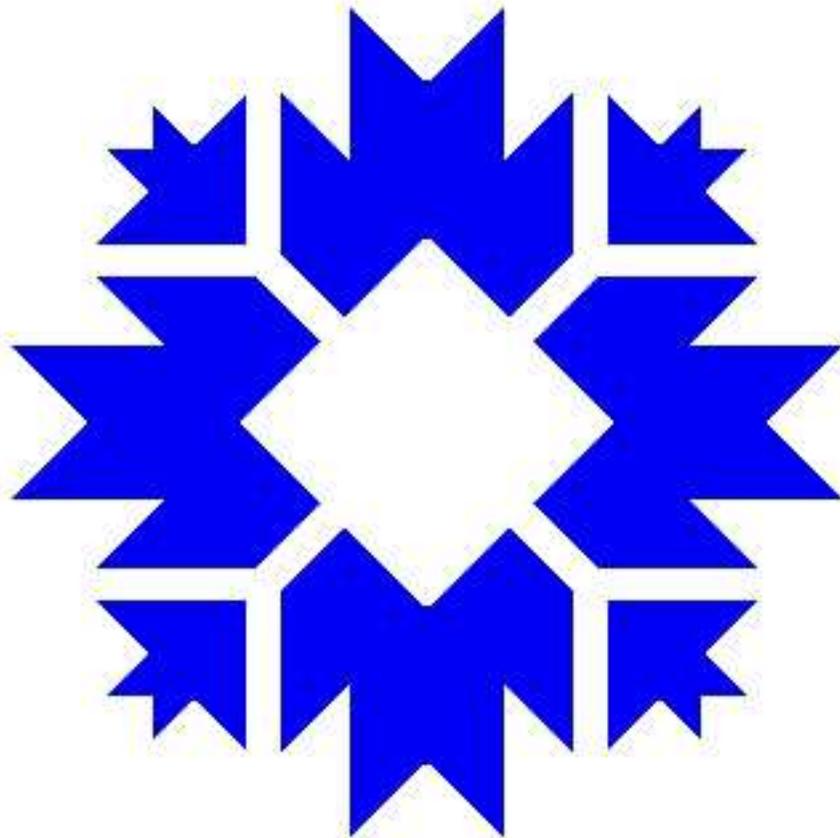


Board of Public Works Meeting

December 3, 2013



AGENDA
BOARD OF PUBLIC WORKS
(This Meeting May be Televised)

A Regular Meeting of the Board of Public Work to be Held Tuesday, December 3, 2013 at 5:30 p.m., in the City Council Chambers of City Hall at Showers, 401 N. Morton Street, Bloomington, Indiana.

- I. MESSAGES FROM BOARD MEMBERS**
- II. APPROVAL OF MINUTES – November 19, 2013**
- III. PETITIONS & REMONSTRANCES**
- IV. TITLE VI ENFORCEMENT**
- V. HEARINGS FOR NOISE APPEAL**
- VI. OLD BUSINESS**
- VII. NEW BUSINESS**
 - 1. Request for Permission to Accept Bids to Abate Property at 207 S. Meadowbrook Drive**
 - 2. Request for Private Parking Permit at 915 West 7th Street**
 - 3. Request for Noise Permit for the Parks and Recreation 2014 Performing Art Series**
 - 4. Approval of E. 3rd Street and S. Washington Street Signal Modernization Design Services Contract**
 - 5. Approval of W. 17th Street and N. Arlington Road LPA-Consultant Construction Inspection Services Contract**
 - 6. Approval of E. 17th Street and N. Jordan Avenue Addendum #2 Design Services Contract**
- VIII. STAFF REPORTS & OTHER BUSINESS**
- IX. APPROVAL OF CLAIMS**
- X. ADJOURNMENT**

The Board of Public Works meeting was held on Tuesday, November 19, 2013 at 5:30 p.m. in the Council Chambers of City Hall at Showers, 401 N. Morton Street, Bloomington, Indiana with Charlotte Zietlow presiding.

**REGULAR MEETING
OF THE BOARD OF
PUBLIC WORKS**

Present: Charlotte Zietlow
James McNamara

ROLL CALL

City Staff: Justin Wykoff – Engineering
Mike Arnold – HAND
Lisa Abbott – HAND
Miah Michaelsen – ESD
Jackie Moore - City Legal
Greg Small – City Legal
Mike Rouker – City Legal
Chris Smith - Public Works
Laurel Waters – Public Works

McNamara wanted to give a shout out to two of his favorite public servants; Dan Grundmann, as the Director of HR has done amazing things for this organization and the City's loss is certainly SPEA's gain. Also, though he is sad to see Dan Grundmann go, he is happy with the news that Doris Sims will be the new HR Director; this is a brilliant and fantastic choice. Congratulations to both Dan and Doris, and the City for having Doris in that important position. Zietlow seconded that.

**MESSAGES FROM
BOARD MEMBERS**

Zietlow wished everyone a Happy Thanksgiving.

McNamara made a motion to approve the minutes from November 5, 2013. Zietlow seconded the motion. The motion passed. Minutes were approved as submitted.

**APPROVAL OF
MINUTES**

None

**PETITIONS &
REMONSTRANCES**

None

**TITLE VI
ENFORCEMENT**

None

**HEARINGS FOR NOISE
APPEALS**

OLD BUSINESS

NEW BUSINESS

Wykoff explained this discussion is about the alley way that runs north south in the 300 block of West 14th Street. Chris & Stephanie Sims are the petitioners. They had petitioned the Board at the July 30th meeting and requested permission to improve the alley for ingress/egress. That request was tabled at that time. The petitioners came back to the Board to request permission to encroach with a fence. This would split the alley between the two neighbors. This is a 12 foot alley so that would give each 6 feet.

Zietlow knows much thought has gone into this, and appreciated the petitioner's patience and good will. She stated the Board had walked through this area and appreciates this solution.

McNamara made a motion to approve Resolution 2013-103: Request to encroach in Public Right of Way with Fence in the 300 Block of West 14th Street.

Chris Sims introduced himself as the property owner at 910 North Madison. He stated the Board members know they had requested to open the alley and there were some issues that came up with the neighbors. He and his wife felt the best solution, if the alley is not going to be used, is to put a fence in there and accept that mid way ground as part of their backyard. Mr. Sims added he does realize if the City were to ever need this right of way, the fence would have to be moved at his expense. This will not affect any setbacks for the buildings. Mrs. Sims stated they wanted everyone to be happy.

Zietlow seconded the motion. The motion passed. Resolution 2013-103 approved.

Wykoff stated this is a project Engineering has worked on with the City Council Sidewalk Committee. The Council has elected this year to construct this portion of sidewalk on 17th Street. Staff asked for permission to put out bids for construction of this project. Results will be brought back to the Board at the December 16th meeting.

McNamara made a motion to seek bids for the construction of the W. 17th Street Sidewalk Project.

Zietlow inquired as to what side of the street the sidewalk would be constructed. Wykoff stated the sidewalk would be on the south side of the street between Madison all the way to College Avenue. He added there is an existing portion on College but they are going to make it ADA compliant. There will also be additional improvements

Resolution 2013-103: Request to Encroach into Public Right of Way with Fence in 300 Block of W. 14th Street

It was noted this was correctly numbered as 2013-13 in the agenda and has been corrected.

Request Permission to Seek Bids for the W. 17th Street Sidewalk Project (Madison Street to College Avenue)

made at Madison where there is an existing bus stop. Currently there is a dirt path in this location so it will be a great improvement project for pedestrians, and much appreciated.

Zietlow seconded the motion. The motion passed. Permission given for staff to seek bids.

Miah explained the Market organizers are asking for the use of Showers Common and Showers Plaza for the 2014 Saturday Farmers' Market which begins April 5th. The Saturday Market will end on November 29th. This request also included closing a section of 8th Street between the B-Line Trail and Morton Street. Closure will be from 4:00 a.m. until 2:00 p.m. each Saturday. The organizers also requested the use of a section of Madison Street adjacent to Bloomingfoods for the Tuesday Market. The Tuesday Market will begin June 3rd and ends September 30. Closure will be from 2:00 p.m. until 7:30 p.m. Businesses on the north end of the block will have full access during this time. A noise permit was also requested.

Authorization to Use Public Streets, Showers Commons and Plaza for the 2014 Farmers' Market Season

Miah reported that last year's Market attendance at the Market exceeded 200,000 people.

McNamara made a motion to give authorization for use of public streets, Showers Commons, and Plaza for the 2014 Farmers' Market Season. Zietlow seconded the motion. The motion passed. Permission to use the areas listed was approved.

Miah explained the Red Kettle Run is sponsored by Indiana Running Company to support the Salvation Army Red Kettle Campaign. The event is on Saturday, December 7th and will take place on the B-Line Trail. The event runs from 8:00 a.m. until 1:00 p.m. and will feature live, non amplified music. Event organizers have received permission to use the B-Line Trail from the Parks Department. The request was for a Noise Permit only. Staff recommended approval. Miah added this is the first time this event has occurred on the B-Line Trail.

Request for Noise Permit for the Red Kettle Run 5K Walk/Run (Saturday, 12/7)

Zietlow asked about the route. Miah explained they will go up to just a little north of the Switchyard Park, then turn around and come back. Zietlow asked if they would be ringing the bells. Miah stated she had seen no indication that they would have bells.

McNamara made a motion to approve the request for the Noise Permit for the Red Kettle Run 5K Walk/Run on Saturday, December 7th. Zietlow seconded the motion. The motion passed. Noise Permit approved.

Miah assured all that the B-line would be cleared before the Krumpi show up.

Patty Mulvihill, City Legal, explained there has been an Order to Vacate issued on this property which requires a hearing in front of the Board of Public Works. The City does not issue Orders to Vacate very often. The second request is to uphold an Order to Repair that had two deadlines, one expired yesterday (11-18-13), and another will expire in December. Since then staff has met with the property owner's legal representatives. This Order to Repair will be amended, and deadlines will be extended because of the extensive nature of the repairs required. Included in the Board's packet was a modified inspection report that listed the violations involved.

Request to Uphold Order to Vacate Order to Vacate & Repair Unsafe Structure at 2601 N. Walnut Street

Mulvihill stated in order to Uphold the Order to Vacate there has to be a hearing by the Board to have an Order to Vacate go into affect. Mulvihill reported that during three different inspections from both the Fire Department and Housing and Neighborhood Development Department, a borage of code violations, whether they were State Building Code violations, or they were Municipal Code Violations, were found. These ranged from insect infestation to structural issues with the building, to deteriorating ceilings, exposed wiring, and a non working fire alarm system. There were no detectors, alarms or sprinkler system. Because of these violations an Order to Vacate was issued because the property was considered to be an immediate threat to the people living there and to the property itself. Mr. Jones, the property owner, voluntarily agreed to comply with the Order to Vacate. The property has been vacated since the Order was issued. Mr. Jones has assured staff, through his legal representatives, that he will continue to keep the property vacant until such time as the City rescinds the order. The Board is being asked to uphold the Order to Vacate today.

