# PROPOSED:

## West Bloomfield Road Sidepath, Intersection, and Signal Improvements Project

LETTING DATE: October 6, 2015

AWARD DATE: October 20, 2015 meeting

or subsequent BPW Meeting

FOR:

THE CITY OF BLOOMINGTON

PLANNING AND TRANSPORTATION DEPARTMENT

POST OFFICE BOX 100

BLOOMINGTON, INDIANA

SUBMITTED BY:

_____

Company or Firm Name

_____

Street and Number

_____

City or Town State Zip Code

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# SECTION I
# INVITATION TO BIDDERS

## INVITATION TO BIDDERS

NOTICE IS HEREBY GIVEN THAT THE BOARD OF PUBLIC WORKS OF THE CITY OF BLOOMINGTON, INDIANA WILL RECEIVE SEALED BIDS FOR THE BELOW-DESCRIBED WORK AT THE LOCATION INDICATED.

West Bloomfield Road Sidepath, Intersection, and Signal Improvements Project

*This project shall include, but is not limited to the placement of a new asphalt sidepath on the north side of West Bloomfield Road, the installation of a new traffic signal, and the installation of new drives and curb. All work shall be completed as shown on the plans and specifications included with this packet.*

Bids are to be submitted in proper form, as described in the "Instructions to Bidders" which can be found on the City's website at https://bloomington.in.gov/sections/viewSection.php?section_id=537.

A pre-bid meeting will be held at City Hall, Showers Building, 401 North Morton Street, Bloomington, Indiana, in the McCloskey Conference Room on September 29, 2015 at 1:30 p.m. If necessary, an addendum with clarifications will be posted on the Planning and Transportation Departments webpage under the Bid/Quotes Opportunities following the pre-bid meeting.

Sealed bids shall be received by the Planning and Transportation Department, at City Hall, 401 North Morton Street, Suite #130, Bloomington, Indiana, at or before 4:30 PM local time on October 6, 2015. Bids will be publicly opened and read aloud by the Board of Public Works at 5:30 PM local time on October 6, 2015, in the City Council Chambers, Showers Building, 401 North Morton Street, Bloomington, Indiana. Any bids received after the designated time will be returned unopened. Bids will be reviewed and the award may be made at the October 20, 2015, meeting or a subsequent meeting of the Board of Public Works.

Each Bidder shall file with his or her sealed bid: (1) a properly executed Non-collusion Affidavit as required by the laws of the State of Indiana; (2) a Questionnaire Form 96 of the State Board of Accounts; (3) a cashier's check or certified check drawn on an acceptable bank or a Bid bond equal to five (5) percent of the total amount of bid. For projects utilizing Federal funding Wage rates shall be in compliance with Davis Bacon. For bids of $100,000.00 or more, the successful bidder shall furnish performance and payment bonds for one hundred percent (100%) of the contract amount prior to the execution of the contract, and said bonds shall remain in effect for a period of one (1) year after final acceptance of the work.

Each Bidder must ensure that to the greatest extent feasible, opportunities for training and employment should be given to lower income residents of the project area and purchases and/or contract for work in connection with the project should be awarded to small business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.

The City of Bloomington is an equal opportunity employer, and Bidder shall meet all requirements for equal employment under Title VII of the 1964 Civil Rights Act as amended and under the Bloomington Human Rights Ordinance, as amended.

Each Bidder for proposals over $10,000.00 shall submit and have approved by the City of Bloomington Contract Compliance Officer, Barbara McKinney, his/her written Affirmative Action Plan at least twenty-four (24) hours prior to the deadline for submission of bid. Bids received that do not have an approved Affirmative Action Plan may be returned unopened. Each Bidder must insure that all employees and applicants for employment are not discriminated against because of race, religion, color, sex, national origin, ancestry or disability. All the protected classes must be included in your Affirmative Action Plan for it to be acceptable. In addition to other requirements, your plan MUST include a workforce breakdown, an internal grievance procedure, a non-retaliation statement, designation of a person by name or position who is responsible for implementation of the Plan, applicability to both applicants and employees, recruitment of minorities, equal access to training programs, and an explanation of your method of communicating the operations of your affirmative action plan to employees and prospective applicants. Barbara McKinney, Contract Compliance Officer, may be contacted at (812) 349-3429, 8:00 a.m. to 5:00 p.m. Monday through Friday.

The Board of Public Works reserves the right to accept the Bid submitted by the lowest responsible and responsive Bidder; to reject any or all Bids; and to waive irregularities or informalities in any Bid. Bids may be held by the Board of Public Works for a period not-to-exceed sixty (60) days from the date of the opening of Bids for the purpose of reviewing the Bids and investigating the qualifications of the Bidders prior to awarding the contract.

Board of Public Works, City of Bloomington, Indiana

Charlotte Zietlow, President

# SECTION II
# INSTRUCTIONS TO BIDDERS

# INSTRUCTIONS TO BIDDERS

**1.00 CONTRACT DOCUMENTS**: Contract Documents that will form the Contract are:

1. The Agreement and its Attachments
2. The Invitation to Bidders
3. The Instructions to Bidders
4. The Performance and Payment Bonds
5. The Specifications
6. The General Conditions
7. The Supplementary Conditions
8. The Special Conditions
9. The Escrow Agreement
10. Request for taxpayer identification number and certification: Substitute W-9.
11. All Addenda to the Bid Documents
12. All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto.
13. CONTRACTOR'S submittals
14. The current Indiana Department of Transportation Standard Specifications and the latest addenda.
15. All plans as provided for the work that is to be completed.

**1.01 DEFINED TERMS**:

**1.01(A)** Bidder: The individual or entity who submits a Bid directly to the Owner.

**1.01(B)** Successful Bidder: The lowest responsible and responsive Bidder to whom Owner makes an award.

**1.02 INSPECTION OF THE SITE:** Bidder shall examine each of the Contract Documents, visit the site of the work and thoroughly and fully inform themselves of the construction hazards, procedures, labor, conditions and factors, which could affect the prosecution and completion of the work. Such considerations shall include; the conditions of existing structures and facilities which may be affected by the proposed work, the procedure necessary for maintenance of uninterrupted operation of existing facilities, the availability and cost of labor and methods for transporting, handling, and storage of materials and equipment. All such factors shall be properly investigated and considered in the preparation of the Bidder's Bid. There will be no subsequent financial adjustment to any contract for lack of such prior information or its effects on the cost of the work.

**1.03 OMISSIONS AND DISCREPANCIES**: Should Bidders find discrepancies in, or omissions from, the Contract Documents, or should they be in doubt as to their meaning, written notification should be made to the City Engineer. Interpretation of the proposed contract documents will be made only by written addendum. A copy of each addendum will be posted at the City's web site at https://bloomington.in.gov/sections/viewSection.php?section_id=537. The Owner will not be responsible for any other explanations or interpretations of the proposed contract documents.

**2.00 BIDS**: Pursuant to the "Invitation to Bidders" sealed Bids for performing the work shall be received by the Planning and Transportation Department, at City Hall, Suite #130, 401 North Morton Street, Bloomington, Indiana, at or before 4:30 PM local time on October 6, 2015. Bids will be publicly opened and read aloud

by the Board of Public Works at 5:30 PM local time on October 6, 2015, at its meeting in the City Council Chambers, Showers Building, 401 North Morton Street, Bloomington, Indiana. Any Bid received after the designated time will be returned unopened. Bids will be reviewed and the award may be made at the October 20, 2015 meeting or a subsequent meeting of the Board of Public Works.

**2.01 BID FORM**: Each Bid shall be legibly written or printed in ink on the Bid Form with Unit Prices provided if applicable. All addenda to the Contract Documents on which a Bid is based, properly signed by the Bidder, shall accompany the Bid when submitted. No alteration in any Bid, or in the Bid Form on which it is submitted, shall be made by any person after the Bid has been submitted by the Bidder.

**2.02 BID SIGNATURES**: Each Bidder shall sign their Bid using their usual signature and giving their full business address. Bids by partnerships shall be signed with the partnership name followed by the signature and designation of one of the partners or other authorized representative. Bids by corporations shall be signed with the name of the corporation followed by the signature and designation of the president, secretary, or other person authorized to bind the corporation. The names of all persons signing should also be typed or printed below the signature. A Bid by a person who affixes to their signature the word "president" or "secretary", "agent", or other designation without disclosing their principal may be held to be the Bid of the individual signing. When requested by the Owner, satisfactory evidence of the authority of the person signing shall be furnished. No Bidder may submit more than one Bid. Two Bids under different names will not be accepted from one firm or association.

**2.03 BID SUBMISSION**: Each Bid submitted shall be enclosed in a sealed envelope or wrapping, addressed to the Board of Public Works, c/o Planning and Transportation Department, Post Office Box 100, Bloomington, Indiana 47402, identified on the outside with the words "SEALED BID", and the name of the project, and shall be filed with the City Engineer at their office in City Hall at 401 North Morton Street, Suite #130, Bloomington, Indiana.

**2.04 INDIANA LEGAL REQUIREMENTS**: Each Bidder shall submit under oath with their Bid a statement of their experience, proposed plan for performing the Work, equipment available to perform the work, and a financial statement. The statements shall be submitted on Questionnaire Form No. 96 of the Indiana State Board of Accounts. Each Bid shall be accompanied by a properly executed Non-Collusion Affidavit as required by the laws of the State of Indiana.

**2.05 BID GUARANTEE**: Each Bid shall be accompanied by a cashier's check or a certified check drawn on an acceptable bank, or an acceptable Bidder's bond in an amount of not less than five percent (5%) of the total Bid. No personal and/or company checks will be accepted or the Bid shall be deemed unresponsive. The Bid guarantee shall be made payable without condition to the City of Bloomington, Indiana, hereinafter referred to as "Owner", and the amount of said Bid Guarantee may be retained by and forfeited to the Owner as liquidated damages if the Bid covered thereby is accepted and a contract based thereon is awarded and the Bidder should fail to enter into a contract in the form prescribed, with legally responsible sureties, within fifteen (15) days after such award is made and confirmed by the Owner.

**2.06 RETURN OF BID GUARANTEE**: The Bid Guarantee deposit of each unsuccessful Bidder will be returned when their Bid is rejected. The Bid Guarantee deposit of the Bidder to whom the Contract is awarded will be returned when the successful Bidder executes a contract and files a satisfactory performance bond and payment bond. The Bid Guarantee deposit of the second and third lowest responsible Bidders may be retained for a period not to exceed ninety (90) days pending the execution of the Contract and bonds by the successful Bidder.

**2.07 WITHDRAWAL OF BID**: No Contractor may withdraw their Bid for a period of sixty (60) days after the date and hour set for the opening, and the Bidders submitting the three lowest Bids may not withdraw their Bid for a period of one-hundred eighty (180) days after the opening date. A Bidder may withdraw their Bid at any time prior to the expiration of the Bid period during which Bids may be submitted by a written request signed in the same manner and by the same person who signed the Bid.

**2.08 ACCEPTANCE AND REJECTION OF BIDS**: The Owner reserves the right to accept the Bid submitted by the lowest responsible and responsive Bidder; to reject any or all Bids; and to waive irregularities or informalities in any Bid. Bids received after the specified time of closing will be returned unopened. The acceptance of a Bid shall bind the successful Bidder to execute the Contract and to be responsible for liquidated damages as provided in Section 4.00 below and in section 13.00 of the General Conditions.

**3.00 QUALIFICATION OF BIDDERS**: Bidders shall submit satisfactory evidence that they have a practical knowledge of the particular work Bid upon, and that they have the necessary financial resources to complete the proposed work. Each Bidder shall execute completely and accurately 'Questionnaire Form No. 96' of the Indiana State Board of Accounts and the 'Request for taxpayer identification number and certification' form of the City of Bloomington and shall file the same with their Bid. The information contained therein shall be used by the Owner to determine the ability, experience, and capital resources of the Bidder. In determining the Bidder's qualifications, the following factors will be considered: whether the Bidder(a) maintains a permanent place of business; (b) has adequate plant and equipment to do the work properly and expeditiously; (c) has the necessary financial resources to meet all obligations incident to the work; (d) has appropriate technical experience; and (e) can be added as an approved vendor to the City of Bloomington. Each Bidder may be required to show that previous work performed has been handled in such a manner that there are no just and proper claims pending against such work. No Bid will be accepted which is submitted by a Bidder who is engaged in any work which would impair their ability to finance the work covered by such Bid or to provide suitable equipment for its proper prosecution and completion.

**4.00 EXECUTION OF CONTRACT**: Any Bidder whose Bid shall be accepted will be required to appear at the office of the City Engineer in person, or, if a firm or corporation, a duly authorized representative shall so appear, to execute the Contract within 15 days after notice that the Contract has been awarded to them. Failure or neglect to do so shall constitute a breach of the agreement effected by the acceptance of the Bid. The amount of the Bid Guarantee accompanying the Bid of such Bidder shall be retained by the City as liquidated damages for such breach. In the event that any Bidder whose Bid shall be accepted shall fail or refuse to execute the Contract as hereinbefore provided, the Board of Public Works may at their option, determine that such Bidder has abandoned the Contract and thereupon their Bid and the acceptance thereof shall be null and void and the Owner shall be entitled to liquidated damages as provided herein.

