall be in excess of all of HWC's available coverage.
- Worker's Compensation at single limit of \$1,000,000.00. Worker's Compensation shall include a Waiver of Subrogation endorsement in favor of CLIENT.
- Professional Liability for protection against claims arising out of performance of professional services caused by negligent error, omission, or act in the amount of \$2,000,000.00
- HWC shall provide to CLIENT Certificates of Insurance indicating the aforesaid coverage upon request of the CLIENT.
- HWC shall name CLIENT as additional insured on General Liability and Auto Liability policy.

HWC will require its Subconsultants to maintain Commercial General Liability, Auto Liability, Workers Compensation and Professional Liability coverages equal to or greater than maintained by HWC. Subconsultants shall also name HWC and CLIENT as additional insureds on General Liability and Auto Liability policy.

HWC shall each deliver to CLIENT the other certificates of insurance evidencing the

Town of Munster
On-Call Planning Services

coverage indicated in this Agreement. Such certificates shall be furnished prior to commencement of HWC's services and at renewals thereafter during the life of the Agreement.

7. Changes in Work

In the event that either the CLIENT or HWC determine that a material change in scope, character or complexity of the work is needed after the work has progressed as directed by the CLIENT, both parties in the exercise of their reasonable and professional judgment shall negotiate the changes and HWC shall not commence the additional work or the change of the scope of the work until a supplemental agreement is executed and HWC is authorized in writing by the CLIENT to proceed.

8. Delays and Extensions

HWC 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 Agreement. Any such delays shall be compensated for by an extension of time for such period as may be reasonably determined by the CLIENT, subject to HWC's approval. However, it being understood, that the permitting of HWC 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 CLIENT of any of its rights herein.

9. Abandonment

Services may be terminated by the CLIENT and HWC by thirty (30) days' notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party so long as such nonperformance has not been caused by delays outside of the control of HWC. If so abandoned, HWC shall deliver to the CLIENT copies of all data, reports, drawings, specifications and estimates completed or partially completed along with a summary of the progress of the work completed within twenty (20) days of the abandonment. In the event of the failure by HWC to make such delivery upon demand, then and in that event HWC shall pay to the CLIENT any damages sustained by reason thereof. The earned value of the work performed shall be based upon an estimate of the portions of the total services as have been rendered by HWC to the date of the abandonment for all services to be paid for on a lump sum basis. HWC shall be compensated for services properly rendered prior to the effective date of abandonment on all services to be paid on a cost basis or a cost plus fixed fee basis. The payment as made to HWC shall be paid as the final payment in CLIENT's full settlement and release for the services hereunder unless otherwise provided hereunder.

10. Non-Discrimination

Pursuant to Indiana and federal law, HWC and HWC's Subconsultants, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of

race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the Agreement.

11. Employment Eligibility Verification

HWC affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien.

HWC shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in I.C. 22-5-1.7-3. HWC is not required to participate should the E-Verify program cease to exist.

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

Either party may terminate this Agreement upon written notice to the other.

12. Successor and Assigns

The CLIENT and HWC each binds themselves and successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the CLIENT and HWC shall assign, sublet or transfer their interest in the Agreement without the written consent of the other.

13. Supplements

This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

14. Governing Laws

This Agreement and all the terms and provisions shall be interpreted and construed according to the laws of the State of Indiana, notwithstanding any state's choice of law rules to the contrary. Should any clause, paragraph, or other part of this Agreement be held or declared to be void or illegal, for any reason, by any court having competent jurisdiction, all other causes, paragraphs or part of this Agreement, shall nevertheless remain in full force and effect. Any and all actions to be litigated under this matter shall be initiated in Lake County, Indiana.

This Agreement contains the entire understanding between the parties and no modification or alteration of this Agreement shall be binding unless endorsed in writing by the parties thereto.

This Agreement shall not be binding until executed by all parties.

15. No Partnership

This Agreement will not constitute, create, give rise to or otherwise recognize a joint venture, partnership or formal business organization of any kind between the parties, and the rights and obligations of the parties shall be only those expressly stated under this Agreement. Neither party shall represent itself as an employee or subcontractor of the other, nor is this Agreement or any related documents intended to be construed so as to make either party an employee or subcontractor of the other. Except as otherwise provided in this Agreement, neither party shall have the ability to bind the other to any agreement for payment of goods or services, nor shall it represent to any person that it has such ability. All expenses incurred by the parties hereto are their respective sole responsibility, unless otherwise provided for in this Agreement.

16. Rights and Benefits

HWC's services will be performed solely for the benefit of the CLIENT and not for the benefit of any other persons or entities.

17. Intentionally Blank.

18. Indemnities

HWC and the CLIENT each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives from and against liability for all claims, losses, damages, and expenses, including reasonable attorney fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions.

19. Complete Agreement

This Agreement, and all other referenced exhibits which form a part of this Agreement, constitutes the entire agreement between the parties with respect to the subject matter hereof and shall be deemed to supersede all prior and contemporaneous agreements, representations, and understandings, whether written or oral, and the same shall be deemed to have been merged into this Agreement

20. Notice

Any notice contemplated herein or required or permitted to be given hereunder shall be in writing and shall be deemed to be given when delivered personally or sent by registered or certified mail, postage prepaid, return receipt requested to the parties at the addresses set forth in the preamble of this Agreement, or to such other address as either party may have last specified by written notice to the other.

IN WITNESS WHEREOF, the CLIENT and HWC have signed this Agreement in duplicate. One counterpart each has been delivered to the CLIENT and HWC.