The second part to this request for Board action is the Order to Repair. Mulvihill explained after meeting with Mr. Jones and his representatives, it was made clear there was so much work that needed to be done to the property they could not realistically meet the short deadlines the City had originally provided. The property owner, and legal representatives were asked to come up with a realistic time table for making those repairs. The time line presented is as follows:

Structural issues, predominately the roof, City recommended deadline of February 1, 2014.

Hardwiring needed throughout the property, interior and exterior,

City recommended deadline of March 1, 2014.

Exterior facade, painting, etc. City recommended deadline of March 1, 2014.

Rectifying the Fire suppression system, i.e., fire extinguishers, alarms, smoke detectors - City recommended remediation by April 1, 2014. Mulvihill added this does seem like a long time out, but the building is currently unoccupied.

Room access related to the card entry locking system to make sure each unit has secure doors, City recommended deadline of April 1, 2014

A rear staircase to the property that the City believes is structurally unsound will need a structural engineer to confirm how it will need to be repaired. The City's recommendation deadline is May 1, 2014.

There are also many repairs needed inside the rooms, i.e. fixing carpet, tiles, bathrooms, faucets, and ceiling repair. City recommended deadline, June 1, 2013.

Mulvihill explained to the Board they are being asked to approve and sign the amended Order to Repair with new deadlines listed. These dates were determined by the time frame suggested by the property owner, and legal representatives. Mulvihill added the City realizes this is a large project and it is possible they could realize there is a lot more work and time needed to fix things; therefore, it is possible that Legal will come back before the Board to ask for an extension of time.

Mulvihill concluded by stating the Board is being asked to uphold the Order to Vacate, and approve the amended Order to Repair.

Mike Allen, Counsel for Mr. Jones, the property owner, introduced himself. Mr. Allen stated they are in agreement with the vast majority of what Ms. Mulvihill has stated. He added that the property owner has agreed to vacate the premises without actually admitting to any of the violations alleged, because some the property owner does dispute. However, in order to move forward and accomplish what needs to be done, the property owner has agreed to voluntarily vacate until repairs are made. The scheduling the City has received is based on estimates received from a contractor and how much time they think will be needed to make those repairs. As stated by Ms. Mulvihill it is possible that the property owner may need to come back and ask for additional time if it is found some repairs are taking longer than perceived. It is possible some repairs can be done at the same time and finished earlier. The property owner asks for understanding in these deadlines as he moves forward in this process.

Zietlow asked about the items that are being disputed. Mulvihill stated once repairs are made the City will go out and perform inspections. If there are disagreements about whether or not something should be fixed it will be dealt with at the time. Mulvihill stated she felt this would probably be an entire remodel of the structure.

McNamara stated the original Order to Repair was broken down by Exhibit A and Exhibit B. Exhibit A seemed to be personal safety issues. The first deadline is February 1, 2014 and this structure appears to be a fire hazard. Mulvihill stated after speaking with the Fire Department they pointed out this is mostly a concrete building, not a wood building, and the Fire Department felt comfortable as long as the property remained vacant and secure from people coming in and squatting. Staff has spoken at length to the property owner and his representatives and they understand the need to keep the structure vacant and secured, and it will be monitored. If they need assistance from the Police Department it will certainly be provided.

McNamara stated there were re-inspections mentioned and asked if the premises were vacant at the first inspection. Mulvihill stated the premises were not vacant at any of the three inspections. McNamara asked if the remedy he is hearing is to fix and make it better as opposed to any kind of acknowledgement that this was an on-going life threatening situation. Mulvihill, in response, stated these are two different issues. With respect to the Board the first issue, i.e., declaring it unsafe and getting it rectified is clearly in the Board's purview. The second issue about penalties for ongoing violations, is really not the jurisdiction of the Board of Public Works. That would be up to the City's administration to handle. City staff has talked to the property owner and his representatives about there being possible financial repercussions for some of the violations, but it has been agreed all those issues are going to be tabled until such time as the immediate problem is resolved, which is getting the property fixed and back up to code. While there are two issues at play, for the Board, there is only one, declaring the building unsafe and issuing respective orders. City staff will deal with any types of penalties that may be necessary in the City administration's view.

McNamara asked for the summary of changes in Municipal code that handles the lodging issue as opposed to the residential rental issues, and if both are being dealt with here. Mulvihill stated there are two things of interest, when Title 16 was amended last Fall, there was a new chapter added called "Lodging Establishments." What that says is that all hotels, motels, transient occupancies, have to be maintained according to the building code they were required to be when

constructed. The City will not, as a matter of course, inspect those unless there is a complaint from a citizen or a government official that says something is not right. The Fire Department is required to inspect common areas and banquet facilities under the Indiana Fire Code. The Fire Department preformed an inspection of this property. In performing that inspection they felt there were other violations that could warrant an inspection under Title 16. The Fire Department filed a complaint for possible Title 16 lodging establishment violations. This resulted in the HAND employees performing an inspection of the actual hotel itself, not just common areas, or banquet facilities, but the entire establishment. This is how inspection of individual units came about.

McNamara stated it was the Fire Department's jurisdiction to inspect the common areas, but with the change in Municipal Code, HAND now has some authority which is complaint driven to inspect lodging premises. Mulvihill stated yes, and believed the legislation began January of this year. McNamara thought this change fantastic.

McNamara made a motion to uphold the Order to Vacate the premises at 2601 N. Walnut Street. Zietlow seconded the motion. The motion passed. Order to Vacate upheld.

McNamara made a motion to uphold the amended Order to Repair the Unsafe Structure at 2601 North Walnut Street. Zietlow seconded the motion. The motion passed. Amended Order to Repair upheld.

None

**STAFF REPORTS &
OTHER BUSINESS**

McNamara moved to approve the claims. Zietlow seconded the motion. Claims approved.

**APPROVAL OF
CLAIMS**

McNamara made a motion to adjourn the meeting. Zietlow seconded the motion. The meeting adjourned at 6:06 p.m.

ADJOURNMENT

Accepted by:

Charlotte Zietlow, President

James McNamara, Vice President

Dr. Frank N. Hrisomalos, Secretary

Date:

Attest to:

NOT APPROVED



City of Bloomington
H.A.N.D.

Board of Public Works

Meeting Date: 03 December 2013

Petition Type: Request permission to accept bids to abate

Address: 013-28210-00 Park Ridge Lot 41, commonly known as 207 S. Meadowbrook Dr.

Petitioner: Housing and Neighborhood Development

Inspector: Michael Arnold

Staff Report: 30 July 2013 Issued Order to Repair and Remove
27 August 2013 Order to Repair and remove upheld
10 October 2013 Partial change in ownership
05 November 2013 Granted Notice by Publication
22 November 2013 No Changes to the Property
03 December 2013 Permission to get bids to Abate the property

While sealing the main structure at this location, it was noted that there was a deteriorated accessory structure in the backyard and a wood fence that is in need of repair. In order to remove the structure and repair or remove the fence an approval to bush hog/clear lot as needed to access the shed and the fence is also required.

Since the owner has not responded to the Notice by Publication, HAND is now requesting permission to abate the property as outlined in the Order to Repair and Remove. The next step is to accept bids for the work to be done.

Attachments: Resolution Pictures



City of Bloomington
Housing and Neighborhood Development

Order to Remove and Repair

Amended 14 August 2013

Arvind R. and Judith A. Parkhe
1342 Cobble Creek Cir.
Bloomington IN 47401

Re: 013-28210-00 Park Ridge Lot 41, commonly known as 207 S. Meadowbrook Dr.

Dear Arvind and Judith Parkhe,

The City of Bloomington's Housing and Neighborhood Development Department ("HAND"), under Indiana Code section 36-7-9-5, issues this Order to Remove. When it issues such an order, the City is required to give all substantial property interest holders in the above-referenced property notice of this Order to Remove.

You have until 31 August 2013 to remove the unsafe bath house/shed, to properly repair and secure the fence around the perimeter of the backyard and to eliminate the overgrowth on the entire property commonly known as 013-28210-00 Park Ridge Lot 41, commonly known as 207 S. Meadowbrook Dr., Bloomington IN 47401

A hearing will be held on this matter on **27 August 2013** at 5:30 pm in the Council Chambers of City Hall, located in the Showers Building at 401 North Morton Street, Bloomington, Indiana. You have the right to appear at this hearing and represent yourself, or you can appear with an attorney on your behalf. It is your right to present evidence, cross-examine opposing witnesses and present your own arguments and witnesses at this hearing.

If you fail to remove what is required in accordance with this Order, the following may occur:

1. The City may have to hire a contractor to fulfill the obligations of the Order to Remove.

Subscribed and sworn to before me a Notary Public this 14th day of July 2013.

Janet E Roberts
Name of Notary Public

Janet E Roberts
Signature of Notary Public

Mauroe
Notary Public's County of Residence

11/22/2015
Notary's Commission Expires

CITY OF BLOOMINGTON NOTICE OF ORDINANCE VIOLATION

Date NOV issued: **Amended 14 August 2013**

Person(s) NOV issued to: **Arvind R. and Judith A. Parkhe**

Date violation discovered: **26 July 2013**

Location/address of violation: **013-28210-00 Park Ridge Lot 41; commonly known as 207 S. Meadowbrook Dr.**

Nature of violation/code provision violated: **Bloomington Municipal Code (BMC) § 17.16**

Inspector's Report

During the process of sealing the structure from the 01 February 2013 Orders to Seal, it was noted there was a deteriorated shed/bath house on the back part of the property. On 26 July 2013, a complaint call was received regarding this structure and its accessibility. It was also noted that the fence around the back portion of the property, especially along the north side, is weak and in need of repair. This property has an abandoned pool and the fence and gate need to be secure to prevent entry. The following shall occur for the property to be in compliance:

1. The Monroe County Building Department and the City Planning Department shall be contacted to determine if any permits are required for the work necessary to remove the shed/bath house from the property in order to bring this property and structure into compliance with this Order;
2. The structure described shall be removed as well as all debris associated with this structure, including the main framing of the structure;
3. The fence shall be repaired and all gates properly secured to prevent entry;
4. The overgrowth shall be eliminated from the entire property, including the vegetation growing up through the drive way; and
5. HAND shall be notified when work is completed at this location.

Relevant Code Citations

BMC § 17.16.020 adopts Indiana Code §§ 36-7-9-1—36-7-9-28 by reference. Indiana Code § 36-7-9-4, Unsafe building and unsafe premises described, states in section (a) "For purposes of this chapter, a building or structure, or any part of a building or structure, that is:

- (1) In an impaired structural condition that makes it unsafe to a person or property;
- (2) A fire hazard;

- (3) A hazard to the public health;
- (4) A public nuisance;
- (5) Dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance; or
- (6) Vacant and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance;

is considered an unsafe building.

BMC § 17.16.040 (f) states, in part, "Unsafe building or structure means any building or structure or part of building or structure that is ... in any of the conditions or possesses any of the defects described below, provided that such conditions or defects exist to the extent that life, health, property, or safety of the public or its occupants are endangered:

- (ll) Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure, provided by the building regulations of this city, or of any law or ordinance of this state or city relating to the condition, location, or structure of buildings;
- (nn) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangements, inadequate light, air or sanitation facilities, or otherwise, is determined by the enforcement authority to be unsanitary, unfit for human habitation, or in such condition that it is likely to cause sickness or disease.