**4.01 INSURANCE**: The Contractor will be required to carry insurance throughout the lifetime of the Contract, as provided in the General Conditions, the amount of insurance of the various types being not less than the amounts specified therein.

**4.02 PAYMENTS**: Payment for all work performed under the proposed contract will be made in cash, or its equivalent, by the Owner within thirty (30) days after completion and final acceptance of the work covered by the contract. Partial estimates will be issued and paid as provided in the General Conditions.

**4.03 TIME FOR BEGINNING AND COMPLETING THE WORK**: The Contractor shall start active and continuous work on the contract within 15 calendar days after the date of the notice to proceed

and shall complete the work within 180 calendar days. Calendar and work days shall be as defined in the General Conditions of these documents.

**4.04 TAXES AND PERMITS**: Attention is directed to the requirements of the General Conditions regarding payments of taxes and obtaining permits. The Contractor shall be responsible for obtaining all necessary permits.

**4.05 WORKER'S COMPENSATION**: Before any work is started, the Contractor shall obtain from the Indiana State Industrial Board and file with the Owner, a certificate as evidence of compliance with the provisions of the Indiana Worker's Compensation Act and the Indiana Worker's Occupational Diseases Act.

**4.06 PERFORMANCE BOND**: For all contracts in the amount of $100,000.00 more, the Bidder whom a contract is awarded will be required to furnish a Performance Bond to the Owner in an amount equal to one-hundred (100) percent of the contract price. The bond shall be executed on the form included in the Contract Documents by a surety company authorized to do business in the State of Indiana and acceptable as surety to the Owner. Accompanying the bond shall be a "Power of Attorney" authorizing the attorney-in-fact to bind the surety company and certified to include the date of the bond. The surety on the Performance Bond cannot be released for one year, and the bond must require that the surety will not be discharged for:

1. modifications, omissions, or additions;
2. defects in the contract; or
3. defects in the Bidding or awarding process.

**4.07 PAYMENT BOND**: For all contracts of $100,000.00 more a Payment Bond is required to insure payment of subcontractors, laborers, material suppliers, and persons furnishing services. The bond is executed by the Contractor to the state, approved by and for the benefit of the Owner, in an amount equal to the contract price. It is deposited with the board, and its surety cannot be released until one year after the board's final settlement with the Contractor. The bond must provide the same assurances as does the Performance Bond against conditions discharging the surety.

**4.08 LOCAL MATERIALS**: Preference will be given to materials, products, supplies, and all other articles produced, manufactured, made, or grown in the State of Indiana.

**4.09 NON-DISCRIMINATION IN EMPLOYMENT**: Each Bidder for Bids over $10,000.00 shall submit and have approved by the City of Bloomington Contract Compliance Officer, Barbara McKinney, their written Affirmative Action Plan at least twenty-four (24) hours prior to the deadline for submission of Bids. Bids received that do not have an approved Affirmative Action Plan may be returned unopened. Each Bidder must insure that all employees and applicants for employment are not discriminated against because of race, religion, color, sex, national origin, ancestry or disability. All the protected classes must be included in your Affirmative Action Plan for it to be acceptable. In addition to other requirements, your plan MUST include a workforce breakdown, an internal grievance procedure, a non-retaliation statement, designation of a person by name or position who is responsible for implementation of the Plan, applicability to both applicants and employees, recruitment of minorities, equal access to training programs, and an explanation of your method of communicating the operations of your affirmative action plan to employees and prospective applicants. Barbara McKinney, Contract Compliance Officer, may be contacted at (812) 349-3429, 8:00 a.m. to 5:00 p.m. Monday through Friday. The successful Bidder must comply with each section of its affirmative action plan and be prepared to comply in all respects with the contract provisions regarding non-discrimination which are included in the Employment Requirement and Wage Rate section. For contracts paid in whole or in part with federal funds, the

Bidder must submit a signed statement as to whether he or she has previously performed work subject to Executive Order 11246. For contracts paid in whole or in part with federal funds, the successful Bidder must, if requested, submit a list of all subcontractors who will perform work on the project, and written and signed statements from authorized agents of the labor pools with which they will or may deal for employees on the work, together with supporting information to the effect that said labor pools' practices and policies are in conformity with Executive Order 11246, and that said labor pools will affirmatively cooperate in, or offer no hindrance to, recruitment, employment, and equal treatment of employees seeking employment, and performing work under the Contract, or a certification as to what efforts have been made to secure such statements when such agents or labor pools have failed or refused to furnish same, prior to the award of the Contract.

**4.10** **Permits**: Contractor is responsible for obtaining all permits.

# SECTION III
# BID FORM
# UNIT PRICES
# SAMPLE BOND FORMS
# ESCROW AGREEMENT

**BID FORM**

This BID Summary Sheet and supplemental unit price sheet shall be completed and submitted with all other BID Documents.

The Lump Sum cost to complete the West Bloomfield Road Sidepath, Intersection, and Signal Improvements Project including all associated work per plans and specification is;

_____, $_____

Any and all Subcontractors performing work valued over $10,000 shall be listed below: Any subcontractor not listed below at the time of bid, must be approved by the City of Bloomington prior to performing any work on this contract. Subcontractors not listed or approved will not be paid for work under this contract. In accordance with Indiana Code 5-16-13 *et seq*., incorporated herein by reference, any subcontractor performing work on this contract is a Tier 2 contractor.

| SUBCONTRACTORS | ADDRESS | TYPE OF WORK |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

In submitting this Bid, Bidder represents that:

A. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, performance, and furnishing of the Work.

B. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents and the following Addenda, receipt of which is hereby acknowledged.

No. _____ Dated_____
No. _____ Dated_____
No. _____ Dated_____

~~C. Bidder attended the pre-bid conference~~

SIGNATURE OF BIDDER
Name of Bidder:_____ Date:_____
By:

_____
Name & Title Printed:_____
Bidder Address:_____ Telephone:_____

# West Bloomfield Road Sidepath, Intersection, and Signal Improvements Project

***Supplemental Unit Prices***
***For***
***Additions/Deductions****

| Item | Description | Unit | Unit Price |
|---|---|---|---|
| | | | |
| 1. | Sodding | SYS | |
| | | | |
| 2. | Topsoil | CYS | |
| | | | |
| 3. | Common Excavation | CYS | |
| | | | |
| 4. | Sidewalk, Concrete- 4” Thick | SYS | |
| | | | |
| 5. | Mulched Seeding | SYS | |
| | | | |
| 6. | Casting, Adjust to Grade | EA | |
| | | | |
| 7. | Pavement Repair (City Specification) | SYS | |
| | | | |
| 8. | Concrete Drive- 6” Thick | SYS | |
| | | | |
| 9. | Right of Way Clearing | SYS | |
| | | | |
| 10. | Tree Removal, 4” to 8” | EA | |
| | | | |
| 11. | Tree Removal, Over 8” to 12” | EA | |
| | | | |
| 12. | Tree Removal, Over 12” to 24” | EA | |
| | | | |
| 13. | Tree Removal, Over 24” to 36” | EA | |
| | | | |
| 14. | Tree Removal, Over 36” | EA | |
| | | | |
| 15. | Sidepath, Asphalt- (2” Base, 2” Surface) | SYS | |

*Supplemental Unit Price Sheet Continued*

| Item | Description | Unit | Unit Price |
|---|---|---|---|
| 16. | Concrete Curb- (20” Curb, 8” Exposed) | LF | |
| | | | |
| 17. | Compacted Aggregate, No. 53 | TON | |

***All prices shall reflect installation as shown on the plans or as stated in the specifications, and shall be authorized by an approved change order prior to installation/deletion.**

# BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

---

BIDDER *(Name and Address)*:

SURETY *(Name, and Address of Principal Place of Business)*:

OWNER *(Name and Address)*:

BID

Bid Due Date:

Description *(Project Name— Include Location)*:

BOND

Bond Number:

Date:

Penal sum _____ $ _____

(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

| **BIDDER** | **SURETY** |
|---|---|
| _____ (Seal) | _____ (Seal) |
| Bidder's Name and Corporate Seal | Surety's Name and Corporate Seal |
| By: _____ | By: _____ |
| Signature | Signature (Attach Power of Attorney) |
| _____ | _____ |
| Print Name | Print Name |
| _____ | _____ |
| Title | Title |
| Attest: _____ | Attest: _____ |
| Signature | Signature |
| Title | Title |

*Note: Addresses are to be used for giving any required notice.*
*Provide execution by any additional parties, such as joint venturers, if necessary.*

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.

3. This obligation shall be null and void if:

3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or

3.2 All Bids are rejected by Owner, or

3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.

6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.

7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

# PERFORMANCE BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT
Effective Date of the Agreement:
Amount:
Description *(name and location)*:

BOND
Bond Number:
Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:
Amount:
Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

---

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

_____ *(seal)*
Contractor's Name and Corporate Seal

**By:** _____
Signature

_____
Print Name

_____
Title

**Attest:**_____
Signature

_____
Title

**SURETY**

_____ *(seal)*
Surety's Name and Corporate Seal

**By:**_____
Signature *(attach power of attorney)*

_____
Print Name

_____
Title

**Attest:**_____
Signature

_____
Title

***Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.***


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1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.


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10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:


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EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

# PAYMENT BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT
Effective Date of the Agreement:
Amount:
Description *(name and location)*:

BOND
Bond Number:
Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:
Amount:
Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

---

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

_____ *(seal)*
Contractor's Name and Corporate Seal

**By:** _____
Signature

_____
Print Name

_____
Title

**Attest:** _____
Signature

_____
Title

**SURETY**

_____ *(seal)*
Surety's Name and Corporate Seal

**By:** _____
Signature *(attach power of attorney)*

_____
Print Name

_____
Title

**Attest:** _____
Signature

_____
Title

***Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.***


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1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.

4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.

5. The Surety's obligations to a Claimant under this Bond shall arise after the following:

   5.1 Claimants who do not have a direct contract with the Contractor,

      5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

      5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).

   5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).

6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.

7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

   7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

   7.2 Pay or arrange for payment of any undisputed amounts.

   7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.


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11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. **Definitions**

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default**: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:


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**ESCROW AGREEMENT**

# West Bloomfield Road Sidepath, Intersection, and Signal Improvements Project

THIS ESCROW AGREEMENT made and entered into this _____ day of _____, 2015, by and between the City of Bloomington Board of Public Works (the "Owner"), and _____, (the "Contractor"), and First Financial Bank (the "Escrow Agent").

WHEREAS, the Owner and Contractor have entered into a public construction contract in the amount of $100,000 or more, dated the _____ day of _____, 2015, for a public works project; and,

WHEREAS, said construction contract provides that portions of payments by Owner to Contractor shall be retained by Owner (herein called retainage) and placed in an escrow account;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

To the extent that the Owner retains funds out of payments applied for by the Contractor under the provisions of the Contract providing for payments based on the value of the work in place and the materials stored, the Owner shall place the funds so retained in an escrow account.

The Escrow Agent shall open a "Money Market" account and deposit said funds promptly into the account and invest the retainage in such obligations as selected by the Escrow Agent at its discretion.

The income from and earnings on and all gains derived from the investment and reinvestment of the funds (escrow income) shall be held in the escrow account. The Escrow Agent shall deposit all funds and hold all investments in a separate escrow fund so that a quarterly accounting can be made to the Contractor of all deposits and investments made in such funds.

The Escrow Agent may commingle the escrow funds with other escrow funds or invested construction funds held by it pursuant to other escrow agreements or trust instruments to which the Owner and the Contractor are parties. To expedite the handling of the investments and reinvestments of the escrow funds, the Escrow Agent may cause all savings accounts, securities, obligations and investments (other than bearer instruments) to be registered in its own name, or in the name of its nominee or nominees, or in such form that title may pass by delivery.

The Escrow Agent shall pay over the net sum held by it hereunder as follows:

The Escrow Agent shall hold all of the escrow funds and shall release the principal thereof only upon the execution and delivery to it of a notice executed by the Owner and by the Contractor specifying the portion or portions of the principal of the escrow funds to be released and the person or persons to whom such portions are to be released. After receipt of said notice the Escrow Agent shall remit the designated part of escrowed principal and the same proportion of then escrowed income to the person specified in the notice. Such release of escrow funds shall be no more than thirty (30) days from the date of receipt by the Escrow Agent of the release executed by the Owner and Contractor. All income earned on the escrowed principal shall be paid to the Contractor with the exception of that amount necessary to pay any fee for the Escrow Agent's services. No escrow income shall be paid to the Contractor until the Escrow Agent's fee, if any, has been paid in full.

In the absence of such a joint written authorization, upon receipt from the Owner of a copy of certification from Owner's Engineer, that Owner has exercised its right to terminate the services of the Contractor pursuant to Article 16.02 of the General Conditions, then the Escrow Agent shall pay over to the Owner the net sum held by it hereunder.

In the absence of such a joint written authorization and in the absence of the termination of the Contractor as provided in "B", above, in the manner directed by a certified copy of a judgment of a court of record establishing the rights of the parties to said funds.

The "Commercial Quick Draw" account set up by the Escrow Agent to hold the retainage shall be a no fee account with no minimum balance required. The account shall earn interest at a variable rate.