This Agreement will be effective on _____, 2023.

“CLIENT”

“HWC”

Town of Munster, IN

HWC Engineering

By: _____

By: 

Printed: _____

Printed: Cory J. Whitesell, PE

Title: _____

Title: Director-Planning and Landscape
Architecture

Date: _____

Date: April 25, 2023

APPENDIX "A"

SERVICES BY HWC

OVERVIEW

In general, the scope of services for this project consists of HWC Engineering (HWC) providing on-call planning services to the Town of Munster, Indiana (CLIENT).

Services shall be performed as requested and directed by the Town Manager or Deputy Town Manager. The specific services to be provided are outlined below.

DETAILED SCOPE OF SERVICES

When directed, HWC shall assist in the administrative reviews of permit applications, concept plans, development plans, primary plats, secondary plats, zoning amendments and related tasks. Up to 10 hours per week of on-call services will be provided. This may include, but is not limited to:

1. Compile staff reports for assigned plan reviews according to Munster's standard formats.
2. Meet with Munster staff on an as-needed basis to coordinate assigned reviews.
3. Attend Plan Commission, Board of Zoning Appeals, or other Town meetings as needed.
4. Attend and participate in Site Plan Review Committee meetings as requested or provide input to Staff attending such meetings.
5. Assist in coordination and correspondence with developers or applicants.
6. HWC will establish a standing "office hours" period on a weekly basis to answer public questions and/or review planning topics with Town staff.

Since the exact scope of services needed from HWC is not known, services will be provided on an hourly rate basis within the designated fee allowance. If the allowance is reached and additional services still are needed, a contract addendum would be executed to amend the total fee.

PROJECT SCHEDULE

The schedule shall be negotiated independently for each assigned task. This Agreement is valid for 3 months (12 weeks) from execution of the Agreement.

FEE PROPOSAL

HWC's hourly rates for planning staff are as follows:

- Senior Project Manager: \$210/hr
- Project Manager: \$175/hr
- Planner II: \$135/hr
- Planner I: \$110/hr

APPENDIX “B”

INFORMATION AND SERVICES TO BE FURNISHED BY THE CLIENT

If requested by HWC, the CLIENT shall, within a reasonable time, so as not to delay the services of HWC:

1. Provide full information as to HWC’s requirements for the Project.
2. Assist HWC by placing at HWC’s disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
3. Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by HWC, obtain advice of an attorney, insurance counselor, and other Engineers as CLIENT deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time or as provided in an agreed schedule so as not to delay the services of HWC.
4. Give prompt written notice to HWC whenever CLIENT observes or otherwise becomes aware of any defect in the Project.
5. Furnish all existing approvals or permits from all governmental authorities having jurisdiction over the Project. HWC will assist the CLIENT in identifying and procuring any additional permits associated with this Project or as identified in this Agreement or “Services by the HWC/the Engineer”.
6. Arrange for access to and make all provisions for HWC to enter upon public and private property as required for HWC to perform services under this Agreement.
7. Obtain necessary easements and right-of-way for construction of the Project, including easement and right-of-way descriptions, property surveys and boundary surveys.
8. Furnish to HWC, as requested by HWC or as required by the Contract Documents, data prepared by or services of others, including exploration and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site.

APPENDIX "C"

NOTICE TO PROCEED AND SCHEDULE

HWC acknowledges the importance to the CLIENT of the project schedule and agrees to put forth reasonable efforts in performing the services with due diligence under this Agreement in a manner consistent with the schedule below:

Activity	Schedule
On-Call Planning Services	As directed by CLIENT

APPENDIX “D”

COMPENSATION

HWC shall receive payment from CLIENT for the work performed under this Agreement, as listed below:

Activity	Fee	Compensation Type
On-Call Planning Services	\$8,000/month x 3 months = \$24,000	Time & Materials, Not to Exceed

Lump Sum Compensation: Lump Sum payment shall include all labor and expenses (for the scope of work as defined in the agreement) incurred by HWC and shall not exceed the fixed payment amount without prior authorization of the CLIENT. HWC shall submit monthly invoices to the CLIENT for the estimated portion of the total services actually completed at the time of the billing. The value of the lump sum services work completed is determined by multiplying the percentage of work completed by the total fee established.

The “Hourly Rates and Reimbursable Expenses Schedule” identified in this Agreement are subject to change each December 31st without notification or modification to this Agreement.

HWC Engineering
2023 Hourly Billing Rates

POSITION	HOURLY RATE
Principal	\$ 230.00
Division Manager	\$ 220.00
Sr Project Manager	\$ 210.00
Project Manager	\$ 175.00
Senior Project Engineer	\$ 175.00
Project Engineer I	\$ 145.00
Project Engineer II	\$ 120.00
Sr Designer/Technician	\$ 130.00
Designer/Technician	\$ 110.00
Project Coordinator	\$ 100.00
Landscape Architect I	\$ 135.00
Landscape Architect II	\$ 110.00
Planner I	\$ 135.00
Planner II	\$ 110.00
Project Surveyor	\$ 130.00
Survey Crew Lead I	\$ 120.00
Survey Crew Lead II	\$ 100.00
Survey Crew Member I	\$ 85.00
Survey Crew Member II	\$ 70.00
Clerical Support	\$ 80.00
Inspection Manager	\$ 140.00
Sr Inspector	\$ 130.00
Construction Inspector I	\$ 120.00
Construction Inspector II	\$ 105.00
Intern	\$ 60.00

REIMBURSABLE EXPENSES

- Actual cost of photographs, postage and other expenses.
- As authorized by CLIENT