207 S. Meadowbrook Dr.
26 July 2013







Board of Public Works Staff Report

Project/Event: Request for Private Parking Space at 915 West 7th Street
Petitioner/Representative: David Bridgewater, Owner 915 West 7th Street
Staff Representative: Justin Wykoff
Agenda Date: December 3, 2013

Report:

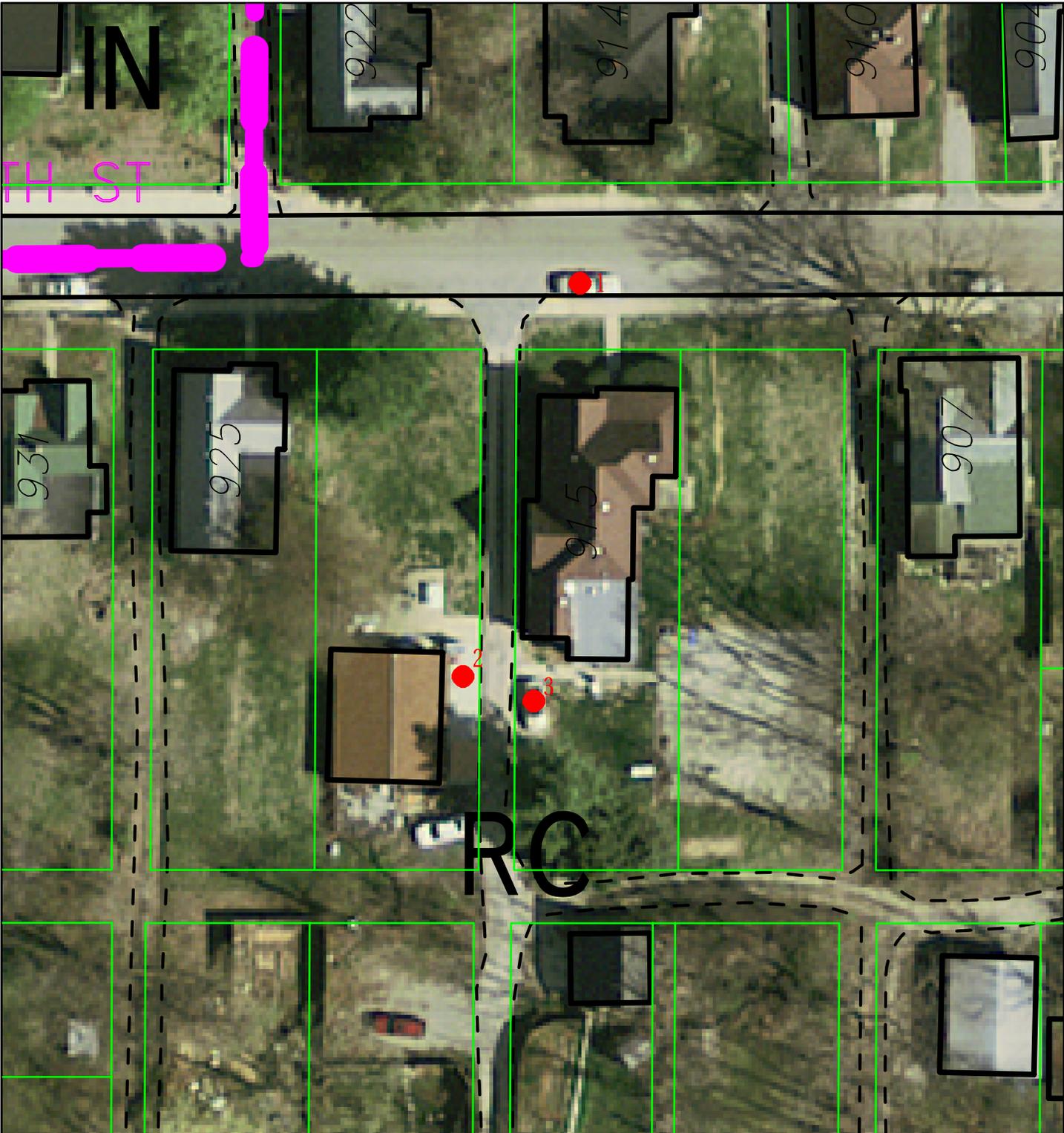
Mr. Bridgewater has requested a 'Private Parking Space' adjacent to his home at 915 West 7th Street. Upon review, Mr. Bridgewater currently has two off street parking spaces within close proximity to the rear access of his residence (see map) where he currently parks.

Per the Bloomington Municipal Code, Mr. Bridgewater is ineligible for an on-street private parking space due to already having adequate parking available.

Recommendation and Supporting Justification: Staff recommends denial of this request based on findings of existing adequate parking per the Bloomington Municipal Code.

Recommend Approval Denial by

A handwritten signature in black ink that reads "Justin D. Wykoff".



Private Parking Space Request

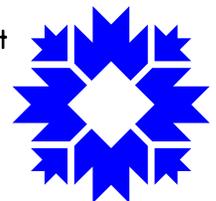
915 West 7th Street

1 = 37 feet, 2 = 24 feet, 3 = 19 feet to nearest access point of 915 West 7th Street

By: wykoffj

26 Nov 13

City of Bloomington
Engineering



Scale: 1" = 40'

For reference only; map information NOT warranted.

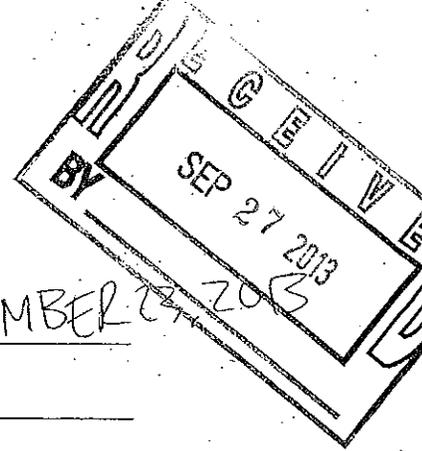
15.36.080 Regulations for permit holders.

The following regulations shall be in effect:

- (1) *A permit shall be issued only when there is a lack of adequate off-street parking at applicant's place of residence. "Adequate off-street parking" shall be defined as space for one automobile, including adequate access to that space.*
- (2) Permits shall be restricted to one per residence.
- (3) Permits shall be valid only for the calendar year in which they are issued.
- (4) Private parking spaces shall be used for passenger vehicles only.
- (5) Private parking spaces shall not be subleased or rented, for consideration or gratuitously, to individuals outside the applicant's household.
- (6) A permit shall not be issued for any space in which there is a parking meter installed by the city.
- (7) The permit holder will purchase and maintain a standard sign as designated by the city.

(Ord. 82-1 § 1 (part), 1982).

APPLICATION FOR PRIVATE PARKING SPACE
ADJACENT TO OWNER'S PROPERTY



NAME DAVID P. BRIGWATERS DATE SEPTEMBER 27, 2013

ADDRESS 915 W. 7TH ST.

PHONE 812-369-0075 (HOME) _____ (WORK)

LICENSE PLATE NUMBER, YEAR AND MAKE OF VEHICLE: RQP 752
2002 LINCOLN TOWN CAR

ANY PERSON RESIDING IN A SINGLE HOUSEHOLD DETACHED DWELLING IN AN AREA OF THE CITY ZONED FOR RESIDENTIAL PURPOSES WHO OWNS AN AUTOMOBILE AND HAS NO OFF STREET PARKING AVAILABLE MAY APPLY TO THE PUBLIC WORKS DEPARTMENT FOR A PERMIT FOR ONE PARKING SPACE ADJACENT TO SUCH RESIDENTIAL PROPERTY. (THIS MEANS THAT IT IS A HOUSE WHICH ONLY ONE FAMILY LIVES IN, NOT AN APARTMENT BUILDING OR A HOUSE THAT HAS BEEN SECTIONED OFF INTO APARTMENTS.) IF I AM APPROVED FOR A PRIVATE PARKING PERMIT, I UNDERSTAND THAT I MAY NOT LEASE DESIGNATED SPACE TO OTHERS.

I swear or affirm that the above information is true and correct and that I meet the above criteria for private parking.

David P. Brigwaters
Signature

I swear or affirm that the above information is true and correct but I do not meet the above criteria. However, I would like to appeal special circumstances, listed on the back; to the Board of Public Works

Signature

Submit this application to the Department of Public Works, Box 100, Bloomington, IN, 47402, with a \$25 application fee (check or money order made payable to the City of Bloomington.) If your request is approved, an additional \$26 (\$13 after July 1) will be due. If your application is denied, your \$25 application fee will be returned to you or you may appeal to the Board of Public Works. If the Board rejects your appeal, your application fee will still be returned to you. An annual permit fee of \$26 will be paid thereafter due by the 15th of February. If you have not paid by February 15, this application and your permit will be considered expired and your sign will be removed.

APPEAL TO THE BOARD OF PUBLIC WORKS



Please list below special circumstances that you feel should entitle you to a private parking space.

Date: 9-23-13

I HAVE A MECHANICAL HEART VALVE & THE STATE ISSUED NO EXPIRATION HANDICAPPED PARKING PERMIT.

FOR CITY USE ONLY

DATE 11 / 13 / 13

APPROVED _____

REJECTED ✓

REVIEWED BY JUSTIN WYKOFF

COMMENTS BY REVIEWER PER BLOOMINGTON MUNICIPAL CODE

15.36.080 ADEQUATE OFF STREET PARKING EXISTS AND A PERMIT SHALL NOT BE ISSUED.

BOARD OF PUBLIC WORKS

DATE OF MEETING _____

APPROVED _____

REJECTED _____

COMMENTS _____









Board of Public Works Staff Report

Project/Event: Noise Permits for 2014 Performing Arts Series

Petitioner/Representative: Bloomington Parks and Recreation

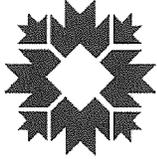
Staff Representative: Miah

Meeting Date: December 3, 2013

Report: Parks and Recreation is requesting a noise permit for their 2014 Performing Arts Series which takes place in several City parks and on the Courthouse lawn. Events include concerts, movies, festivals and special events. Please see the attached list for specific events and locations.

Recommendation and Supporting Justification: These are great events that are free and open to the general public.

Recommend **Approval** **Denial** Miah Michaelson



CITY OF BLOOMINGTON

NOISE PERMIT

City of Bloomington
401 N. Morton St., Suite 120
Bloomington, Indiana 47404
812-349-3418

Application and Permit Information

This is an application for a permit for relief from Chapter 14.09 (Noise Control) of the Bloomington Municipal Code. Any permit granted by the City of Bloomington must contain all conditions upon which said permit shall be effective. The City may prescribe any reasonable conditions or requirements it deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

Once a completed application is submitted to the City, it will be reviewed by the Board of Public Works. If the permit is approved, the holder must still abide all other city, state, and federal laws.