This Agreement and anything done or performed hereunder by either the Contractor or Owner shall not be construed to prejudice or limit the claims which either party may have against the other arising out of the aforementioned construction agreement.

This instrument constitutes the entire agreement between the parties regarding the duties of the Escrow Agent with respect to the investment and payment of escrow funds. The Escrow Agent is not liable to the Owner and Contractor for any loss or damages not caused by its own negligence or willful misconduct.

**OWNER:**
City of Bloomington
Board of Public Works
By:

_____
Charlotte Zietlow, President

**ESCROW AGENT:**
First Financial Bank
By:

_____
Name:_____
Title:_____

**CONTRACTOR:**
By:

_____
Name:_____
Title:_____
Tax I.D. Number:_____

# SECTION IV
# AFFIRMATIVE ACTION PLAN REQUIREMENTS, RESPONSIBLE BIDDER AFFIDAVIT, LIVING WAGE ORDINANCE CERTIFICATION

2015

RE: Affirmative Action and Living Wage Ordinance

To Prospective Bidders:

**Affirmative Action**: All bidders with the City of Bloomington for projects in excess of $10,000.00 must submit an affirmative action plan to my office. This plan must insure that applicants are employed and that employees are treated in a manner that provides equal employment opportunity and tends to eliminate inequality based upon race, religion, color, sex, national origin, ancestry or disability.

In addition, pursuant to the **Responsible Bidders Ordinance**, all bidders with the City of Bloomington for public work bids of $150,000 or more must include two additional protected categories in their affirmative action plan: sexual orientation and gender identity.

Even if your company already has a plan on file with the City, you must check with me to make sure that it complies with our current requirements. If you already have a plan, but it does not cover all of the City's current requirements, you may submit a separate supplement with your plan to fill any gaps.

You must submit your written affirmative action plan (or supplement) to me at least twenty-four hours before the bid deadline. You must submit your plan to me separately from your bid. The twenty-four hours will give me sufficient time to review your and the other bidders' plans. I recommend that you submit your affirmative action plan to me earlier, if possible, so that you and I will have time to work out any problems that may be in your plan. Bidders who fail to submit acceptable plans by the deadline are subject to disqualification.

I strongly advise you to confirm with me that I have received your plan and that it meets our requirements well before the bid deadline. We will make every effort to work with you to clear up problems. But it remains your responsibility to confirm that I received your plan and that it complies with our requirements. If you fail to confirm that I received and approved your plan, you risk losing your eligibility to bid. We will be glad to provide a receipt upon request. Please let us know if you want a receipt when you submit your plan.

You must insure that all the protected classes listed above are included in your plan. In addition to other requirements, your plan MUST include a workforce breakdown, an internal grievance procedure, a non-retaliation statement, designation of a person by name or position who is responsible for implementing the plan, applicability to both applicants and employees, recruitment of minorities, equal access to training programs, and an explanation of your methods of communicating the operations of your affirmative action plan to your employees and prospective applicants.

Accompanying this letter you will find the following materials:

(1) A workforce breakdown form. You MUST submit a workforce breakdown (sometimes called a "utilization report") with your Affirmative Action plan. This form is provided for your convenience. If you already have a current form you have completed for another jurisdiction that includes the same type of information, you may substitute a copy of that form instead of using our form. Your workforce breakdown figures must be updated every six months. Even if you already have an acceptable affirmative action plan on file with my office, you should submit a new workforce breakdown each time you bid for a City Contract, to be sure we have up-to-date figures.

(2) An affirmative action plan checklist. I will use this checklist to review your affirmative action plan. If you compare your plan with this list, you should be able to tell whether your plan fulfills the City's requirements. If you omit any of the elements on the checklist, your plan will not be approved.

(3) Two sample affirmative action plans: one for bidders covered by the Responsible Bidders Ordinance and one for all other bidders. These may be useful if your company has never designed an affirmative action plan before. Feel free to adopt one of these plans as your own or to amend them to meet your needs.

Additional materials, such as the City of Bloomington's Contract Compliance Regulations, are available from my office upon request.

**Living Wage**: Also, please be aware that you may be required to comply with the Bloomington Living Wage Ordinance. Whether the LWO applies to your project depends upon the size and type of your project and the number of people you employ. If you have questions about the applicability of the LWO, click on the LWO flow chart at www.bloomington.in.gov/livingwage or call me. For 2015, the living wage for covered employees is $12.31 an hour.

If you have any questions, contact me at (812) 349-3429 or e-mail me at
mckinneb@ bloomington.in.gov. My office hours are Monday through Friday, 8-5.
Thank you.

Barbara E. McKinney, Human Rights Director/Contract Compliance Officer

# BLOOMINGTON HUMAN RIGHTS COMMISSION
# Model Affirmative Action Plan
# for Bidders Covered by Responsible Bidder Ordinance

## Policy Statement

_____, Inc., declares its policy to provide equal opportunity in employment, training and advancement, and to administer its employment practices without regard to race, color, religion, sex, national origin, ancestry, disability, sexual orientation or gender identity. Our policy of nondiscrimination will prevail throughout every aspect of our employment practices, including recruitment, hiring, training and all other terms and conditions of employment. We shall implement an affirmative action plan to make it widely known that equal employment opportunities are available on the basis of individual merit. We shall survey and analyze our employment workforce annually to determine what steps, if any, are needed to conform effectively with this equal employment policy.

### Responsible Officer

Mr. or Ms. _____ (or the _____ officer) is the equal employment opportunity officer for our company and is responsible for implementing this affirmative action policy.

### Publication of Policy

Our employees will be made aware of our commitment to affirmative action through the following procedures:

- posting notices on employee bulletin boards,
- including our policy statement and plan in our personnel manual,
- regularly sending out notice of our policy in paycheck envelopes,

- and training supervisors to recognize discriminatory practices.

We will make potential employees aware of our policy through the following procedures:

- including the words "Equal Opportunity Employer" in all of our advertisements and notices for job openings,
- notifying employment agencies about our commitment, and
- sending notice of our policy to unions.

### Implementing Our Policy

Our affirmative action plan will be implemented by widening our recruitment sources. We shall advertise in newspapers and other media that reach people in protected classes. We shall send job notices to schools with large percentages of students in the protected classes and to local groups that serve these classes.

We shall examine our hiring practices periodically to insure that we consider only job-related qualifications in filling our positions. We shall discard irrelevant educational requirements and unnecessary physical requirements. We shall retain only job-related questions on our employment application.

We shall keep affirmative action information on each applicant, but separate from his or her application. We shall keep records on our hiring decisions to evaluate the success of our affirmative action measures. We shall decide placement, duties, benefits, wages, training prospects, promotions, layoffs and terminations without regard to race, sex, religion, color, national origin, ancestry, disability, sexual orientation or gender identity.

**Grievance Procedure**

If an employee feels he or she has been discriminated against on the basis of race, sex, religion, color, national origin, ancestry, disability, sexual orientation or gender identity he or she may bring the complaint to his or her immediate supervisor. If the complaint is not resolved readily at that level, he or she may submit it to _____ (personnel officer, corporate president, other) who will make a final decision on its validity. This grievance process does not preclude his or her complaining to local, state or federal civil rights agencies. We will not retaliate against an employee or applicant for voicing a grievance or for filing a complaint with the appropriate agency.

Our current workforce breakdown is shown on the attached form.

_____ _____

Corporate President Date

## AFFIRMATIVE ACTION PLAN CHECKLIST

NOTE: This is **not** an Affirmative Action Plan Effective Date: _____

| **Contractor: Plan MUST Include:** | | **Yes** | **No** | **Comments:** |
|---|---|---|---|---|
| Policy statement of equal employment opportunity | | ☐ | ☐ | |
| | | | | |
| **Covers:** | Applicants for employment | ☐ | ☐ | |
| | Employees | ☐ | ☐ | |
| **On basis of:** | Race | ☐ | ☐ | |
| | Religion | ☐ | ☐ | |
| | Color | ☐ | ☐ | |
| | Sex | ☐ | ☐ | |
| | National Origin | ☐ | ☐ | |
| | Ancestry | ☐ | ☐ | |
| | Disability | ☐ | ☐ | |
| | Sexual Orientation* | ☐ | ☐ | |
| | Gender Identity* | ☐ | ☐ | |
| **Designates a person responsible for implementation of the Plan** | | ☐ | ☐ | |
| **Provides for communication of the policy:** | | | | |
| | Within the Organization | ☐ | ☐ | |
| | Outside the Organization | ☐ | ☐ | |
| | (e.g., recruitment sources, unions) | | | |
| | | | | |
| **Applies to all terms and conditions of employment (e.g., hiring, placement, promotion, duties, wages, benefits, use of facilities, layoff, discipline, termination)** | | ☐ | ☐ | |
| | | | | |
| **Provision for: Recruitment from minority groups** | | ☐ | ☐ | |
| | | | | |
| **Provision for: Equal access to training programs** | | ☐ | ☐ | |
| | | | | |
| **Grievance Procedure** | | ☐ | ☐ | |
| | | | | |
| **Prohibits retaliation for filing grievances** | | ☐ | ☐ | |
| | | | | |
| **Workforce Breakdown** | | ☐ | ☐ | |
| **(figures up to date within 6 months)** | | | | |

**Living Wage Ordinance Certification**

Employer's Name: _____
Employer's Address: _____
_____
Employer's Phone Number: _____
Employer's Email Address: _____
Job title(s) of Covered Employees: _____
_____
(use additional sheet if necessary)

Do you pay all covered employees at least the living wage (for 2014, $12.06 per hour) for work done in connection with the City assistance or subsidy? Yes_____ No _____

If not, do the covered employees have access to a health insurance plan sponsored by you? Yes_____ No_____

If you don't pay all of your covered employees at least the living wage, and your covered employees have access to a health insurance plan that you sponsor, please answer the following questions:

● What is the hourly equivalent value of your contribution to the health insurance plan on behalf of the covered employees who chose to participate in your health insurance plan? (To determine this, divide your annual contribution per employee by 2080.) $_____

● If the covered employee chose not to participate in your health insurance plan, but could have done so, then what would have been the hourly equivalent value of your contribution to the health insurance plan? (Again, divide your annual contribution by 2080). $_____

I hereby attest that the information I've provided above is truthful and accurate. I hereby attest that I am aware of the provisions of the Living Wage Ordinance chapter of the Bloomington Municipal Code.

_____ _____
Signature Printed Name

_____ _____
Date Office held

This form must be filed in the first quarter of the year following that in which the living wage ordinance applies. Send completed form to the Contract Compliance Officer, PO Box 100, Bloomington, IN 47402-0100, or fax to 349-3441.

**Responsible Bidder Affidavit**

Contractor and any subcontractor performing more than $150,000 worth of work on the project shall complete this *Responsible Bidder Affidavit* as required by Chapter 2.29 of the Bloomington Municipal Code. Contractor must submit this affidavit with its bid. Failure to comply with all submission requirements may result in a determination that the Contractor is not a responsible and responsive bidder.

---

The undersigned _____, as _____ and on behalf of
(Name) (Title)
_____ certifies the following:
(Contractor)

Contractor is compliant with all applicable laws pre-requisite to doing business in Indiana.

Yes [ ] No [ ]

Does Contractor have a Federal Employer Identification Number (EIN) (also known as a Federal Tax Identification Number)?
Yes [ ] No [ ]

Please list your Federal Employer Identification Number: _____

Alternatively, for sole proprietors, list your social security number: _____

Contractor is in compliance with Section 2000(e) of Chapter 21, Title 42 of the United States Code and Federal Executive Order Number 11375 (known as the Equal Opportunity Employer Provisions).

Yes [ ] No [ ]

Contractor has submitted an affirmative action plan as required under § 2.21.070(8) of the Bloomington Municipal Code.
Yes [ ] No [ ]

Contractor affirms that all of its workers who qualify as employees are covered under a current worker's compensation insurance policy, and that all workers who will be part of the project are properly classified as employees or independent contractors.

Yes [ ] No [ ]

Contractor confirms that any of its employees designated as apprentices are properly registered with an apprenticeship and training program approved and registered with the United States Department of Labor, Bureau of Apprenticeship and Training.

Yes [ ] No [ ]

Contractor currently has a substance abuse testing policy in place.

Yes [ ] No [ ]

Please list any professional or trade license(s) required by law for any trade or specialty area required to complete work on the present project.

_____

_____

_____

_____

Has the Contractor, or any directors, officers, or managers employed by the Contractor, had any professional or trade license suspended or revoked within the last five (5) years?

Yes [ ]  No [ ]

**Verification**

I certify that I am authorized to execute this affidavit on behalf of the Contractor set forth above, that I have personal knowledge of all the information set forth herein, and that all statements representations, and information contained in this affidavit are true and accurate.