Contact Miah Michaelsen with any questions: (812) 349-3418 or michaelm@bloomington.in.gov

Event and Noise Information

Type or Name of Event:	Performing Arts Series, Movies in the Park, Parks Events				
Location of Event:	Various (see attached)				
Date of Event:	various	Time of Event:	Start:	End:	
Description of Noise:	amplified live music and announcements				
Source of Noise:	<input checked="" type="checkbox"/> Live Band	<input type="checkbox"/> Instrument	<input type="checkbox"/> Loudspeaker	Other:	
Will Noise be Amplified?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No			

Applicant Information

Name:	Greg Jacobs				
Organization:	City of Bloomington Parks & Recreation Department	Title:	Community Events Coordinator		
Physical Address:	401 N Morton St Ste 250, Bloomington, IN 47402				
Email Address:	jacobsg@bloomington.in.gov	Phone Number:	812-349-3725		
Signature:			Date:	11/15/13	

FOR CITY OF BLOOMINGTON USE ONLY

In accordance with Section 14.09.070 of the Bloomington Municipal Code, We, the Board of Public Works, the designee of the Mayor of the City of Bloomington, hereby waives the City Noise Ordinance for the above mentioned event.

BOARD OF PUBLIC WORKS

Charlotte T. Zietlow, President

James McNamara

Date

Dr. Frank N. Hrisomalos

City of Bloomington Parks and Recreation Department Request for noise permits for 2014 list of events

Monroe County Courthouse Concert – 11am – 1pm
5/8/2014

Peoples Park Concerts – 11am – 1pm

4/15/2014	7/15/2014
4/22/2014	7/22/2014
4/29/2014	7/29/2014
5/6/2014	8/5/2014
5/13/2014	8/12/2014
5/20/2014	8/19/2014
5/27/2014	8/26/2014
6/3/2014	9/2/2014
6/10/2014	9/9/2014
6/17/2014	9/16/2014
6/24/2014	9/23/2014
7/1/2014	9/30/2014
7/8/2014	10/7/2014

Waldron, Buskirk and Hill Park Concerts – 5:30 – 9pm
6/5-8/2014 (6-10pm)

6/13/2014
6/20/2014
6/27/2014
7/11/2014
7/18/2014
7/25/2014
8/1/2014
8/8/2014
8/15/2014

Bryan Park Event – 6-9pm Mad Egg Dash – amplified announcements
4/11/2014

Bryan Park Concerts – 5:30 – 8pm

7/13/2014

7/20/2014

7/27/2014

8/3/2014

8/10/2014

8/17/2014

8/24/2014

8/31/2014

9/7/2014

9/14/2014

Bryan Park Movies – 7 – 11:30pm

8/22/2014

8/23/2014

8/29/2014

8/30/2014

9/5/2014

9/6/2014

9/12/2014

9/13/2014

9/19/2014

9/20/2014

Bryan Park Event – 6:30 – 8pm Festival of Ghost Stories – amplified storytelling

10/24/2014

RCA Park event – noon – 5pm Trick or Treat Trail – amplified announcements

10/18/2014

Monroe County Fairgrounds – 10a – 4pm Pumpkin Launch – Amplified music

11/1/2014

Showers Plaza – 7am – 5pm Holiday Market – Amplified music

11/29/2014



Board of Public Works Staff Report

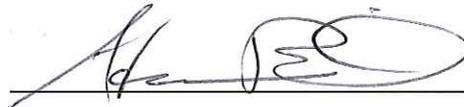
Project/Event: 3rd & Washington Signal Modernization Design Contract
Petitioner/Representative: n/a
Staff Representative: Adrian Reid
Date: 12/3/2013

Report:

Street Department is replacing the signal at 3rd & Washington, and, along with modernizing the signal poles and equipment, sidewalk and curb ramps at the intersection need to be brought into compliance with ADA specifications. This contract in the amount of \$7,995, covers design of curb ramps and location of new poles. The schedule is aggressive because we think we can get a break on pricing from traffic signal contractors by conducting the improvements over the winter.

Recommendation and Supporting Justification: Staff recommends approval this design contract addendum with Eagle Ridge Civil Engineering Services.

Recommend Approval Denial by



PROJECT NAME: Intersection Improvements at 3rd Street & Washington Street

AGREEMENT FOR CONSULTING SERVICES

This Agreement, entered into on this _____ day of _____, 2013, by and between the City of Bloomington Department of Public Works through its Board of Public Works (hereinafter referred to as "Board"), and Eagle Ridge Civil Engineering Services, LLC (hereinafter referred to as "Consultant"),

WITNESSETH:

WHEREAS, the Board wishes to enhance the services it provides by engaging in efforts to improve the intersection of 3rd Street and Washington Street by updating signal equipment, and in conjunction with this work also wishes to improve adjacent sidewalks, curbs and curb ramps, and;

WHEREAS, the Board requires the services of a professional engineering consultant in order to **perform tasks including coordination with various stakeholders including utilities and adjacent property owners, the preparation of intersection plans, specifications and cost estimates, and the completion of right of way documents**, which shall be hereinafter referred to as "the Services", and;

WHEREAS, it is in the public interest that such Services be undertaken and performed; and

WHEREAS, Consultant is willing and able to provide such Services to the Board;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Article 1. Scope of Services: Consultant shall provide required Services for the Board as set forth in Exhibit A, Scope of Services. Exhibit A is attached hereto and incorporated herein by reference as though fully set forth.

Consultant shall diligently pursue its work under this Agreement and shall complete the Services as described in Exhibit A in a timely manner. Consultant shall perform all Services as expeditiously as is consistent with professional skill and care and the orderly progress of the work.

In the performance of Consultant's work, Consultant agrees to maintain such coordination with the Board as may be requested and desirable, including primary coordination with the Public Works Department officials designated by the Board as project coordinator(s).

Consultant agrees that any information or documents, including digital GIS information, supplied by the Board pursuant to Article 3, below, shall be used by Consultant for this project only, and shall not be reused or reassigned for any purpose.

Article 2. Standard of Care: Consultant shall be responsible for completion of the Services in a manner to meet high professional standards consistent with the Consultant's profession in the location and at the time of the rendering of the services. The City Engineer shall be the sole judge of the adequacy of Consultant's work in meeting such standards. However, the City Engineer shall not unreasonably withhold its approval as to the adequacy of such performance.

Article 3. Responsibilities of the Board: The Board shall have the following responsibilities under this Agreement and shall meet these responsibilities in a timely manner so as not to delay the orderly progress of the Services, and Consultant shall be entitled to rely upon the accuracy and completeness of information supplied by the Board:

A. Information/Reports

Provide Consultant with reports, studies, site characterizations, regulatory decisions and similar information relating to the Services that Consultant may rely upon without independent verification unless specifically identified as requiring such verification.

B. Representative

The Board hereby designates Justin Wykoff, Manager of Engineering, Department of Public Works ("Wykoff") to serve as the Board's representative for the project. Wykoff shall have the authority to transmit instructions, receive information, interpret and define the Board's requirements and make decisions with respect to the Services.

C. Decisions

Provide all criteria and full information as to Board's requirements for the Services and make timely decisions on matters relating to the Services.

Article 4. Compensation: The Board shall pay Consultant a fee based on the payment schedule set forth in Exhibit B, Schedule of Compensation. Exhibit B is attached hereto and incorporated herein by reference as though fully set forth. The total compensation paid, including fees and expenses, shall not exceed the amount of **Seven Thousand Nine Hundred Ninety Five (\$7,995.00)**. This sum includes salaries, payroll taxes and insurance, employee fringe benefits, general overhead costs, profit, and project related expenses. Payments will be made according to Consultant's monthly progress statements for each phase and shall be invoiced for the work completed only.

Additional assignments or additional services not set forth in Exhibit A, changes in work, or incurred expenses in excess of the rates set forth in Exhibit B must be authorized in writing by the Board or the Board's designated representative prior to such work being performed, or expenses incurred. The Board shall not make payment for any unauthorized work or expenses. Claims for additional work or expenses must be submitted within thirty (30) days of the completion of the work or expenditure, and must be accompanied by a statement of itemized costs.

1. Timing and Format for Billing:

Invoices shall be submitted monthly for Services completed at the time of billing and are due upon receipt. Invoices shall be considered past due if not paid within thirty (30) calendar days of the due date. Such invoices shall be prepared in a form supported by documentation as the Board may reasonably require.

Tasks shall be invoiced separately, either as separate lines on a single invoice, or on separate invoices at the Board's direction.

2. Billing Records:

Consultant shall maintain accounting records of its costs in accordance with generally accepted accounting practices. Access to such records will be provided during normal business hours with reasonable notice during the term of this Agreement and for 3 years after completion.

Article 5. Appropriation of Funds: Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the Board are at any time not forthcoming or are insufficient, through failure of any entity, including the Board itself, to appropriate funds or otherwise, then the Board shall have the right to terminate this Agreement without penalty as set forth in Article 7 herein.

Article 6. Schedule: Consultant shall perform the Services according to the schedule set forth in Exhibit C, Schedule. Exhibit C is attached hereto and incorporated herein by reference as though fully set forth. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

Article 7. Termination: In the event of a party's substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the Agreement upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

The Board may terminate or suspend performance of this Agreement at the Board's prerogative at any time upon written notice to the Consultant. The Consultant shall terminate or suspend performance of the Services on a schedule acceptable to the Board, and the Board shall pay the Consultant for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to the Consultant's compensation and the schedule of services.

Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by Consultant in connection with this Agreement shall become the property of the Board, as set forth in Article 11 herein.

Article 8. Identity of Consultant: Consultant acknowledges that one of the primary reasons for its selection by the Board to perform the duties described in this Agreement is the qualification and experience of the principal personnel whom Consultant has represented will be responsible

there for. Consultant thus agrees that the work to be done pursuant to this Agreement shall be performed by the principal personnel described in Exhibit D, Principal Personnel, and such other personnel in the employ under contract or under the supervision of Consultant. Exhibit D is attached hereto and incorporated herein by reference as though fully set forth. The Board reserves the right to reject any of the Consultant's personnel or proposed outside professional subconsultants, and the Board reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 9. Cost Estimates: All estimates of construction cost to be provided by Consultant shall represent the best judgment of Consultant based upon the information currently available and upon Consultant's background and experience with respect to projects of this nature. It is recognized, however, that neither Consultant nor the Board has control over the cost of labor, materials or equipment, over contractors' method of determining costs for services, or over competitive bidding, market or negotiating conditions. Accordingly, Consultant cannot and does not warrant or represent that the proposals or construction bids received will not vary from the cost estimates provided pursuant to this Agreement.

Article 10. Reuse of Documents: All documents, including but not limited to, drawings, specifications and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to this project. They are not intended or represented to be suitable for reuse by the Board or others on modifications or extensions of this project or on any other project. The Board may elect to reuse such documents; however any reuse without prior written verification or adaptation by Consultant for the specific purpose intended will be at the Board's sole risk and without liability or legal exposure to the Consultant. The Board shall indemnify and hold harmless the Consultant against all Judgments, losses, damages, injuries and expenses arising out of or resulting from such reuse. Any verification or adaptation of documents by the Consultant will entitle the Consultant to additional compensation at rates to be agreed upon by the Board and the Consultant.

Article 11. Ownership of Documents and Intellectual Property: All documents, drawings and specifications, including digital format files, prepared by Consultant and furnished to the Board as part of the Services shall become the property of the Board. Consultant shall retain its ownership rights in its design, drawing details, specifications, data bases, computer software and other proprietary property. Intellectual property developed, utilized or modified in the performance of the Services shall remain the property of the Consultant.

Article 12. Independent Contractor Status: During the entire term of this Agreement, Consultant shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the Board.

Article 13. Indemnification: To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the City of Bloomington, the Board, and the officers, agents and employees of the City and the Board from any and all claims, demands, damages, costs, expenses or other liability arising out of bodily injury or property damage (collectively "Claims") but only to the extent that such Claims are found on a comparative basis of fault to be caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, employees, or subconsultants in the performance of services under this Agreement.

Article 14. Insurance: During the performance of any and all Services under this Agreement, Consultant shall maintain the following insurance in full force and effect:

- a. General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.
- b. Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- c. Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum combined single limit of \$1,000,000 for each occurrence, and \$2,000,000 in the aggregate.
- d. Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code.

All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Board, and the officers, employees and agents of each shall be named as additional insured under both the General Liability Insurance and Automobile Liability Insurance policies, and the policies shall stipulate that the insurance will operate as primary insurance and that no other insurance effected by the City will be called upon to contribute to a loss hereunder.

Consultant shall provide evidence of each insurance policy to the Board prior to the commencement of work under the Agreement. Approval of the insurance by the Board shall not relieve or decrease the extent to which Consultant may be held responsible for payment of damages resulting from service or operations performed pursuant to this Agreement. If Consultant fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the Board required proof that the insurance has been procured and is in force and paid for, Board shall have the right at Board's election to forthwith terminate the Agreement.

Article 15. Conflict of Interest: Consultant declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services required under this Agreement. The Consultant agrees that no person having any such interest shall be employed in the performance of this Agreement.

Article 16. Waiver: No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

Article 17. Severability: The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken

provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Article 18. Assignment: Neither the Board nor the Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party; provided, however, Consultant may assign its rights to payment without the Board's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

Article 19. Third Party Rights: Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Board and the Consultant.

Article 20. Governing Law and Venue: This Agreement shall be governed by the laws of the State of Indiana. Venue of any disputes arising under this Agreement shall be in the Monroe County Circuit Court, Monroe County, Indiana.

Article 21. Non-Discrimination: Consultant shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non- discrimination in employment.

Article 22. Compliance with Laws: In performing the Services under this Agreement, Consultant shall comply with any and all applicable federal, state and local statutes, ordinances, plans, and regulations, including any and all regulations for protection of the environment. When appropriate, Consultant shall advise Board of any and all applicable regulations and approvals required by the Federal Environmental Management Agency (FEMA). Where such statutes, ordinances, plans or regulations of any public authority having any jurisdiction on the project are in conflict, Consultant shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the Board in a timely manner of the conflict, attempts of resolution, and planned course of action.

Article 23. Notices: Any notice required by this Agreement shall be made in writing to the addresses specified below:

Board:

City of Bloomington
Department of Public Works
City Hall at Showers
401 N. Morton Street
Bloomington, IN 47401

Consultant:

Eagle Ridge Civil Engineering Services, LLC
1321 Laurel Oak Drive
Avon, IN 46123

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Board and the Consultant.

Article 24. Intent to be Bound: The Board and the Consultant each bind itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors,

administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

Article 25. Integration and Modification: This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Board and the Consultant. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement.

This Agreement may be modified only by a written amendment signed by both parties hereto.

Article 26. Verification of New Employee' Employment Status: Consultant is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists.) Consultant shall sign an affidavit, attached as Exhibit E, affirming that Consultant does not knowingly employ an unauthorized alien. "Unauthorized alien" is defined at 8 U.S. Code 1324a(h)(3) as a person who is not a U.S. citizen or U.S. national and is not lawfully admitted for permanent residence or authorized to work in the U.S. under 8U.S. Code Chapter 12 or by the U.S. Attorney General.

Consultant and any of its subcontractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the Consultant or any of its subcontractors learns is an unauthorized alien. If the Commission obtains information that the Consultant or any of its subcontractors employs or retains an employee who is an unauthorized alien, the Commission shall notify the Consultant or its subcontractors of the Agreement violation and require that the violation be remedied within thirty (30) days of the date of notice. If the Consultant or any of its subcontractors verify the work eligibility status of the employee in question through the E-Verify program, there is a rebuttable presumption that the Consultant or its subcontractor did not knowingly employ an unauthorized alien. If the Consultant or its subcontractor fails to remedy the violation within the thirty (30) day period, the Commission shall terminate the Agreement, unless the Commission determines that terminating the Agreement would be detrimental to the public interest or public property, in which case the Commission may allow the Agreement to remain in effect until the Commission procures a new Consultant. If the Commission terminated the Agreement, the Consultant or its subcontractor is liable to the Commission for actual damages.

Consultant shall require any subcontractors performing work under this Agreement to certify to the Consultant that, at the time of certification, the subcontractor does not knowingly employ or contract with an unauthorized alien and the subcontractor has enrolled in and is participating in the E-Verify program. Consultant shall maintain on file all subcontractors' certifications throughout the term of this Agreement with the Commission.

Exhibit E is attached hereto and incorporated herein by reference as though fully set forth.

Article 27. No Investment in Iran: Consultant is required to certify that it does not engage in investment activities in Iran as more particularly described in Indiana Code 5-22-16.5. (This is not required if federal law ceases to authorize the adoption and enforcement of this statute.) Consultant shall sign an affidavit, attached as Exhibit F, affirming that Consultant is not engaged in said investment activities.

Exhibit F is attached hereto and incorporated herein by reference as though fully set forth.

This Agreement may be modified only by a written amendment signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

Owner

City of Bloomington
Board of Public Works

Consultant

Eagle Ridge Civil Engineering Services, LLC

By:

Charlotte Zietlow
President

Brock Ridgway, P.E.
Managing Member

By:

Mark Kruzan,
Mayor

EXHIBIT A SCOPE OF ENGINEERING SERVICES

GENERAL

The following scope of services describes the tasks and assumptions that apply to the work of Eagle Ridge Civil Engineering Services, LLC (Eagle Ridge) to prepare a design for improvements to the intersection of 3rd Street and Washington Street, including modifications to the sidewalks, curbs, curb ramps in conjunction with the upgrading of signal equipment.

The estimated Engineering Fee and Schedule of Services are provided in Exhibits B and C, respectively. Tasks to be performed by Consultant are identified by bullets (◆), the responsibilities of City are designated by statements beginning with "City". Information regarding assumptions or conditions of this scope is typically in italicized text.

- ~~◆ Conduct Topographic Survey and Mapping of the project site.~~
- ~~◆ Conduct Right of Way Research to determine apparent location of existing property lines and right of way.~~
- ◆ Conduct Site Reconnaissance, Review Survey and prepare a picture log.
- ◆ Prepare Intersection Design and Intersection Layout Drawing, including the following elements:
 - Proposed signal strain pole locations.
 - Assume existing poles must remain in service during placement
 - Position poles based on requirements for distance to pedestrian push buttons, visibility of pedestrian walk indicators, and to minimize obstruction to the pedestrian's traveled way.
 - Proposed controller location
 - Proposed curb layouts including potential bumpouts, if applicable.
 - Proposed curb ramp layouts and crosswalks
 - Proposed sidewalks, including modifications, removals, replacements.
 - Design Proposed Right of Way or Easements needed (*plat exhibits and legal descriptions and/or staking will be conducted by the City under a separate contract, if needed*)
- ◆ Prepare Construction Plans on 24"x36" sheets - Plan set to include:
 - Title Sheet & Index
 - Utility Contacts, Typical Construction Details
 - Intersection Plan
- ◆ Coordinate with CBU for design review and concurrence (at project kickoff and at 50% Design).
- ◆ In early coordination to utilities, request utility information including mapping available along with notification of any expected utility upgrade work they are planning in the project area.
- ◆ Compare utility-provided information with survey data.
- ◆ Minimize the impacts to utilities where possible while still meeting CITY's design goals. Coordinate with utilities to identify potential conflicts and solutions to minimize impacts.
- ◆ Send Utilities a copy of the Preliminary Plans (50%), and invite utilities to the Field Check & Utility Coordination Meeting if necessary. Ask them to verify their facilities are accurately shown. Consider input at the Field Check in the development of the plans.
- ◆ Conduct field check and other coordination meetings with IU and DPW as needed.
- ◆ If requested, participate in a meeting with business owners to discuss changes in front of businesses.
- ◆ Prepare an itemized proposal and construction cost estimate for the sidewalk, curb and curb ramp work

***Intersection Improvements at 3rd Street & Washington Street
City of Bloomington***

- ◆ Prepare a technical specification set for the work.
- ◆ Attend Prebid and Preconstruction Meetings

CITY Provide GIS maps of the project area. Include edges of pavement, contours with elevations, property, parcel and right-of-way lines, property owners, city-owned utilities, sidewalks, addresses, facility names, building outlines, and aerial photography.

ASSUMPTIONS:

Environmental Hazards

No known environmental hazard or contaminated areas are expected to exist on the project site. If field investigations reveal or develop a suspicion of hazardous material condition, then the appropriate step is to perform an environmental Phase I or Phase II survey. This work has not been included in the Agreement.

Land Rights / Rights of Entry

It is assumed that the study area will be accessible to Eagle Ridge given a reasonable effort to notify property owners of the nature and timing of the work.

Right of Way Engineering

It is assumed the City will conduct its own right-of-way acquisition activities, including right of way management, and acquisition related services. City will also contract separately for the preparation of any plat exhibits and legal descriptions needed.

Construction Inspection

This scope does not include construction observation services.

City Owned Utilities Design

Per initial coordination with CBU, there are no specific utility improvements that they are requesting be included in this project. The scope therefore does not include work on sanitary sewers or watermains.

Retaining Walls

No retaining wall design is believed to be needed for the project.

City to Provide Survey and Right of Way Mapping

City intends to enter into a separate agreement to have survey and mapping prepared for this project.

EXHIBIT B

COMPENSATION

This task is to be conducted on an Hourly basis with an agreed Maximum Cost of **\$7,995**. In the event that additional services are needed, additional compensation will be determined using the following rates:

Senior Civil Engineer	\$110/hour
Civil Engineer	\$85/hour
CADD Technician	\$60/hour
Direct Expenses	At Cost
Subconsultants	Cost+5%*
Mileage Reimbursement	Current IRS Rate

The attached spreadsheet details the fee estimate by task.

*Intersection Improvements at 3rd Street & Washington Street
City of Bloomington*

EXHIBIT C

ESTIMATED PROJECT SCHEDULE

MILESTONE	ESTIMATED DATE	COMMENTS
Notice to Proceed	December 4, 2013	
Survey and Mapping Complete		By City
Preliminary Plans	December 20, 2013	
Field Check and Utility Coordination Meeting	January 10, 2014	
Stakeholder Meetings	January 2014	
Draft Final Plans	February 1, 2014	
Right of Way Acquisition	January-February 2014	Activity by City
Final Plans (100%)	February 2014	
Bidding by City	March 2014	
Construction	April-May 2014	

*Intersection Improvements at 3rd Street & Washington Street
City of Bloomington*

EXHIBIT D
KEY PERSONNEL

CONSULTANT will provide the following key team members to provide the services described in Exhibit A. Key team members may not be changed without the approval of the City.