_____
Signature of Authorized Officer

_____
Name of Authorized Officer

_____
Title

_____
Date

# SECTION V
# STATE FORM NO. 96
# QUESTIONNAIRE/NON-COLLUSION AFFIDAVIT
# REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION

# CONTRACTOR'S BID FOR PUBLIC WORK- **FORM 96**

State Form 52414 (R2 / 2-13) / Form 96 (Revised 2013)
Prescribed by State Board of Accounts

PART I

## WORKFORCE BREAKDOWN FORM

**COMPANY NAME:** _____

**ADDRESS:** _____

_____

**REPRESENTATIVE:** _____

**CONTACT PHONE NUMBER** _____

| Position, Title Class or Category | Total Number Employees in Each Position | Total Number Minority Employees | Percent of Total | Total Number Female Employees | Percent of Total | Total Number Employees with Disabilities | Percent of Total |
|---|---|---|---|---|---|---|---|
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I swear or affirm under penalties of perjury that this workforce breakdown is accurate, to the best of my knowledge.

_____ _____

Signature and Title of Representative: Date:

*(To be completed for all bids. Please type or print)*

Date *(month, day, year):*_____

1. Governmental Unit (Owner):_____
2. County:_____
3. Bidder (Firm):_____

   Address:_____

   City/State/ZIP code:_____
4. Telephone Number:_____
5. Agent of Bidder *(if applicable):*_____

Pursuant to notices given, the undersigned offers to furnish labor and/or material necessary to complete the public works project of_____

(Governmental Unit) in accordance with plans and specifications prepared by_____

_____ and dated_____for the sum of

_____ $_____ ___

The undersigned further agrees to furnish a bond or certified check with this bid for an amount specified in the notice of the letting. If alternative bids apply, the undersigned submits a proposal for each in accordance with the notice. Any addendums attached will be specifically referenced at the applicable page.

If additional units of material included in the contract are needed, the cost of units must be the same as that shown in the original contract if accepted by the governmental unit. If the bid is to be awarded on a unit basis, the itemization of the units shall be shown on a separate attachment.

The contractor and his subcontractors, if any, shall not discriminate against or intimidate any employee, or applicant for employment, to be employed in the performance of this contract, with respect to any matter directly or indirectly related to employment because of race, religion, color, sex, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the contract.

CERTIFICATION OF USE OF UNITED STATES STEEL PRODUCTS
*(If applicable)*

I, the undersigned bidder or agent as a contractor on a public works project, understand my statutory obligation to use steel products made in the United States (I.C. 5-16-8-2). I hereby certify that I and all subcontractors employed by me for this project will use U.S. steel products on this project if awarded. I understand that violations hereunder may result in forfeiture of contractual payments.

ACCEPTANCE

The above bid is accepted this_____day of_____, subject to the following conditions: _____

_____

Contracting Authority Members:

_____ _____

_____ _____

_____ _____

PART II

*(For projects of $150,000 or more -IC 36-1-12-4)*

Governmental Unit: _____

Bidder (Firm) _____

Date *(month, day, year):* _____

These statements to be submitted under oath by each bidder with and as a part of his bid. Attach additional pages for each section as needed.

SECTION I EXPERIENCE QUESTIONNAIRE

1. What public works projects has your organization completed for the period of one (1) year prior to the date of the current bid?

| Contract Amount | Class of Work | Completion Date | Name and Address of Owner |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

2. What public works projects are now in process of construction by your organization?

| Contract Amount | Class of Work | Expected Completion Date | Name and Address of Owner |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

3. Have you ever failed to complete any work awarded to you? _____ If so, where and why?

_____

_____

_____

4. List references from private firms for which you have performed work.

_____

_____

_____

_____

_____

## SECTION II PLAN AND EQUIPMENT QUESTIONNAIRE

1. Explain your plan or layout for performing proposed work. *(Examples could include a narrative of when you could begin work, complete the project, number of workers, etc. and any other information which you believe would enable the governmental unit to consider your bid.)*

_____

_____

_____

_____

_____

2. Please list the names and addresses of all subcontractors *(i.e. persons or firms outside your own firm who have performed part of the work)* that you have used on public works projects during the past five (5) years along with a brief description of the work done by each subcontractor.

_____

_____

_____

_____

_____

3. If you intend to sublet any portion of the work, state the name and address of each subcontractor, equipment to be used by the subcontractor, and whether you will require a bond. However, if you are unable to currently provide a listing, please understand a listing must be provided prior to contract approval. Until the completion of the proposed project, you are under a continuing obligation to immediately notify the governmental unit in the event that you subsequently determine that you will use a subcontractor on the proposed project.

_____

_____

_____

_____

_____

4. What equipment do you have available to use for the proposed project? Any equipment to be used by subcontractors may also be required to be listed by the governmental unit.

_____

_____

_____

_____

_____

5. Have you entered into contracts or received offers for all materials which substantiate the prices used in preparing your proposal? If not, please explain the rationale used which would corroborate the prices listed.

_____

_____

_____

_____

_____

## SECTION III CONTRACTOR'S FINANCIAL STATEMENT

Attachment of bidder's financial statement is mandatory. Any bid submitted without said financial statement as required by statute shall thereby be rendered invalid. The financial statement provided hereunder to the governing body awarding the contract must be specific enough in detail so that said governing body can make a proper determination of the bidder's capability for completing the project if awarded.

## SECTION IV CONTRACTOR'S NON- COLLUSION AFFIDAVIT

The undersigned bidder or agent, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such sale.

## SECTION V OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID FOR PUBLIC WORKS ARE TRUE AND CORRECT.

Dated at_____this_____day of_____

_____

*(Name of Organization)*

By_____ ___

_____

*(Title of Person Signing)*

## ACKNOWLEDGEMENT

STATE OF_____)

) ss

COUNTY OF_____)

Before me, a Notary Public, personally appeared the above-named_____and

swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to before me this_____day of_____

_____

*Notary Public*

My Commission Expires:_____

County of Residence:_____

# BID OF

_____
*(Contractor)*

_____
*(Address)*

_____

# FOR

# PUBLIC WORKS PROJECTS

# OF

_____

_____

_____

Filed_____

Action taken_____

_____

**MARK KRUZAN**
**MAYOR**

CITY OF BLOOMINGTON
401 N Morton St
Post Office Box 100
Bloomington IN 47402

CONTROLLER'S OFFICE
p 812.349.3412
f 812.349.3456
controller@bloomington.in.gov

## REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION: SUBSTITUTE W-9

Name (as shown on your tax return):

Business Name (if different):

Check appropriate box for federal tax classification:

☐ Individual/sole proprietor ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____

☐ Other ► _____

Exemptions:

Exempt payee code (if any)_____

Exemption from FATCA reporting code (if any)_____

Address (number, street, and apt. or suite no.):

City, State, and ZIP code:

Telephone number: | Fax number:

**Taxpayer Identification Number (TIN)**
Enter you TIN in the appropriate box. The TIN provided must match the name given on the "Name" line
To avoid backup withhold. For individuals, this is your social security number (SSN). However, for a Resident alien, sole proprietor, or disregarded entity, see the Part 1 instructions on page 3 of IRS Form W-9. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 3 of IRS Form W-9

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose Number to enter.

Social security number

☐☐☐ - ☐☐ - ☐☐☐☐

Employer identification number

☐☐ - ☐☐☐☐☐☐☐

**Certification**
Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

3. I am a U.S. person or other U.S. person (defined below), and

4. The FATCA codes(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification Instructions**
You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3 of the IRS Form W-9.

Please mail or fax this complete form as soon as possible to the Controller's Office using the contact information above.
**NO PAYMENTS WILL BE SENT UNTIL THIS FORM IS RECEIVED**.

| SIGN HERE | Signature of U.S. person ► | Date ► |
|---|---|---|

**THE CITY'S PREFERRED METHOD OF PAYMENT IS EFT. PLEASE COMPLETE TO ENROLL**

| **EFT Information** | | | |
|---|---|---|---|
| Bank Name: | | | |
| Type of Account: | Checking | Savings | |
| Routing Number: | | | |
| Account Number: | | | |
| Name of Account: | | | |
| Email for Payment Notification: | | | |

**REFERENCES FOR SOLE PROPRIETORS & PARTNERSHIPS**

| **Name:** | **Address:** |
|---|---|
| **Phone:** | **Email:** |

| **Name:** | **Address:** |
|---|---|
| **Phone:** | **Email:** |

| **Name:** | **Address:** |
|---|---|
| **Phone:** | **Email:** |

**BILLING INFORMATION**

| Payment Remittance | | |
|---|---|---|
| Address (PO Box) | | |
| Address (Physical) | | |
| City | State | Zip |
| Person to Contact | | |
| Email | | |
| Phone | | |

# SECTION VI
# GENERAL CONDITIONS

# GENERAL CONDITIONS

# FOR

# CONSTRUCTION

*INDEX TO THE ARTICLES OF THE GENERAL CONDITIONS*


DEFINITIONS

EXECUTION OF DOCUMENTS

CORRELATION, INTERPRETATION AND INTENT OF DOCUMENTS

AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS

BONDS AND INSURANCE

CONTRACTOR'S RESPONSIBILITIES

WORK BY OTHERS

OWNER'S RESPONSIBILITIES

ENGINEER'S RESPONSIBILITIES DURING CONSTRUCTION

CHANGES IN THE WORK

CHANGES IN CONTRACT PRICE

CHANGE OF CONTRACT TIME

LIQUIDATED DAMAGES

WARRANTY AND GUARANTEE: TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.

PAYMENTS AND COMPLETION.

SUSPENSION OF WORK AND TERMINATION.

ARBITRATION.

ENVIRONMENTAL REQUIREMENTS.

MISCELLANEOUS.


**1.00 DEFINITIONS**. The Owner, the Contractor and the Engineer, are those mentioned as such in the Agreement. They are treated throughout the Contract Documents as if each were of the singular number and masculine gender. Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

**1.01. ADDENDA.** Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the Contract Documents, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Agreement is executed.

**1.02. AGREEMENT.** The contractual agreement between the Contractor and the Owner.

**1.03. APPLICATION FOR PAYMENT.** The form used by Contractor in requesting payments, including accompanying documentation required by the Contract Documents.

**1.04. BID.** The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

**1.05. BIDDER.** Any person, firm, or corporation submitting a Bid for the Work.

**1.06. BOARD.** The City of Bloomington Board of Public Works.

**1.07. BONDS.** Bid, performance, and payment bonds and other instruments of security, furnished by the Contractor and his surety in accordance with the Contract Documents.

**1.08. CALENDAR DAY.** Every day shown on the calendar.

**1.09. CHANGE ORDER.** A written order to the Contractor signed by the Owner authorizing an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued after execution of the Agreement.

**1.10. CONTRACT.** The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Engineer and the Contractor, (2) between the Owner and a Subcontractor or Sub subcontractor, or (3) between any persons or entities other than the Owner and Contractor.

**1.11. CONTRACT DOCUMENTS.** The Agreement, Addenda (whether issued prior to the opening of Bid or the execution of the Agreement), Change Orders issued by the Owner or Engineer, Invitation to Bidders, Instructions to Bidders, Proposal, Non-Collusion Affidavit, Questionnaire, Contractor's Bid, the Bonds, Employment Requirements and Wage Rates, Notification Procedures, General Equipment Stipulations, the Notice of Award, the Notice to Proceed, these General Conditions, the Special Conditions, the Specifications, Drawings, and Modifications.

**1.12. CONTRACT PRICE.** The total amount payable to the Contractor under the Contract Documents.

**1.13. CONTRACT TIME.** The number of days stated in the Agreement for the completion of the Work, computed as provided in these General Conditions; or by the date set forth in the Agreement. Contract days are not to be determined from the usage of the Indiana Department of Transportation (I.N.D.O.T.) Standard Specifications Manual.

**1.14. CONTRACTOR.** The person, firm, or corporation with whom the Owner has executed the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative. The relationship of the Contractor to the Owner shall be that of an independent contractor.

**1.15. DAY.** A calendar day of twenty-four hours measured from midnight to the next midnight.

**1.16. DATE OF CONTRACT.** The date written in the first paragraph of the Contract Agreement.

**1.17. DRAWINGS OR PLANS.** The graphic and pictorial portions of the Contract Documents, wherever located or whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

**1.18. ENGINEER.** The Traffic and Transportation Engineer (herein after "City Engineer", or "Engineer"), person, firm, or corporation named by the Owner "the City of Bloomington", or the duly authorized agents of the Engineer, acting within the scope of the duties entrusted to them.

**1.19. FIELD ORDER.** A written order issued by the Engineer which clarifies or interprets the Contract Documents or orders minor changes in the Work.

**1.20. MODIFICATION.** (a) A written amendment of the Contract Documents signed by both parties. (b) A Change Order. (c) A written clarification or interpretation issued by the Engineer. (d) A written order for a minor change or alteration in the Work issued by the Engineer. A Modification may be issued only after execution of the Agreement.

**1.21. NOTICE OF AWARD.** The Written notice by the Owner to the apparent successful Bidder stating that upon compliance with the conditions precedent to be fulfilled by him within the time specified, the Owner will execute and deliver the Agreement to him.

**1.22. NOTICE TO PROCEED.** A written notice given to the Contractor by the Owner (with a copy to the Engineer) fixing the date on which the Contract Time will commence to run and on which the Contractor shall start to perform his obligations under the Contract Documents.