<u>Position / Responsibility</u>	<u>Name</u>
Senior Civil Engineer/Project Manager	Brock Ridgway, P.E.
Civil Engineer/Project Engineer	Michael Tanis, P.E.



Board of Public Works Staff Report

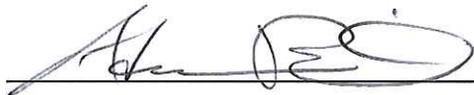
Project/Event: 17th & Arlington LPA-Consultant Contract for Construction Inspection Services
Petitioner/Representative: n/a
Staff Representative: Adrian Reid
Date: 12/3/2013

Report:

The 17th & Arlington Roundabout project is scheduled for a bid letting through INDOT for February 5, 2014, for construction of the project in 2014. We have selected American Structurepoint for construction inspection services through the INDOT consultant selection process. We are requesting approval of this contract in an amount not to exceed \$473,518.96, which is based on a fixed percentage of the construction estimate. Construction of the roundabout is programmed in the MPO TIP for STP funding in the 2014 & 2015 fiscal years.

Recommendation and Supporting Justification: Staff recommends approval this construction inspection contract with American Structurepoint.

Recommend Approval Denial by



LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of _____, 20____ ("Effective Date") by and between City of Bloomington, Indiana, acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and American Structurepoint, Inc. ("the CONSULTANT"), a corporation organized under the laws of the State of Indiana.

Des. No.: 0900216, R-35641

Project Description: Intersection of 17th Street, Monroe Street, and Arlington Road

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 October 13, 2014. 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.

SECTION IV COMPENSATION. The LPA shall pay the CONSULTANT for the Services performed under this Contract as set forth in Appendix "D" which is herein attached to and made an integral part of this Contract. The maximum amount payable under this Contract shall not exceed \$ 473,518.96.

SECTION V NOTICE TO PROCEED AND SCHEDULE. The CONSULTANT shall begin the work to be performed under this Contract only upon receipt of the written notice to proceed from the LPA, and shall deliver the work to the LPA in accordance with the schedule contained in Appendix "C" which is herein attached to and made an integral part of this Contract.

SECTION VI GENERAL PROVISIONS

1. **Access to Records.** The CONSULTANT and any SUB-CONSULTANTS shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by the LPA, INDOT and/or the Federal Highway Administration (“FHWA”) or its authorized representative, and copies thereof shall be furnished free of charge, if requested by the LPA, INDOT, and/or FHWA. The CONSULTANT agrees that, upon request by any agency participating in federally-assisted programs with whom the CONSULTANT has contracted or seeks to contract, the CONSULTANT may release or make available to the agency any working papers from an audit performed by the LPA, INDOT and/or FHWA of the CONSULTANT and its SUB-CONSULTANTS in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

2. **Assignment; Successors.**
 - A. The CONSULTANT binds its successors and assignees to all the terms and conditions of this Contract. The CONSULTANT shall not assign or subcontract the whole or any part of this Contract without the LPA’s prior written consent, except that the CONSULTANT may assign its right to receive payments to such third parties as the CONSULTANT may desire without the prior written consent of the LPA, provided that the CONSULTANT gives written notice (including evidence of such assignment) to the LPA thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

 - B. Any substitution of SUB-CONSULTANTS must first be approved and receive written authorization from the LPA. Any substitution or termination of a Disadvantaged Business Enterprise (“DBE”) SUB-CONSULTANT must first be approved and receive written authorization from the LPA and INDOT’s Economic Opportunity Division Director.

3. **Audit.** The CONSULTANT acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with 48 CFR part 31 and audit guidelines specified by the State and/or in accordance with audit requirements specified elsewhere in this Contract.

4. **Authority to Bind Consultant.** The CONSULTANT warrants that it has the necessary authority to enter into this Contract. The signatory for the CONSULTANT represents that he/she has been duly authorized to execute this Contract on behalf of the CONSULTANT and has obtained all necessary or applicable approval to make this Contract fully binding upon the CONSULTANT when his/her signature is affixed hereto.

5. **Certification for Federal-Aid Contracts Lobbying Activities.**
 - A. The CONSULTANT certifies, by signing and submitting this Contract, to the best of its 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, 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.

- ii. *Professional Licensing Standards.* The CONSULTANT, its employees and SUBCONSULTANTS have complied with and shall continue to comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the CONSULTANT pursuant to this Contract.

- iii. *Work Specific Standards.* The CONSULTANT and its SUB-CONSULTANTS, if any, have obtained, will obtain and/or will maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the LPA.
 - iv. *Secretary of State Registration.* If the CONSULTANT is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
 - v. *Debarment and Suspension of CONSULTANT.* Neither the CONSULTANT nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State and will immediately notify the LPA of any such actions. The term "principal" for purposes of this Contract 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 the CONSULTANT or who has managerial or supervisory responsibilities for the Services.
 - vi. *Debarment and Suspension of any SUB-CONSULTANTS.* The CONSULTANT's SUB-CONSULTANTS are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The CONSULTANT shall be solely responsible for any recoupment, penalties or costs that might arise from the use of a suspended or debarred SUBCONSULTANT. The CONSULTANT shall immediately notify the LPA and INDOT if any SUB-CONSULTANT becomes debarred or suspended, and shall, at the LPA's request, take all steps required by the LPA to terminate its contractual relationship with the SUB-CONSULTANT for work to be performed under this Contract.
- C. *Violations.* In addition to any other remedies at law or in equity, upon CONSULTANT'S violation of any of Section 7(A) through 7(B), the LPA may, at its sole discretion, do any one or more of the following:
- i. terminate this Contract; or
 - ii. delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.
- D. *Disputes.* If a dispute exists as to the CONSULTANT's liability or guilt in any action initiated by the LPA, and the LPA decides to delay, withhold, or deny work to the CONSULTANT, the CONSULTANT may request that it be allowed to continue, or receive work, without delay. The CONSULTANT must submit, in writing, a request for review to the LPA. A determination by the LPA under this Section 7.D shall be final and binding on the parties and not subject to administrative review. Any payments the LPA may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.
8. **Condition of Payment.** The CONSULTANT must perform all Services under this Contract to the LPA's reasonable satisfaction, as determined at the discretion of the LPA and in accordance with all 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 amendments. Any changes to a DBE firm listed in the Affirmative Action Certification must be requested in writing and receive prior approval by the LPA and INDOT's Economic Opportunity Division Director. After this Contract is completed and if a DBE SUB-CONSULTANT has performed services thereon, the CONSULTANT must complete, and return, a Disadvantaged Business Enterprise Utilization Affidavit ("DBE-3 Form") to INDOT's

Economic Opportunity Division Director. The DBE-3 Form requires certification by the CONSULTANT AND DBE SUB-CONSULTANT that the committed contract amounts have been paid and received.

12. Non-Discrimination.

- A. Pursuant to I.C. 22-9-1-10, the Civil Rights Act of 1964, and the Americans with Disabilities Act, the CONSULTANT shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Contract, 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, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Contract. Acceptance of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
- B. The CONSULTANT understands that the LPA is a recipient of federal funds. Pursuant to that understanding, the CONSULTANT agrees that if the CONSULTANT employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CONSULTANT will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CONSULTANT shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's Title VI enforcement shall include the following additional grounds: sex, ancestry, age, income status, religion and disability.)

- C. The CONSULTANT shall not discriminate in its selection and retention of contractors, including without limitation, those services retained for, or incidental to, construction, planning, research, engineering, property management, and fee contracts and other commitments with persons for services and expenses incidental to the acquisitions of right-of-way.
- D. The CONSULTANT shall not modify the Project in such a manner as to require, on the basis of race, color or national origin, the relocation of any persons. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, income status, religion and disability).
- E. The CONSULTANT shall not modify the Project in such a manner as to deny reasonable access to and use thereof to any persons on the basis of race, color or national origin. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, income status, religion and disability.)
- F. The CONSULTANT shall neither allow discrimination by contractors in their selection and retention of subcontractors, lessors and/or material suppliers, nor allow discrimination by their 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.

The CONSULTANT shall take such action with respect to any SUBCONSULTANT procurement as the LPA or INDOT may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a SUBCONSULTANT or supplier as a result of such direction, the CONSULTANT may request the LPA to enter into such litigation to protect the interests of the LPA, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

13. Disputes.

- A. Should any disputes arise with respect to this Contract, the CONSULTANT and the LPA agree to act promptly and in good faith to resolve such disputes in accordance with this Section 13. Time is of the essence in the resolution of disputes.
- B. The CONSULTANT agrees that the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the CONSULTANT fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs (including reasonable attorneys' fees and expenses) incurred by the LPA or the CONSULTANT as a result of such failure to proceed shall be borne by the CONSULTANT.
- C. If a party to this Contract is not satisfied with the progress toward resolving a dispute, the party must notify the other party of this dissatisfaction in writing. Upon written notice, the parties have ten (10) business days, unless the parties mutually agree in writing to extend this period, following the written notification to resolve the dispute. If the dispute is not resolved within ten (10) business days, a dissatisfied party may submit the dispute in writing to initiate negotiations to resolve the dispute. The LPA may withhold payments on disputed items pending resolution of the dispute.

14. Drug-Free Workplace Certification.

- A. The CONSULTANT hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it will give written notice to the LPA within ten (10) days after receiving actual notice that an employee of the CONSULTANT in the State of Indiana has been convicted of a criminal drug violation occurring in the CONSULTANT's workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Contract payments, termination of this Contract and/or debarment of contracting opportunities with the LPA.
- B. The CONSULTANT certifies and agrees that it will provide a drug-free workplace by:
 - i. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CONSULTANT's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - ii. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CONSULTANT's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

- 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.

17. **Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and the suit, if any, must be brought in the State of Indiana. The CONSULTANT consents to the jurisdiction of and to venue in any court of competent jurisdiction in the State of Indiana.
18. **Liability.** If the CONSULTANT or any of its SUB-CONSULTANTS fail to comply with any federal requirement which results in the LPA's repayment of federal funds to INDOT the CONSULTANT shall be responsible to the LPA, for repayment of such costs to the extent such costs are caused by the CONSULTANT and/or its SUB-CONSULTANTS.
19. **Indemnification.** The CONSULTANT agrees to indemnify the LPA, its officials, and employees, and to hold each of them harmless, from claims and suits including court costs, attorney's fees, and other expenses caused by any negligent act, error or omission of, or by any recklessness or willful misconduct by, the CONSULTANT and/or its SUB-CONSULTANTS, if any, under this Contract. The LPA shall not provide such indemnification to the CONSULTANT.
20. **Independent Contractor.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents or employees of the other party. The CONSULTANT shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.
21. **Insurance - Liability for Damages.**
- A. The CONSULTANT shall be responsible for the accuracy of the Services performed under this Contract and shall promptly make necessary revisions or corrections resulting from its negligence, errors or omissions without any additional compensation from the LPA. Acceptance of the Services by the LPA shall not relieve the CONSULTANT of responsibility for subsequent correction of its negligent act, error or omission or for clarification of ambiguities. The CONSULTANT shall have no liability for the errors or deficiencies in designs, drawings, specifications or other services furnished to the CONSULTANT by the LPA on which the Consultant has reasonably relied, provided that the foregoing shall not relieve the CONSULTANT from any liability from the CONSULTANT'S failure to fulfill its obligations under this Contract, to exercise its professional responsibilities to the LPA, or to notify the LPA of any errors or deficiencies which the CONSULTANT knew or should have known existed.
- B. During construction or any phase of work performed by others based on Services provided by the CONSULTANT, the CONSULTANT shall confer with the LPA when necessary for the purpose of interpreting the information, and/or to correct any negligent act, error or omission. The CONSULTANT shall prepare any plans or data needed to correct the negligent act, error or omission without additional compensation, even though final payment may have been received by the CONSULTANT. The CONSULTANT shall give immediate attention to these changes for a minimum of delay to the project.
- C. The CONSULTANT shall be responsible for damages including but not limited to direct and indirect damages incurred by the LPA as a result of any negligent act, error or omission of the CONSULTANT, and for the LPA's losses or costs to repair or remedy construction. Acceptance of the Services by the LPA shall not relieve the CONSULTANT of responsibility for subsequent correction.

- 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 the LPA 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:

1. Contractual Liability coverage shall be included.
2. The policy shall provide thirty (30) days notice of cancellation to the LPA.
3. The CONSULTANT shall name the LPA as an additional insured.

IV. Watercraft Liability (When Applicable)

1. When necessary to use watercraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT, or any SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the watercraft shall carry watercraft liability insurance in the amount of \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Protection & Indemnity where applicable. Coverage shall apply to owned, non-owned, and hired watercraft.
2. If the maritime laws apply to any work to be performed by the CONSULTANT under the terms of the agreement, the following coverage shall be provided:
 - a. United States Longshoremen & Harbor workers
 - b. Maritime Coverage - Jones Act
3. The policy shall provide thirty (30) days notice of cancellation to the LPA.
4. The CONSULTANT or SUB-CONSULTANT shall name the LPA as an additional insured.

V. Aircraft Liability (When Applicable)

1. When necessary to use aircraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT or SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the aircraft shall carry aircraft liability insurance in the amount of \$5,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Passenger Liability. Coverage shall apply to owned, non-owned and hired aircraft.
2. The policy shall provide thirty (30) days notice of cancellation to the LPA.
3. The CONSULTANT or SUB-CONSULTANT shall name the LPA as an additional insured.

22. **Merger and Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

23. **Notice to Parties:** Any notice, request, consent or communication (collectively a "Notice") under this Agreement shall be effective only if it is in writing and (a) personally delivered; (b) sent by certified or registered mail, return receipt requested, postage prepaid; or (c) sent by a nationally recognized overnight delivery service, with delivery confirmed and costs of delivery being prepaid, addressed as follows:

Notices to the LPA shall be sent to:

Adrian Reid, PE
City of Bloomington
401 North Morton Street, Suite 130
Bloomington, Indiana 47402

Notices to the CONSULTANT shall be sent to:

Willis Conner, President
American Structurepoint, Inc.
7260 Shadeland Station
Indianapolis, Indiana 46256

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.

28. **Pollution Control Requirements.** If this Contract is for \$100,000 or more, the CONSULTANT:
- i. Stipulates that any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
 - ii. Agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and
 - iii. Stipulates that, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the Federal Highway Administration of the receipt of any knowledge indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.

29. **Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

30. **Status of Claims.** The CONSULTANT shall give prompt written notice to the LPA any claims made for damages against the CONSULTANT resulting from Services performed under this Contract and shall be responsible for keeping the LPA currently advised as to the status of such claims. The CONSULTANT shall send notice of claims related to work under this Contract to:

Adrian Reid, PE
City of Bloomington
401 North Morton Street, Suite 130
Bloomington, Indiana 47402

31. **Sub-consultant Acknowledgement.** The CONSULTANT agrees and represents and warrants to the LPA, that the CONSULTANT will obtain signed Sub-consultant Acknowledgement forms, from all SUB-CONSULTANTS providing Services under this Contract or to be compensated for Services through this Contract. The CONSULTANT agrees to provide signed originals of the Sub-consultant Acknowledgement form(s) to the LPA for approval prior to performance of the Services by any SUB-CONSULTANT.

32. **Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification or Amendment thereof.

33. **Taxes.** The LPA will not be responsible for any taxes levied on the CONSULTANT as a result of this Contract.

34. **Termination for Convenience.**

- A. The LPA may terminate, in whole or in part, whenever, for any reason, when the LPA determines that such termination is in its best interests. Termination or partial termination of Services shall be effected by delivery to the CONSULTANT of a Termination Notice at least fifteen (15) days prior to the termination effective date, specifying the extent to which performance of Services under such termination becomes effective. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of termination. The LPA will not be liable for Services performed after the effective date of termination.
- B. If the LPA terminates or partially terminates this Contract for any reason regardless of whether it is for convenience or for default, then and in such event, all data, reports, drawings, plans, sketches, sections and models, all specifications, estimates, measurements and data pertaining to the project, prepared under the terms or in fulfillment of this Contract, shall be delivered

within ten (10) days to the LPA. In the event of the failure by the CONSULTANT to make such delivery upon demand, the CONSULTANT shall pay to the LPA any damage (including costs and reasonable attorneys' fees and expenses) it may sustain by reason thereof.

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.

36. **Waiver of Rights.** No rights conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver or excuse is approved in writing and signed by the party claimed to have waived such right. Neither the LPA's review, approval or acceptance of, nor payment for, the Services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CONSULTANT shall be and remain liable to the LPA in accordance with applicable law for all damages to the LPA caused by the CONSULTANT's negligent performance of any of the Services furnished under this Contract.
37. **Work Standards/Conflicts of Interest.** The CONSULTANT shall understand and utilize all relevant INDOT standards including, but not limited to, the most current version of the Indiana Department of Transportation Design Manual, where applicable, and other appropriate materials and shall perform all Services in accordance with the standards of care, skill and diligence required in Appendix "A" or, if not set forth therein, ordinarily exercised by competent professionals doing work of a similar nature.
38. **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the parties hereto. Other than the indemnity rights under this Contract, nothing contained in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto) any rights, benefits or remedies of any kind or character whatsoever.
39. **No Investment in Iran.** As required by IC 5-22-16.5, the CONSULTANT certifies that the CONSULTANT is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Contract and denial of future state contracts, as well as an imposition of a civil penalty.
40. **Assignment of Antitrust Claims.** The CONSULTANT assigns to the State all right, title and interest in and to any claims the CONSULTANT now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

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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
American Structurepoint, Inc.

LOCAL PUBLIC AGENCY
City of Bloomington

Signature

Gregory L. Henneke, Executive VP
(Print or type name and title)

Signature

Charlotte Zietlow, President
(Print or type name and title)

Signature

James McNamera, Vice President
(Print or type name and title)

Signature

Dr. Frank N. Hrisomalos, Secretary
(Print or type name and title)

Signature

Mark Kruzan, Mayor
(Print or type name and title)

ATTEST:

Signature

(Print or type name and title)

APPENDIX "A"

SERVICES TO BE FURNISHED BY CONSULTANT:

In fulfillment of this Contract, the CONSULTANT shall comply with the requirements of the appropriate regulations and requirements of the Indiana Department of Transportation and Federal Highway Administration.

The CONSULTANT shall be responsible for performing the following activities:

A. ENGINEERING PERSONNEL

For the fulfillment of all services outlined in Section B below, the CONSULTANT will provide one full-time Resident Project Representative, inspectors, and clerical and secretarial personnel as required for a period of time necessary to complete the construction project and final construction report.

The qualifications and experiences of personnel provided by the CONSULTANT are subject to approval by the LOCAL PUBLIC AGENCY and INDOT, and no personnel will be assigned to the project until LOCAL PUBLIC AGENCY and INDOT approval is obtained.

The full-time Resident Project Representative will take directions from and report to the INDOT Area Engineer on all matters concerning contract compliance and administration.

The full-time Resident Project Representative will coordinate project activities with the LOCAL PUBLIC AGENCY Project Coordinator and INDOT Area Engineer.

B. DESCRIPTION OF SERVICES

1. **CONSTRUCTION SCHEDULE:** Review the construction schedule prepared by the Contractor for compliance with the contract and give to the LOCAL PUBLIC AGENCY detailed documentation concerning its acceptability.
2. **CONFERENCES:** Attend preconstruction conferences as directed by the LOCAL PUBLIC AGENCY, arrange a schedule of progress meetings and such other job conferences as required for the timely and acceptable conduct of the job, and submit such schedules prepared to the LOCAL PUBLIC AGENCY for notification to those who are expected to attend. Record for the LOCAL PUBLIC AGENCY, as directed, minutes of such meetings. The CONSULTANT shall be available for conferences as requested by the LOCAL PUBLIC AGENCY, INDOT, and Federal Highway Administration to review working details of the project. The LOCAL PUBLIC AGENCY, INDOT, and Federal Highway Administration may review and inspect the activities whenever desired during the life of the Agreement.
3. **LIAISON:** Serve as the LOCAL PUBLIC AGENCY's liaison with the Contractor, working principally through the Contractor's field superintendent or such other person in authority as designated by the Contractor. Acting in liaison capacity, the Resident Project Representative shall be thoroughly familiar with the plans and specifications applicable to the project to monitor the Contractor for compliance with provisions therein. Any deviation observed shall be reported to the LOCAL PUBLIC AGENCY and INDOT by the Resident Project Representative.

Serve as the LOCAL PUBLIC AGENCY's liaison with the traveling public and nearby affected business owners and property owners. The Resident Project Representative will offer information and provide field office numbers to interested parties. If necessary, the Resident Project Representative will attend and participate in any public information meetings.