**1.23. OWNER.** The City of Bloomington named and designated in the Agreement as "Owner" acting through its Board of Public Works and its authorized agents. All notices, letters, and other communication directed to the Owner shall be addressed and delivered to the Office of the City Engineer, 401 North Morton, Suite #130, Bloomington, Indiana, 47404.

**1.24. PROJECT.** The total construction of which the Work performed under the Contract Documents may be the whole or a part, and which may include construction by the Owner or by separate contractors.

**1.25. BID.** The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

**1.26. BIDDER.** Any person, firm, or corporation submitting a Bid for the Work.

**1.27. RESPONSIBLE BIDDER.** One who is fully capable of performing the contract requirements and who has the integrity and reliability to insure faithful performance.

**1.28. RESPONSIVE BIDDER.** One who has submitted a Bid conforming in all material respects to the Contract Documents.

**1.29. SHOP DRAWINGS.** All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a Subcontractor, manufacturer, supplier or distributor and which illustrate the equipment, material or some portion of the Work.

**1.30. SPECIFICATIONS.** Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work, and performance of related services.

**1.31. SUBCONTRACTOR.** An individual, firm, or corporation having a direct contact with the Contractor or with any other Subcontractor for the performance of a part of the Work to a special design at the site, but does not include a firm which merely furnishes material. All Subcontractor's performing work having a value over $10,000.00 must be approved prior to performing any work under this contract agreement. Any work performed without prior approval will not be compensated for.

**1.32. SUBSTANTIAL COMPLETION.** The date as determined by the Engineer when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it was intended; or if there be no such determination, the date of final completion.

**1.33. WORK.** Any and all obligations, duties, and responsibilities necessary to the successful completion of the Project assigned to, or undertaken by, the Contractor under the Contract Documents, including all labor, materials, equipment, and other incidentals, and the furnishing thereof.

**1.34. MISCELLANEOUS DEFINITIONS**

**1.34.1. AS ORDERED, AS DIRECTED, AS REQUIRED, AS PERMITTED, AS ALLOWED.** The order, directions, requirement, permission, or allowance of the Owner or Engineer is intended only to the extent of judging compliance with the Contract Documents. The terms do not imply that the Owner or Engineer has any authority or responsibility for supervision of the Contractor's forces or construction operations. Such supervision is the sole responsibility of the Contractor.

**1.34.2. REASONABLE, SUITABLE, ACCEPTABLE, PROPER, SATISFACTORY.** The terms reasonable, suitable, acceptable, proper, and satisfactory mean such to the Owner or Engineer and are intended only to the extent of judging compliance with the Contract Documents.

**1.34.3. UNDERSTOOD AND AGREED.** Whenever in these Contract Documents the expression "it is understood and agreed" or an expression of like import is used, such expression means the mutual understanding and agreement of the parties executing the Contract Agreement.

## 2.00. EXECUTION OF AGREEMENT.

**2.01. EXECUTION OF AGREEMENT.** The Agreement and other Contract Documents will be executed as set forth in the Special Conditions.

**2.02. DELIVERY OF BONDS.** When the executed Agreements are delivered to the Owner, the Contractor shall also deliver to the Owner such Bonds as he may be required to furnish in accordance with the Agreement.

**2.03. COPIES OF DOCUMENTS.** The Owner shall furnish to the Contractor the number of copies of the Contract Documents set forth in the Special Conditions or a minimum of 3 sets of complete documents.

**2.04. CONTRACTOR'S PRE-AWARD REPRESENTATIONS.** The Contractor represents that he has familiarized himself with, and assumes full responsibility for having familiarized himself with, the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work, and represents that he has correlated his study, observations and site visits with the requirements of the Contract Documents. The Contractor also represents that he has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Specifications and made such additional surveys and investigations as he deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that he has correlated the results of all such data with the requirements of the Contract Documents.

**2.05. COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED.** Unless otherwise provided in the SPECIAL CONDITIONS**,** the Contractor will be expected to start active and continuous work on the contract within 5 calendar days after the date of the Notice to Proceed. In **no case** shall work begin prior to the date of the Notice to Proceed unless this time is waived and mutually agreed upon and indicated on the Notice to Proceed. If a delayed starting date is indicated in the proposal, the 5 calendar day limitation shall be waived. Work day charges will then begin on a date mutually agreed upon, but not later than the delayed starting date specified. In the event that any contract is canceled after an award has been made but prior to the issuing of the Notice to Proceed, no reimbursement will be made for any expenses accrued relative to this contract during that period.

**2.06. STARTING THE PROJECT.** The Engineer shall be notified at least 3 days in advance of the date on which the work is expected to begin. Should the prosecution of the work for any reason be discontinued, the Engineer shall be notified at least 24 hours in advance of resuming operations.

**2.07. BEFORE STARTING CONSTRUCTION.** Before undertaking each part of the Work, the Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. He shall at once report in writing to the Engineer any conflict, error, or discrepancy which he may discover. However, he shall not be liable to the Owner or Engineer for his failure to discover any conflict, error, or discrepancy in the Drawings or Specifications.

**2.08. SUBMISSION OF SCHEDULES.** Within ten days after delivery of the executed Agreement by the Owner to the Contractor, the Contractor shall submit to the Engineer for review, an estimated progress schedule that shall be in 'Critical Path' format and indicating the starting and completion dates of the various stages of the Work, and a preliminary schedule of Shop Drawing submissions and other specified schedules. The 'Critical Path' schedule must include all possible overlapping work that can be accomplished should one action or function not be available or accessible to the contractor in order to show that the Contractors interrelated activities that will control the work path to complete the project within the time limits set forth for the project. Contracts with less than 60 calendar days completion time, less than 35 work days, or less than 60 days between the notice to proceed and the completion date do not need to submit a progress schedule. The progress schedule may be used as a basis for establishing major construction operations and as a check on the progress of the work. The Engineer shall be notified at least 3 days in advance of the date on which the work is expected to begin. Sufficient materials, equipment, labor shall be provided by the Contractor to meet the progress schedule (if required) and to guarantee the completion of the project in accordance with the plans and specifications.

**3.00. CORRELATION, INTERPRETATION, AND INTENT OF CONTRACT DOCUMENTS.** It is the intent of the Specifications and Drawings to describe a complete Project to be constructed in accordance with the Contract Documents. The Contract Documents comprise the entire Agreement between the Owner and the Contractor. They may be altered only by a Modification.

The Contract Documents are complementary. What is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error, or discrepancy in the Contract Documents, he shall call it to the Engineer's attention in writing at once. Before proceeding with the Work affected thereby, he shall not be liable to the Owner or Engineer for his failure to discover any conflict, error or discrepancy in the Specifications or Drawings. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

In case of discrepancy, and subject to the terms of the **AGREEMENT** between Owner and Contractor, calculated dimensions will govern over scaled dimensions; plans will govern over specifications; special conditions will govern over the plans and specifications. The instructions to Bidders and the description of the pay items listed in the itemized proposal will govern over plans, specifications, and special conditions. The precedence outlined herein shall not absolve the Contractor of his responsibility with regard to errors and omissions, or from his requirement to follow all IOSHA, OSHA, any local safety ordinances, and general good construction practices.

Advantage shall not be taken of any apparent error or omission in the plans or specifications. In the event such an error or omission is discovered, the Engineer shall be notified immediately in writing. Such corrections and interpretations as may be deemed necessary for fulfilling the intent of the plans and specifications will then be made.

**4.00. AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS.**

**4.01. AVAILABILITY OF LANDS.** The Owner shall furnish, as indicated in the Contract Documents and not later than the Notice to Proceed, the lands upon which the Work is to be done, rights-of-way for access thereto, and such other lands which are designated for use by the Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise specified in the Contract Documents. If the Contractor believes that any delay in the Owner's furnishing these lands or easements entitles him to an extension of the Contract Time, he may make a claim therefore as provided in these General Conditions

**4.02. PHYSICAL CONDITIONS; SURVEYS AND REPORTS.** Refer to **Instructions to Bidder**. For identification of those surveys and investigation reports of subsurface and latent physical conditions at the Project site or otherwise affecting performance of the Work which have been relied upon by the Engineer in preparation of the Drawings and Specifications, refer to **SPECIAL CONDITIONS**.

**4.03. UNFORESEEN PHYSICAL CONDITIONS.** The Contractor shall promptly notify the Owner and Engineer in writing of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents. The Engineer will promptly investigate those conditions and advise the Owner in writing if further surveys or subsurface tests are necessary. Promptly thereafter, the Owner shall obtain the necessary additional surveys and tests and furnish copies to the Engineer and Contractor. If the Engineer finds that the results of such surveys or tests indicate that there are subsurface or latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by the Contractor, a Change Order shall be issued incorporating the necessary revisions.

**4.04. REFERENCE POINTS.** The Owner shall provide engineering surveys for construction to establish reference points which in his judgment are necessary to enable the Contractor to proceed with the Work. The Contractor shall be responsible for surveying and laying out the Work (unless otherwise provided in the Special Conditions), and shall protect and preserve the established reference points and shall make no changes or reallocations without the prior written approval of the Owner. He shall report to the Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. The Contractor shall replace and accurately relocate all reference points so lost, destroyed or moved at the Contractor's expense.

## 5.00. BONDS AND INSURANCE.

**5.01. PERFORMANCE, PAYMENT AND OTHER BONDS.** When Contractor delivers the executed counterparts of the **AGREEMENT** to Owner, the Contractor shall furnish a Performance Bond, Payment Bond, and other Bonds specified in **AGREEMENT** as security for the faithful performance and payment of all his obligations under the Contract Documents. The Performance Bond shall be in an amount at least equal to *100%* of the Contract Price, unless otherwise listed in **SPECIAL CONDITIONS**. Bonds shall be executed on the forms (when provided) included in the Contract Documents and with such sureties as are licensed to conduct business in the state of Indiana and are named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. The surety shall have an "A" minimum rating of performance and a financial rating strength of five times the Contract Price, all as stated in "Best's Key Rating Guide, Property-Liability". Each Bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety and certified to include the date of the Bond.

**5.02. TERMINATION OF SURETY.** If the surety on any Bond furnished by the Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated or revoked in any state where any part of the Project is located, the Contractor shall within five days thereafter substitute another Bond and surety, both of which shall be acceptable to the Owner.

**5.03. CONTRACTOR'S LIABILITY INSURANCE.** The Contractor shall purchase and maintain such insurance as will protect him from claims under worker's compensation laws, disability benefit laws, or similar employee benefit laws, from claims for damages because of bodily injury, occupational sickness or disease, or death of his employees, and claims insured by personal injury liability coverage; from claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees including claims insured by personal injury liability coverage; and from claims for injury to or destruction of tangible property, including loss of use resulting therefrom - any or all of which may arise out of or result from the Contractor's operations under the Contract Documents, whether such operations be by himself or by any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. This insurance shall include the specific coverage's and be written for not less than any limits of liability and maximum deductibles specified in the Supplementary Conditions or required by law, whichever is greater, shall include contractual liability insurance and shall include the Owner and Engineer as additional insured parties. Before starting the Work, the Contractor shall file with the Owner and Engineer certificates of such insurance, acceptable to the Owner; these certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least fifteen days prior written notice has been given to the Owner and Engineer.

## 6.00. CONTRACTOR'S RESPONSIBILITIES.

**6.01. SUPERVISION AND SUPERINTENDENCE.** The Contractor shall supervise and direct the Work efficiently and with his best skill and attention. He shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but he shall not be solely responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. The Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

**6.02. RESIDENT SUPERINTENDENT.** The Contractor shall keep on the Work site at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to the Owner and Engineer. The superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor.

**6.03. LABOR, MATERIALS AND EQUIPMENT.** The Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities, and all other facilities and incidentals necessary for the execution, testing, initial operation, and completion of the Work.

All materials and equipment shall be new, except as otherwise provided in the Contract Documents. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the contract Documents.

The Contractor shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them, and of persons and organizations for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between the Owner or Engineer and any Subcontractor or other person or organization having a direct contact with the Contractor, nor shall it create any obligation on the part of the Owner or Engineer to pay or to see to the payment of any monies due any Subcontractor or any other person or organization, except as may otherwise be required by law. The Owner or Engineer may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to the Contractor on account of specific Work done in accordance with the schedule of values.

The divisions and sections of the Specifications and the identification of any Drawings shall not control the Contractor in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

The Contractor agrees to bind specifically every Subcontractor to the specific terms and conditions of the Contract Documents for the benefit of the Owner.

All Work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by insurance, except such rights as they may have to the proceeds of such insurance.

The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor.

**6.04. PATENT FEES AND ROYALTIES.** The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of the Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents. The Contractor shall indemnify and hold harmless the Owner and Engineer and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

**6.05. PERMITS.** The Contractor shall obtain and pay for all construction permits and licenses and shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of his/her Bid. The Owner shall assist the Contractor, when necessary, in obtaining such permits and licenses. The Contractor shall also pay all public utility charges necessary for the meter/service connections to place installed devices into working order and placing said service accounts in the name of the City of Bloomington, or their assigned designee.

**6.06. LAWS AND REGULATIONS.** The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If the Contractor observes that the Specifications or Drawings are in conflict therewith, he shall give the Engineer prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, he shall bear all costs arising there from; however, it shall not be his primary responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations.

**6.07. TAXES.** The Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by him in accordance with the law of the place where the work is to be performed. The Owner is exempt from sales tax on products permanently incorporated into the work. The Contractor may obtain sales tax exemption for such materials, products, and equipment and shall obtain an Indiana General Sales Tax Exemption Certificate from the Owner.

**6.08. USE OF PREMISES.** The Contractor shall confine his equipment, the storage of materials and equipment and the operations of his workmen to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with materials or equipment. No assumptions of allowable traffic closures shall be made by the Contractor unless specifically called for in a "Maintenance of Traffic" plan should one exist. All roadway and lane closures must be approved by the Engineer prior to implementing the closure and a 'Notice of Intent' to close a lane or roadway must be delivered in writing to the Engineer by

the Wednesday preceding the week of the desired closure date or time so proper notification can be given to the required personnel.

The Contractor shall not load nor permit any part of any structure to be loaded with weights that will endanger the structure, nor shall he subject any part of the Work to stresses or pressures that will endanger it.

**6.09. RECORD DRAWINGS.** The Contractor shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. These shall be available to the Engineer and shall be delivered to him for the Owner upon completion of the Project and prior to final payment.

**6.10. SAFETY AND PROTECTION.** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. He shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to: all employees on the Work and other persons who may be affected thereby. This includes ensuring the safety of pedestrians, bicyclist, and motorists who are allowed to access the site during the project. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall notify owners of adjacent utilities when prosecution of the Work may affect them. All damage, injury or loss to any property caused directly or indirectly, in whole or in part, by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by the Contractor: except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the Owner or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor. The Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and the Engineer has issued a notice to the Owner and Contractor in accordance with Supplementary Conditions that the Work is acceptable.

**6.11. SUPERINTENDENT OF SAFETY.** The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Owner. The Superintendent of Safety shall be responsible for the maintenance of traffic control devices and personnel in accordance with the Manual on Uniform Traffic Control Devices (M.U.T.C.D.) for work zone safety. Weekly "Sign and Barricade Reports" are to be submitted by the Superintendent of Safety.

**6.12. EMERGENCIES.** In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Engineer or Owner, is obligated to act, at his discretion, to prevent threatened damage, injury or loss. He shall give the Engineer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes and deviations involved. If the Contractor believes that additional work done

by him in an emergency which arose from causes beyond his control entitles him to an increase in the Contract Price or an extension of the Contract Time, he may make a claim therefore.

**6.13. INDEMNIFICATION.** The Contractor shall indemnify and hold harmless the Owner and Engineer and their agents and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense: is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from and is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable regardless of whether or not it is caused in part by a party indemnified hereunder. In any and all claims against the Owner or Engineer or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts. The indemnification obligations of the Contractor shall not extend to the liability of the Engineer, his agents or employees arising out of: the preparation of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications or the giving of or the failure to give directions or instructions by the Engineer, his agents or employees, provided such giving or failure to give is the primary cause of injury or damage.

## 7.00. WORK BY OTHERS.

The Owner may perform additional work related to the Project by himself, or he may let other direct contracts therefore which shall contain General Conditions similar to these. The Contractor shall afford the other contractors who are parties to such direct contracts (or the Owner, if he is performing the additional work himself) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate his Work with theirs.

If any part of the Contractor's Work depends for proper execution or results upon the work of any such other contractor (or Owner), the Contractor shall inspect and promptly report to the Engineer in writing any defects or deficiencies in such work that render it unsuitable for such proper execution and results. His failure to so report shall constitute an acceptance of the other work as fit and proper for the relationship of his Work except as to defects and deficiencies which may appear in the other work after the execution of his Work.

The Contractor shall do all cutting, fitting, and patching of his Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. The Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of the Engineer and of the other contractors whose work will be affected.

If the performance of additional work by other contractors or the Owner is not noted in the Contract Documents prior to the execution of the contract, written notice thereof shall be given to the Contractor prior to starting any additional work. If the Contractor believes that the performance of any such additional work by the Owner or others involves him in additional expense or entitles him to an extension of the Contract Time, he may make a claim therefore.

## 8.00. OWNER'S RESPONSIBILITIES.

The Owner shall issue all communications to the Contractor through the Engineer.

In case of termination of the employment of the Engineer, the Owner shall appoint an engineer against whom the Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer. Any dispute in connection with such an appointment shall be subject to arbitration.

The Owner shall furnish the data required of him under the Contract Documents promptly and shall make payments to the Contractor promptly after they are due.

In addition to his rights to request changes in the Work, the Owner shall be obligated to execute Change Orders.

## 9.00. ENGINEER'S STATUS DURING CONSTRUCTION.

**9.01. OWNER'S REPRESENTATIVE.** The Engineer will be the Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of the Engineer as the Owner's representative during construction are set forth in these General Conditions and shall not be extended without the written consent of the Owner and the Engineer.

**9.02. CLARIFICATIONS AND INTERPRETATIONS.** The Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as he may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the Contractor believes that a written clarification and interpretation entitles him to an increase in the Contract Price, he may make a claim therefore.

**9.03. REJECTING DEFECTIVE WORK.** The Engineer will have authority to reject Work which is "defective" (which term is hereinafter used to describe Work that is unsatisfactory, faulty or defective, or does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Specifications, or has been damaged prior to the Engineer's recommendation of final payment). He will also have authority to require special inspection or special testing of the Work whether or not the Work is fabricated, installed or completed.

**9.04. DECISIONS ON DISAGREEMENTS.** The Engineer will be the interpreter of the requirements of the Contract Documents and the judge of the performance hereunder. In his capacity as interpreter and judge he/she will exercise his/her best efforts to insure faithful performance by both Owner and Contractor. He will not show partiality to either and will not be liable for the result of any interpretation or decision rendered in good faith. Claims, disputes, and other matters relating to the execution and progress of the Work or the interpretation of or performance under the Contract Documents shall be referred to the Engineer for decision, which he will render in writing within a reasonable time.

**9.05. ARBITRATION.** Either the Owner or the Contractor may demand arbitration with respect to any such claim, dispute, or other matter that has been referred to the Engineer, except any which have been waived by the making or acceptance of final payment, such arbitration to be in accordance with these General Conditions. However, no demand for arbitration of any such claim, dispute, or other matter shall be made until the earlier of (a) the date on which the Engineer has rendered his decision or (b) the tenth day after the parties have presented their evidence to the Engineer if he

has not rendered his written decision before that date. No demand for arbitration shall be made later than thirty days after the date on which the Engineer rendered his written decision in respect to the claim, dispute or other matter as to which arbitration is sought; and the failure to demand arbitration within said thirty days' period shall result in the Engineer's decision being final and binding upon the Owner and the Contractor. If the Engineer renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but shall not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned.

**9.06. LIMITATIONS ON THE ENGINEER'S RESPONSIBILITIES.** Neither the Engineer's authority to act under this article or elsewhere in the Contract Documents nor any decision made by him in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, any material, man, fabricator, supplier or any of their agents or employees or any other person performing any of the Work.

The Engineer will not be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, and he will not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents.

The Engineer will not be responsible for the acts or omissions of the Contractor, or any Subcontractors, or any of his or their agents or employees or any other persons at the site or otherwise performing any of the Work.

## 10.00. CHANGES IN THE WORK.

Without invalidating the Agreement, the Owner may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by Change Orders and initiated through a Field Order from the Engineer or Owner. Upon receipt of a Change Order, the Contractor shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in these General Conditions on the basis of a claim made by either party.

The Engineer may authorize minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order. If the Contractor believes that any minor change or alteration authorized by the Engineer entitles him to an increase in the Contract Price, he may make a claim therefore.

Additional work performed by the Contractor without authorization of a Change Order will not entitle him to an increase in the Contract Price or an extension of the Contract Time, except as otherwise provided herein.

The Owner shall execute appropriate Change Orders prepared by the Engineer covering changes in the Work to be performed as provided herein and any other claim of the Contractor for a change in the Contract Time or the Contract Price which is confirmed by the Engineer.

It is the Contractor's responsibility to notify his Surety of any changes affecting the general scope of the Work or change in the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly.

## 11.00. CHANGE OF CONTRACT PRICE.

The Contract Price constitutes the total compensation payable to the Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the Contractor shall be at his expense without change in the Contract Price.

The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price shall be based on written notice delivered to the Owner and Engineer within twenty days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within forty-five days of such occurrence unless the Engineer allows an additional period of time to ascertain accurate cost data. All claims for adjustments in the Contract Price shall be determined by the Engineer if the Owner and the Contractor cannot otherwise agree on the amount involved. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order. All changes requested by the Engineer or Owner must be submitted to the Contractor in the form of a Field Order, at which time, the contractor shall provide in return a request for a change order with the prices for said requested work detailed by item and quantity for the Engineer and Owner to review for acceptance and so they can issue a Change Order for the approved work.

The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.

By mutual acceptance of a lump sum.

On the basis of the Cost of the Work plus a Contractor's Fee for overhead and profit (determined in accordance with the following paragraphs).

**11.01. COST OF THE WORK.** The term "Cost of the Work" means the sum of all costs necessarily incurred and paid by the Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by the Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall include only the following items:

Payroll costs for employees in the direct employ of the Contractor in the performance of the Work under schedules of job classifications set forth in the Wage Scale Determination. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Sunday or legal holidays shall be included in the above to the extent authorized by the Owner.

The cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to the Contractor unless the Owner deposits funds with the Contractor with which to make payments, in which case the cash discounts shall accrue to the Owner. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they may be obtained.

Payments made by the Contractor to the Subcontractors for Work performed by the Subcontractors. If required by the Owner, the Contractor shall obtain competitive bids from Subcontractors acceptable to him and shall deliver such bids to the Owner, who will then determine with the advice of the Engineer which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as the Contractor's Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

Costs of special consultants (including, but not limited to, engineers, architects, testing laboratories, surveyors, lawyers and accountants) employed for services specifically related to the Work.

**11.02. SUPPLEMENTAL COSTS** include the following:

The proportion of necessary transportation, traveling and subsistence expenses of the Contractor's employees incurred in discharge of duties connected with the Work.

The cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of the Contractor.

Rentals of all construction equipment and machinery and the parts thereof whether rented from the Contractor or others in accordance with the rental agreements approved by the Owner with the advice of the Engineer, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

Sales, use or similar taxes related to the Work, and for which the Contractor is liable, imposed by any governmental authority.

Deposits lost for causes other than the Contractor's negligence, royalty payments and fees for permits and licenses.

Losses, damages and expenses, not compensated by insurance or otherwise, sustained by the Contractor in connection with the execution of, and to, the Work, provided they have resulted from causes other than the negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of the Owner. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining the Contractor's fee. If, however, any such loss or damage requires reconstruction and the Contractor is placed in charge thereof, he shall be paid for his services a fee proportionate to that stated under Contractor's Fee.

The cost of utilities, fuel and sanitary facilities at the site.

Minor expenses such as telegrams, long distance phone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

The cost of premiums for additional bonds and insurance required because of changes in the Work.

**11.03 The** term "**COST OF THE WORK**" shall *not* include any of the following:

Payroll costs and other compensation of the Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by the Contractor, whether at the site or in his principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications - all of which are to be considered administrative costs covered by the Contractor's Fee.

Expenses of the Contractor's principal and branch offices other than his office at the site.

Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work and charges against the Contractor for delinquent payments.

Cost of premiums for all bonds and for all insurance policies whether or not the Contractor is required by the Contract Documents to purchase and maintain the same (except as otherwise provided above).

Costs due to the negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

Other overhead or general expense costs of any kind not specifically and expressly included in the Cost of the Work.

**11.04. CONTRACTOR'S FEE.** The Contractor's Fee which includes his overhead and profit shall be determined as follows:

A mutually acceptable fee; or, if none can be agreed upon,

A fee based on the following percentages of the various portions of the Cost of the Work:

for payroll costs and the cost of all materials and equipment included in the Work, the Contractor's Profit shall be ten percent.

for payments to Subcontractors, the Contractor's Profit shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be ten percent, and

no fee shall be payable on the basis of costs of special consultants or supplemental costs.

**11.05. CREDIT.** The amount of credit to be allowed by the Contractor to the Owner for any such change which results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.

Whenever the cost of any Work is to be determined pursuant to preceding paragraphs, the Contractor will submit in form prescribed by the Engineer an itemized cost breakdown together with supporting data.

## 12.00. CHANGE OF CONTRACT TIME.

The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to the Owner and Engineer within twenty days of the occurrence of the event giving rise to the claim. Notice of the extent of the claim with supporting data

shall be delivered within forty-five days of such occurrence unless the Engineer allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by the Engineer if the Owner and the Contractor cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order. Computation of Contract time shall be in accordance with the contract agreement and not that of the Indiana Department of Transportation (INDOT).

The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor if he makes a claim therefore as provided in the preceding paragraph. A claim for an extension of the Contract Time otherwise allowable under the Contract Documents, shall be granted only to the extent the time lost exceeds the float, using Critical Path analysis as called for in Section 2.08 above, for a delayed activity at the time of the event giving rise to the Claim. Float, whether expressly disclosed or implied in any manner, is jointly owned by the project participants. Such delays shall include, but not be restricted to, acts or neglect by any separate contractor employed by the Owner, fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God.