4. **COOPERATE** with the LOCAL PUBLIC AGENCY in dealing with the various federal, state, and local agencies having jurisdiction over the project.
5. **ASSIST** the LOCAL PUBLIC AGENCY and INDOT in obtaining from the Contractor a list of his proposed suppliers and subcontractors.
6. **ASSIST** the LOCAL PUBLIC AGENCY and INDOT in obtaining from the Contractor additional details or information when needed at the job site for proper execution of work.
7. **EQUIPMENT:** Furnish all equipment necessary to sample and test materials in accordance with INDOT procedures.
8. **SAMPLES:** Obtain field samples of materials delivered to the site as required by INDOT and deliver such samples to the appropriate INDOT laboratory office.
9. **SHOP DRAWINGS**
 - a. Receive shop drawings and falsework drawings. Check for completeness and then forward to LOCAL PUBLIC AGENCY's DESIGN ENGINEER for approval.
 - b. Review approved shop and falsework drawings, specifications, and other submissions, record receipt of this data, maintain a file of all drawings and submissions, and check construction for compliance in accordance with the Contract Documents
 - c. Alert the Contractor's field superintendent when it is observed materials or equipment are being or about to be used or installed before approval of shop drawings or samples, where such are required, and advise the LOCAL PUBLIC AGENCY and INDOT when he believes it is necessary to disapprove work as failing to conform to the Contract Documents
10. **REVIEW OF WORK, INSPECTION, AND TESTS**
 - a. Conduct on-site inspections for the LOCAL PUBLIC AGENCY of the work in progress as a basis for determining the project is proceeding in accordance with the Contract Documents
 - b. Provide on-site acceptance testing of materials in the manner and extent prescribed by the latest edition of the INDOT Construction Manual and in accordance with current accepted practices
 - c. Accompany visiting inspectors representing local, state, or federal agencies having jurisdiction over the project, and report details of such inspection to the LOCAL PUBLIC AGENCY and INDOT
 - d. Verify required testing has been accomplished
11. **MODIFICATION:** Consider and evaluate the Contractor's suggestions for modifications in drawings and/or specifications and report them with recommendations to the LOCAL PUBLIC AGENCY and INDOT.
12. **RECORDS**
 - a. Prepare and maintain at the job site orderly files of correspondence, reports of job conferences, shop drawings and other submissions, reproductions of original Contract Documents, including all addenda, change orders, and additional drawings

- subsequent to the award of the Contract, progress reports, and other project-related documents
- b. Keep a diary or logbook recording hours on the job site, weather conditions, list of visiting officials, decisions, general observations, and specific observations with regard to test procedures. Upon request, furnish copies of such a diary or logbook to the LOCAL PUBLIC AGENCY
 - c. Maintain for the LOCAL PUBLIC AGENCY a record of names, addresses, and telephone numbers of all subcontractors and major material suppliers
 - d. Maintain a set of drawings on which authorized changes are noted and deliver to the LOCAL PUBLIC AGENCY upon request, but in any event at the completion of the project
 - e. Prepare the Final Construction Record and Final Estimate as required by INDOT and the LOCAL PUBLIC AGENCY. Provide a copy of the Final Construction Record to the LOCAL PUBLIC AGENCY
13. **REPORTS:** Furnish to INDOT and the LOCAL PUBLIC AGENCY at periodic intervals, as required, progress reports of the project, including the Contractor's compliance with the approved construction schedule.
 14. **PROGRESS ESTIMATES:** Prepare progress estimates for periodic partial payments to the Contractor and deliver to the LOCAL PUBLIC AGENCY and INDOT for review and processing. The payments to the Contractor will be based on estimates of the value of work performed and materials complete and in place in accordance with the contract.
 15. **PROJECT RESPONSIBILITY:** The Resident Project Representative will be responsible for the documentation of pay quantities and estimates and the maintenance of appropriate records related to the construction of this project.
 16. **WORK SCHEDULE AND SUSPENSION:** The CONSULTANT's crew will be required to regulate their work week to conform to the Contractor's hours in accordance with the directions of the INDOT Area Engineer. If work on the construction project is suspended and all matters concerning contract compliance and administration are complete, the services of the CONSULTANT may also be suspended without cost to the project.
 17. **PROJECT MANAGEMENT:** Project Manager will perform contract oversight, planning, coordination, monitoring, and administration activities as well as shop drawing review and responding to design related questions
 18. **CONTRACT ADMINISTRATION:** The CONSULTANT will administer the contract in accordance with INDOT procedures.
 19. CONSULTANT shall not at any time supervise, direct, or have control over Contractor's work, nor shall CONSULTANT have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work.

APPENDIX "B"

INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA:

The LPA shall furnish the CONSULTANT with the following:

1. Designated employee and Project Coordinator to coordinate activities between CONSULTANT, INDOT, and the LOCAL PUBLIC AGENCY
2. Assistance to the CONSULTANT by placing at his disposal all available information pertinent to the project

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:

1. The CONSULTANT will be prepared to begin work under this Contract within five days after a letter of notice to proceed is received from the LOCAL PUBLIC AGENCY. The CONSULTANT shall complete and deliver the final construction record and final estimate to the INDOT Area Manager within 45 calendar days after the contractor's last day of work.
2. CONSULTANT's fee assumes 50 weeks of construction inspection activities.

APPENDIX "D"

1. The CONSULTANT will receive as payment for the work performed under this Contract the total amount not to exceed \$473,518.96, unless a modification of the Contract is approved in writing by the LOCAL PUBLIC AGENCY and INDOT.
2. The CONSULTANT will be paid for the work described in Appendix "A" in accordance with the following negotiated hourly billing rates per classification.

Labor Classification	Allowable Hourly Rates Per Year			
	2013/2014		2014/2015	
	Regular	Overtime	Regular	Overtime
Project Manager	\$168.61	N/A	\$175.37	N/A
Project Engineer	\$112.22	N/A	\$116.69	N/A
PE/PS/Resident Project Representative/Field Manager	\$97.68	\$112.42	\$101.58	\$116.91
Inspectors	\$70.74	\$81.42	\$73.56	\$84.66
Intern	\$48.87	\$56.25	\$50.82	\$58.49

* Rates are effective from July 1, through June 30

3. The classification rates are based on the calendar year for the actual hours of work performed by essential personnel exclusively working on this Contract. For those services performed by the CONSULTANT, the CONSULTANT will be reimbursed the direct non-salary costs (the actual costs of such out-of-pocket expenses directly attributable to this Contract such as fares, subsistence, mileage, long distance calls, equipment rentals, reproductions, etc.) as approved by INDOT. The direct non-salary costs for travel reimbursement shall not exceed the limitations on travel expenses set out in the current INDOT policy on travel reimbursement.
4. For those services performed by other than the CONSULTANT, the CONSULTANT will be reimbursed for the actual invoice for the services performed by other than the CONSULTANT, provided that each such invoice shall be subject to approval as reasonable by the LOCAL PUBLIC AGENCY prior to any reimbursement therefore.
5. The actual amount payable shall be determined in accordance with a final audit by INDOT's Division of Cost Accounting and Audits.

B. Method of Payment

1. Payment shall be made monthly to the CONSULTANT upon submission to the LOCAL PUBLIC AGENCY of an invoice. From the partial payment computed each month, there shall be deducted all previous partial fee payments made to the CONSULTANT.

2. If, prior to the satisfactory completion of the services under this Contract, the total of the direct and indirect costs incurred and the portion of the fixed fee completed by the CONSULTANT is within ten percent (10%) of the maximum amount payable, the CONSULTANT shall notify INDOT and the status will be evaluated.
3. It is the policy of INDOT that Project Representatives and/or Inspectors are on the construction site whenever the Contractor is engaged in any activity requiring inspection or testing concurrent with the construction or activity.

In order for the Contractor to comply with the Contract Plans and Specifications and complete the work within the time required, it is often necessary for the Contractor to work more than an 8-hour day, and more than a 5-day week. This in turn, may require the Resident Project Representative and Inspectors to work over 40 hours per week. Should this become necessary, then Overtime Premium may be paid on this project at the rate of 1.5 times the actual hourly rate for all hours worked on this project by the Project Representatives and Inspectors over 40 hours per week.



Board of Public Works Staff Report

Project/Event: 17th & Jordan Intersection Improvement Design
Contract Addendum #2

Petitioner/Representative: n/a

Staff Representative: Adrian Reid

Date: 12/3/2013

Report:

Clark Deitz, Inc. has completed the design for the 17th & Jordan Intersection Improvement project and right-of-way has been secured in the last year. The original contract with Clark Dietz was executed in 2006 and had an addendum in 2007 for additional geotechnical work. So the design of the project has been completed for several years. As a result, a second addendum is required to complete the final plans in accordance with new INDOT standards. Specifically, pavement design and additional utility coordination are required as part of submittal of final plans to INDOT for bid letting. The addendum in the amount of \$29,200 covers this additional design work and gets the plans to the INDOT letting. The project is programmed into the MPO TIP using STP funds for 2014, but the letting is not scheduled until December of 2014.

Recommendation and Supporting Justification: Staff recommends approval this design contract addendum with Clark Dietz, Inc.

Recommend Approval Denial by





April 22, 2013

Adrian Reid
City Engineer, Bloomington Public Works Department
City Hall at Showers
401 North Morton Street
Bloomington, Indiana 47402

Re: 17th Street and Jordan Avenue Intersection Improvement
Amendment 2 Fee Request

Dear Mr. Reid:

We are excited to hear that the 17th Street and Jordan Avenue Intersection Improvement Project is funded and scheduled to be constructed in 2014.

In order to get the project ready for re-submittal to INDOT, updates will be needed; itemized as follows:

- 1) Perform new pavement design and incorporate into plans, quantities, and estimate
- 2) Update design calculations per new Design Manual
- 3) Update plans per new standards
- 4) Update special provisions
- 5) Perform coordination with City and University staff
- 6) Complete revised INDOT Final submittal forms
- 7) Develop quarterly reports

In addition to the design updates, we are required to redo the utility coordination for the project, as more than two years have passed since this was previously completed.

The only permit required for this project is the IDEM Rule 5 Permit, which we obtained in 2010. This is valid until 2015, and therefore does not need re-application.

We look forward to helping the City complete this much-needed improvement.

Sincerely,

Clark Dietz, Inc.

A handwritten signature in black ink, appearing to read "Doug Valmore".

Doug Valmore, P.E.
Vice President

				
17th Street and Jordan Avenue Intersection Improvements				
Bloomington, IN				
Road Design				
Addendum No. 2 Man-Hour Estimate				
CATEGORIES OF WORK	Project Manager	Project Engineer	CADD Tech III	Subconsultants and Expenses
Road Design				
New Pavement Design	2			\$ 3,850
Incorporate Pavement Design into Plans		6	24	
Incorporate Pavement Design into Quantities and Estimate		14		
Update Design Calculations per New Design Manual	1	8		
Update Plans per New Standards	1	8	16	
Update Special Provisions	1	8		
Prepare New Cost Estimate in New INDOT Format		8		
Coordination Meetings with City/University Staff	16			\$ 250
INDOT Final Tracings Forms		12		
Quarterly Reports	8			
TOTAL HOURS	29	64	40	
Average Hourly Rate	\$ 51.44	\$ 38.15	\$ 30.11	
Payroll Cost	\$ 1,491.76	\$ 2,441.60	\$ 1,204.40	\$ 5,138
Overhead (1.7068)				\$ 9,078
Total Labor Cost (Payroll + Overhead)				\$ 14,216
Profit (15%)				\$ 2,132
TOTAL FEE				\$ 16,348.02
				\$ 16,300.00

				
17th Street and Jordan Avenue Intersection Improvements				
Bloomington, IN				
Utility Coordination				
Addendum No. 2 Man-Hour Estimate				
CATEGORIES OF WORK	Project Manager	Project Engineer	CADD Tech III	Subconsultants and Expenses
Utility Coordination				
Perform Utility Verification and Conflict Review	1	8		
Utility Coordination Meeting	8			
Revise Design to Accommodate Utilities (where practice)	1	6	16	
Review Utility Relocation Plans	2	24	16	
Miscellaneous Utility Coordination		20		
Utility Special Provisions	2	4		
TOTAL HOURS	14	62	32	
Average Hourly Rate	\$ 51.44	\$ 38.15	\$ 30.11	
Payroll Cost	\$ 720.16	\$ 2,365.30	\$ 963.52	\$ 4,049
Overhead (1.7068)				\$ 7,154
Total Labor Cost (Payroll + Overhead)				\$ 11,203
Profit (15%)				\$ 1,680
TOTAL FEE				\$ 12,883.59
				\$ 12,900.00