All time limits stated in the Contract Documents are of the essence of the Agreement. The Contractor agrees to make no monetary claim for delays, interferences or hindrances of any kind in the performance of this Contract occasioned by any act or omission to act of the Owner or any other party, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work where Critical Path analysis shows such an extension of time is warranted.

## 13.00. LIQUIDATED DAMAGES.

Liquidated damages shall be paid to the Owner in accordance with the Agreement. If no provision is made in the Agreement, liquidated damages shall be paid as follows:

In the event the Contractor fails to satisfactorily complete the entire Work contemplated and provided for under this contract on or before the date of completion as determined and described elsewhere herein, the Owner shall deduct from the amount due the Contractor the sum of Five Hundred Dollars ($500.00) for each calendar day of delay, which sum is agreed upon not as a penalty, but as a fixed and liquidated damage for each day of such delay, to be paid in full and subject to no deduction, it being understood and agreed that timely completion is of the essence. If the monies due the Contractor are less than the amount of such liquidated damages, then the Contractor or his surety shall pay the balance to the Owner.

## 14.00. WARRANTY AND GUARANTEE: TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.

**14.01. WARRANTY AND GUARANTEE.** The Contractor warrants and guarantees to the Owner and Engineer that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality and free from faults or defects and in accordance with the requirements of the Contract Documents and of any inspections, tests or approvals referred to in the Tests and Inspection paragraph. All unsatisfactory Work, all faulty or defective Work, and all Work not conforming to the requirements of the Contract Documents at the time of acceptance thereof or of such inspections, tests or approvals, shall be considered defective. Prompt notice of all defects shall be given to the Contractor. All defective Work, whether or not in place, may be rejected, corrected, or accepted as provided herein.

**14.02. TESTS AND INSPECTIONS.** If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by some public body, the Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish the Engineer the required certificates of inspection, testing, or approval. All other inspections, tests, or approvals required by the Contract Documents

shall be performed by organizations acceptable to the Owner and the Contractor and the costs thereof shall be borne by the Owner unless otherwise specified.

The Contractor shall give the Engineer timely notice of readiness of the Work for all inspections, tests or approvals. If any such Work required so to be inspected, tested or approved is covered without written concurrence of the Engineer, it must, if requested by the Engineer, be uncovered for observation, and such uncovering shall be at the Contractor's expense unless the Contractor has given the Engineer timely notice of his intention to cover such Work and the Engineer has not acted with reasonable promptness in response to such notice. This timeframe of notification shall be no less than 2 hours, and occur during normal working hours of the City of Bloomington (Monday through Friday – 8:00a.m. to 5:00p.m.) Requests for inspection during all other hours shall receive 48 hours notice

Neither observations by the Engineer nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from his obligations to perform the Work in accordance with the Contract Documents.

**14.03. ACCESS TO WORK.** The Engineer and his representatives and other representatives of the Owner will at reasonable times have access to the Work. The Contractor shall provide proper and safe facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

**14.04. UNCOVERING WORK.** If any Work is covered contrary to the written request of the Engineer, it must, if requested by the Engineer, be uncovered for his observation and replaced at the Contractor's expense.

If any Work has been covered which the Engineer has not specifically requested to observe prior to its being covered, or if the Engineer considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the Engineer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services, and an appropriate deductive Change Order shall be issued. If, however, such Work is not found to be defective, the Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if he makes a claim therefore.

**14.05. OWNER MAY STOP THE WORK.** If the Work is defective, or the Contractor fails to supply sufficient skilled workmen or suitable materials or equipment, or if the Contractor fails to make prompt payment to Subcontractors or for labor, materials or equipment, the Owner may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other party.

**14.06. CORRECTION OR REMOVAL OF DEFECTIVE WORK.** If required by the Engineer prior to his recommendation of final payment, the Contractor shall promptly, without cost to the Owner and as specified by the Engineer, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Engineer, remove it from the site and replace it with nondefective Work. If the Contractor does not correct such defective Work within

a reasonable time, all as specified in a written notice from the Engineer, the Owner may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and replacement, including compensation for additional professional services, shall be paid by the Contractor, and an appropriate deductive Change Order shall be issued. The Contractor shall also bear the expenses of making good all Work of others destroyed or damaged by his correction, removal or replacement of his defective Work.

**14.07. CORRECTION PERIOD.** If, after final payment and prior to the expiration of one year after the date of Substantial Completion (unless a longer period is set forth in the Supplementary Conditions) or such longer period as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, the Contractor shall promptly, without cost to the Owner and in accordance with the Owner's written instructions, either correct such defective Work or, if it has been rejected by the Owner, remove it from the site and replace it with non-defective Work. If the Contractor does not promptly comply with the terms of such instructions, the Owner may have the defective Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by the Contractor.

**14.08. ACCEPTANCE OF DEFECTIVE WORK.** If, instead of requiring correction or removal and replacement of defective Work, the Owner (and, prior to final payment, the Engineer) prefers to accept it, he may do so. In such case, if acceptance occurs prior to final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price; or, if the acceptance occurs after final payment, an appropriate amount shall be paid by the Contractor to the Owner.

**14.09. NEGLECTED WORK BY THE CONTRACTOR.** If the Contractor should fail to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, the Owner, after seven days written notice to the Contractor may, without prejudice to any other remedy he may have, make good such deficiencies and the cost thereof (including compensation for additional professional services) shall be charged against the Contractor if the Engineer agrees with such action, in which case a Change Order shall be issued incorporating the necessary revisions in the Contract Documents including an appropriate reduction in the Contract Price. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

## 15.00. PAYMENTS AND COMPLETION.

**15.01. APPLICATION FOR PROGRESS PAYMENT.** The Contractor may, no more frequently than every two weeks, make an estimate of the value of the Work completed, and submit an Application for Payment. The estimated cost of repairing, replacing, or rebuilding any part of the Work or replacing materials which do not conform to the Contract Documents will be deducted from the estimated value. The Application for Payment shall be submitted to the Engineer for review and approval.

**15.02. CONTRACTOR'S WARRANTY OF TITLE.** The Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the Owner at the time of payment free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Liens").

**15.03. REVIEW OF APPLICATION FOR PAYMENT.** The Contractor shall furnish to the Engineer such detailed information as he may request to aid in the review and approval of such Estimates. The Engineer will, within five working days after receipt of each Application for Payment, either recommend payment and present the Application to the Owner, or return the Application to the Contractor indicating in writing his reasons for refusing to recommend payment. In the latter case, the Contractor may make the necessary corrections and resubmit the Application. The Owner will pay to the Contractor within forty-five days after receipt of Application. If required by the terms of the **AGREEMENT,** Retainage shall be withheld from each payment in the amount of 10% of each Application up to 50% completion. At 50% completion further payments shall be made in full to the contractor and no further amounts may be retained unless the Engineer certifies that the job is not proceeding satisfactorily, but amounts previously retained shall not be paid to the Contractor. At 50% completion or any time thereafter when the progress of the Work is not satisfactory, additional amounts may be retained, but in no event shall the total retainage be more than 10% of the value of the work completed. Upon substantial completion of the work, any amount retained may be paid to the Contractor. When the work has been substantially completed except for the work which cannot be completed due to weather conditions, lack of materials or other reasons which in the judgment of the Owner are valid reasons for non-completion, the Owner may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed. Such Applications for Payment are processed on a regular biweekly schedule, which will be provided to the Contractor.

**15.04. FINAL INSPECTION.** When the Work has been substantially completed and at a time mutually agreeable to the Owner, Engineer, and Contractor, the Engineer and Contractor shall make a final walk-through inspection of the Work. The Engineer shall report to the Owner his findings as to the acceptability and completeness of the Work.

**15.05. APPLICATION FOR FINAL PAYMENT.** Upon written notice from the Engineer that Work is completed and acceptable as provided in the Supplementary Conditions, the Contractor shall make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all other documentation called for in the Contract Documents and such other data and schedules as the Engineer may reasonably require.

**15.06. FINAL PAYMENT.** If, on the basis of his observation and review of the Work during construction, his final inspection and his review of the final Application for Payment, all as required by the Contract Documents, the Engineer is satisfied that the Work has been completed and the Contractor has fulfilled all of his obligations under the Contract Documents, he will, within ten days after receipt of the final Application for Payment, present the Application to the Owner for Payment. Thereupon the Engineer will give written notice to the Contractor that the Work is acceptable subject to the provisions of the paragraph regarding waiver of claims. Otherwise, he will return the Application to the Contractor, indicating in writing his reasons for refusing to recommend final payment, in which case the Contractor shall make the necessary corrections and resubmit the Application. The Owner shall, within thirty days of presentation to him of the final Application for Payment, pay the Contractor the entire sum found to be due after deducting all amounts to be retained under any provision of the Contract Documents.

**15.07. CONTRACTOR'S CONTINUING OBLIGATION.** The Contractor's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither

recommendation of any progress or final payment by the Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by the Owner to the Contractor under the Contract Documents, nor any use or occupancy of the Project or any part thereof by the Owner, nor any act of acceptance by the Owner nor any failure to do so, nor any correction of defective Work by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

**15.08. WAIVER OF CLAIMS.** The making and acceptance of final payment shall constitute:

a waiver of all claims by the Owner against the Contractor other than those arising from unsettled Liens, from defective Work appearing after final inspection or from failure to comply with the requirements of the Contract Documents or the terms of any special guarantees specified therein, and

a waiver of all claims by the Contractor against the Owner other than those previously made in writing and still unsettled.

## 16.00. SUSPENSION OF WORK AND TERMINATION.

**16.01. OWNER MAY SUSPEND WORK.** The Owner may, at any time and without cause, suspend the Work or any portion thereof for a period of ninety days by notice in writing to the Contractor, which shall fix the date on which Work shall be resumed. The Contractor shall resume the Work on the date so fixed. The Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if he makes a claim therefore as provided in these General Conditions.

**16.02. OWNER MAY TERMINATE.** If the Contractor is adjudged a bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or if he disregards the authority of the Engineer, or if he otherwise violates any provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and his Surety seven days written notice, terminate the services of the Contractor and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and finish the Work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excesses shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. Such costs incurred by the Owner shall be incorporated in a Change Order.

Where the Contractor's services have been so terminated by the Owner, said termination shall not affect any rights of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from liability.

Upon seven days written notice to the Contractor, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Agreement.

In such case, the Contractor shall be paid for all Work executed and any expense sustained plus a reasonable profit.

**16.03. CONTRACTOR MAY STOP WORK OR TERMINATE.** If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety days by the Owner or under an order of court or other public authority, or the Engineer fails to act on any Application for Payment within thirty days after it is submitted, or the Owner fails to pay the Contractor any sum recommended by the Engineer or awarded by arbitrators within thirty days of its approval and presentation, then the Contractor may, upon seven days written notice to the Owner and Engineer, terminate the Agreement and recover from the Owner payment for all Work executed and any expense sustained plus a reasonable profit. In addition and in lieu of terminating the Agreement, if the Engineer has failed to act on an Application for Payment or the Owner has failed to make any payment as aforesaid, the Contractor may upon seven days notice to the Owner and Engineer stop the Work until he has been paid all amounts then due.

**17.00. ARBITRATION.**

**17.01** As a condition precedent to the commencement of judicial action for resolution of Claims, disputes, and other matters in question arising out of, or relating to, the Agreement, including any disagreement with Engineer's decisions, either Owner or Contractor shall file a written demand for arbitration of the dispute with the other party.

**17.02** No demand for arbitration of any Claim, dispute, or other matter that is required to be referred to Engineer initially for decision in accordance with Paragraph 10.00, 11.00 and 12.00 of the General Conditions may be made until the earlier of (a) the date on which Engineer has rendered a written decision or (b) 30 days after the parties have presented their evidence to Engineer if a written decision has not been rendered by Engineer before that date. No demand for arbitration of any such Claim, dispute, or other matter may be made later than 30 days after the date on which Engineer has rendered a written decision in respect thereof; and the failure to demand arbitration within said 30 day period shall result in Engineer's decision being final and binding upon Owner and Contractor. If Engineer renders a decision after arbitration or judicial proceedings have been initiated, such decision may be entered as evidence but will not supersede such proceedings, except where the decision is acceptable to the parties concerned.

**17.03** In all other cases, the demand for arbitration shall be made within a reasonable time after the Claim, dispute, or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such Claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

**17.04** If the party upon whom the demand for arbitration is made rejects arbitration, or fails to give a written response within 30 days after receiving the demand, the other party may commence judicial action on the merits of the dispute. If the party upon whom the demand for arbitration is made accepts arbitration, the other party may commence arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining. The agreement to arbitrate entered into in accordance herewith will be specifically enforceable under the prevailing law of any court having jurisdiction.

**17.05** If a Claim, dispute, or other matter in question between Owner and Contractor involves the work of a Subcontractor, either Owner or Contractor may join such Subcontractor as a party to the arbitration between Owner and Contractor. Contractor shall include in all subcontracts required by Paragraph 6.14 of the General Conditions a specific provision whereby the Subcontractor consents to being joined in an arbitration between Owner and Contractor involving the Work of such Subcontractor. Nothing in this paragraph nor in the provision of such subcontract consenting to joinder shall create any Claim, right, or cause of action in favor of Subcontractor and against Owner, Engineer, or Engineer's Consultants that does not otherwise exist

**17.06** The award rendered by the arbitrators will be final, and judgment may be entered upon it in any court having jurisdiction.

## 18.00. ENVIRONMENTAL REQUIREMENTS.

The Contractor, when constructing a project involving trenching and/or other related earth excavation, shall comply with the following environmental constraints and be required to install appropriate erosion control devices as determined by the City of Bloomington, which may include, but not be limited to the placement of inlet protection, silt fencing, check dams, temporary seeding and/or mulching. All costs for this work shall be included in the cost of the base Bid with work performed by the contractor to ensure that all erosion in contained on site.

**18.01. WETLANDS.** The Contractor, when disposing of excess, spoil, or other related earth construction materials on public or private property, shall not fill in or otherwise convert wetlands.

**18.02. FLOODPLAINS.** The Contractor, when disposing of excess, spoil, or other related earth construction materials on public or private property, shall not fill in or otherwise convert 100 year flood plain areas delineated on the latest FEMA Floodplain Maps.

**18.03. HISTORIC PRESERVATION.** Any excavation by the Contractor that uncovers an historical or archaeological artifact shall be immediately reported to the City Engineer's Office. Construction shall be temporarily halted pending the notification process and further directions issued by the City after consultation with the State Historic Preservation Office (SHPO).

**18.04. ENDANGERED SPECIES.** The Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species or their critical habitat be brought to the attention of the contractor, the contractor shall immediately report this evidence to the City Engineer. Construction shall be temporarily halted pending the notification process and further directions issued by the OWNER after consultation with the U.S. Fish and Wildlife Service.

**18.05 Rule 5 Permit.** The Contractor shall comply with all applicable requirements of the Rule 5 Permit for erosion control utilizing applicable Best Management Practices (B.M.P.'s) prior to the commencement of work.

## 19.00. MISCELLANEOUS.

**19.01. GIVING NOTICE.** Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to be validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by first class, registered or certified mail, postage prepaid, to the business address provided on the Contractual Agreement.

**19.02. COMPUTATION OF TIME.** Computation of time shall be set forth by the number of calendar days allowed for in the contract agreement. Calendar days shall consist every day shown on the calendar. The usage of Indiana Department of Transportation (I.N.D.O.T.) standard specifications with regard to time usage or computation does not apply to this contract and therefore is not applicable.

**19.03. ADDITIONAL SPECIFICATION REQUIREMENTS.** Areas of work not covered under Special Conditions will be required to meet specifications covered in applicable sections of Indiana Department of Transportation Specifications 2014 Edition (or latest edition and supplements at time of Bid) for the installation and placement of materials to ensure quality workmanship. INDOT Specifications shall not be interpreted to contradict current Public Works, or Bloomington Utility Specifications which shall override and supersede INDOT Specifications.

# SECTION VII
# SPECIAL CONDITIONS AND SUPPLEMENTARY CONDITIONS

# Special Conditions

1. Contractor shall maintain local access for all residents and local business within the limits of the project during construction.

2. Contractor shall limit his/her operations to within the project site, and seed and straw all disturbed areas. Contractors using any property outside the public right of way shall have an agreement in writing from each respective property owner of said property on file with the City of Bloomington Project Representative prior to usage. No verbal agreements are permitted.

3. Contractor is responsible for securing the construction site at all times.

4. Approximately 310 feet of 24 inch concrete curb (12 inch exposed face) shall be installed along the west side of the driveway for the Twin Lakes Ballfields Complex at a location determined by the City of Bloomington. Price for curb shall include patching of asphalt after curb installation completed and backfilling behind curb.

5. Installation of the asphalt driveway as shown on the plan sheet titled W. 2nd Street Sidepath Sanitary Sewer Construction for the property at 820 S. Anna Lee Lane shall be included in the lump sum bid price. No other work as shown on this plan sheet shall be included with the project.

6. Contractor shall coordinate the relocation of the light pole located at Station 13+25 near Basswood Drive. Contractor shall coordinate with the City of Bloomington to determine the new location.

7. Contractor shall provide right of way staking on the north side of Bloomfield Road from Landmark Avenue to Cory Lane for AT&T. Contractor will coordinate with AT&T while AT&T relocates five utility poles in this area.

8. Two of the R3-5L signs attached to the traffic signal shall be replaced with signs that read “LEFT TURN YIELD ON FLASHING YELLOW ARROW”. A detail for the sign is attached with this packet. The R3-5L signs for the traffic lanes on Bloomfield Road are the two signs that shall be replaced.

9. The Contractor shall install 45 new trees within or in the vicinity of the project limits. The trees shall have a minimum caliper of 1.75 inches. Contractor shall coordinate with City staff on the placement of trees. Trees shall be a mix of the species outlined in the City of Bloomington Tree Care Manual, 2nd Edition, pages 13-18. The manual can be found at the following web address: https://bloomington.in.gov/media/media/application/pdf/24154.pdf.

10. The traffic signal strain poles and other equipment shall be spun aluminum (grey) in color.

## Special Conditions Continued
## Page 2

11. Traffic Signal shall include two LED Cobrahead Street Lights on 20 foot Luminaire Arms. One street light shall be mounted on the strain pole on the north-east corner of the intersection. The other street light shall be mounted on the strain pole on the south-west corner of the intersection.

12. The two water meters at Station 20+25 near Cory Lane shall remain in their current location. Contractor will adjust water meters to grade if necessary.

13. Contractor shall disregard note stating "Contractor to relocate existing yard hydrant at 19+64 to a location approved by owner".

14. The new traffic signal and the new driveway for the Twin Lakes Recreation Center shall have an intermediate completion date of December 31, 2015. The project in whole, shall be completed in 180 calendar days.

15. For all maintenance of traffic, including pedestrian routes, the Contractor shall follow the current Indiana Manual on Uniform Traffic Control Devices (IMUTCD) with regard to all signage and signage placement used during the project for both vehicular, bicycle and pedestrian traffic travelling through the project limits. The Contractor shall install and maintain any temporary pedestrian route in accordance with the Draft Public Right of Way Accessibility Guidelines (PROWAG) and must be approved by the Department of Planning and Transportation.

16. The following undistributed quantities for tree removal shall be included in the lump sum bid:

| ***Description*** | ***Quanity*** |
|---|---|
| 6" Tree Removal | 26 |
| 10" Tree Removal | 8 |
| 18" Tree Removal | 8 |
| 30" Tree Removal | 2 |

The diameter of trees will be measured at a height of 24" above the ground. Trees of less than 4" in diameter will be classified as brush.

| ***Measured Diameter at Height of 24"*** | ***Pay Diameter*** |
|---|---|
| 4 to 8 inches | 6 inch |
| Over 8 to 12 inches | 10 inch |
| Over 12 to 24 inches | 18 inch |
| Over 24 to 36 inches | 30 inch |

17. The City of Bloomington is currently salvaging certain materials from the 'Lodge Building' that is to be demolished per the plans. The City will be finished salvaging materials by September 19, 2015. The remaining building and materials shall be removed by the Contractor.

18. The City of Bloomington Fire Department may conduct training exercises in or on the 'Lodge Building' that is to be demolished per the plans. These training exercises may damage salvageable materials in the building. The Contractor is responsible for demolishing the building 'as is' after the Fire Department conducts their training exercises.
19. The Decorative PCCP 4", Item 30 in the Legend of the plan set shall be Bomanite Natural Gray in color. A detail is attached to the bid documents.

# Supplementary Conditions

**List of Subjects**

SC-1 Contractor's Responsibilities

SC-6.14 Subcontractors and Suppliers

SC-2

**Supplementary Conditions**

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SC-1 Subcontractors and Suppliers Add the following new paragraph immediately after Paragraph 2.09 of the General Conditions:

6.14 All work performed for the Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.

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# *SECTION VIII*
# *SAMPLE AGREEMENT*

# AGREEMENT

**BETWEEN**

**CITY OF BLOOMINGTON**

**PLANNING AND TRANSPORTATION DEPARTMENT**

**AND**

**CONTRACTOR**

**FOR**

**West Bloomfield Road Sidepath, Intersection, and Signal Improvements Project**

**THIS AGREEMENT,** executed by and between the City of Bloomington, Indiana, Planning and Transportation Department through the Board of Public Works (hereinafter CITY), and _____, (hereinafter CONTRACTOR);

**WITNESSETH THAT:**

WHEREAS, CITY desires to retain CONTRACTOR'S services for the placement of a new asphalt sidepath on the north side of West Bloomfield Road, the installation of a new traffic signal, and the installation of new drives and curb.

WHEREAS, CONTRACTOR is capable of performing work as per his/her Bid on the Bid Summary sheet; and

WHEREAS, in accordance with Indiana Code 5-16-13 *et seq*., incorporated herein by reference, Contractor is a Tier 1 or General Contractor for this project; and

WHEREAS, CONTRACTOR was determined to be the lowest responsible and responsive Bidder for said project.

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree as follows:

**ARTICLE 1. TERM**

**1.01** This Agreement shall be in effect upon execution of this Agreement by all parties. In accordance with Indiana Code 5-16-13 *et seq*., incorporated herein by reference, Contractor is a Tier 1 contractor or general contractor for this project.

**ARTICLE 2. SERVICES**

**2.01** CONTRACTOR shall complete all work required under this Agreement on or before June 00, 2016, unless the parties mutually agree to a later completion date. Substantial Completion shall mean completion of all work.

**2.02** It is hereby understood by both parties that time is of the essence in this Agreement. Failure of CONTRACTOR to complete all work as herein provided will result in monetary damages to CITY. It is hereby agreed that CITY will be damaged for every day the work has not been performed in the manner herein provided and that the measure of those damages shall be determined by reference Section 13.00 of the General Conditions for Each Day of Overrun in Contract Time. CONTRACTOR agrees to pay CITY said damages or, in the alternative, CITY, at its sole discretion, may withhold monies otherwise due CONTRACTOR. It is expressly understood by the parties hereto that these damages relate to the time of performance and do not limit CITY's other remedies under this Agreement, or as provided by applicable law, for other damages.

**2.03** CONTRACTOR agrees that no charges or claims for damages shall be made by him for any delays or hindrances, from any cause whatsoever during the progress of any portion of the services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for a reasonable period as may be mutually agreed upon between the parties, it being understood, however, that permitting CONTRACTOR to proceed to complete any service, or any part of the services / project, 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 CITY of any of its rights herein.

## ARTICLE 3. COMPENSATION

**3.01** CONTRACTOR shall provide services as specified in Attachment A, "Scope of Work", attached hereto and incorporated into this Agreement.

**3.02** Upon the submittal of approved claims, CITY shall compensate CONTRACTOR in a lump sum not to exceed _____. CITY may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following:

Defective work.

Evidence indicating the probable filing of claims by other parties against CONTRACTOR which may adversely affect CITY.

Failure of CONTRACTOR to make payments due to subcontractors, material suppliers or employees.

Damage to CITY or a third party.

**3.03** The submission of any request for payment shall be deemed a waiver and release by CONTRACTOR of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.

**3.04** CONTRACTOR shall maintain proper account records for the scope of all services of this Agreement and provide an accounting for all charges and expenditures as may be necessary for audit purposes. All such records shall be subject to inspection and examination by CITY's representatives at reasonable business hours.

**3.05** For projects utilizing federal funding the CONTRACTOR shall submit time sheets (WH-347) for his own and all subcontracted employees, to City Engineer or his representative for approval and review, including review for compliance with Davis Bacon requirements, if federal funds are used.

**3.06** **Engineer** The City Engineer shall act as the CITY's representative and assume all duties and responsibilities and have all the rights and authority assigned to the Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**ARTICLE 4.** **RETAINAGE**

For contracts in excess of $100,000, the Owner requires that retainage be held set out below.

**4.01** **Escrow Agent** The retainage amount withheld shall be placed in an escrow account. First Financial Bank, Bloomington, Indiana, shall serve as the escrow agent.

**4.02** **Retainage Amount The** escrow agent, Owner and Contractor shall enter into a written escrow agreement. Under that agreement, the Owner shall withhold ten percent (10%) of the dollar value of all work satisfactorily completed until the Contract work is fifty percent (50%) completed. No additional retainage shall be withheld on the remaining fifty percent (50%) of the Contract work. The escrow agent shall invest all escrowed principal in obligations selected by the escrow agent. The escrow agent shall be compensated for the agent's services by a reasonable fee, agreed upon by the parties, that is comparable with fees charged for the handling of escrow accounts of similar size and duration. The fee shall be paid from the escrow income. The escrow agent's fee may be determined by specifying an amount of interest the escrow agent will pay on the escrowed amount, with any additional earned interest serving as the escrow agent's fee. The escrow agreement may include other terms and conditions as deemed necessary by the parties.

**4.03** **Payment of Escrow Amount** The escrow agent shall hold the escrowed principal and income until receipt of the notice from the Owner and Contractor that the Contract work has been substantially completed to the reasonable satisfaction of the Owner, at which time the Owner shall pay to the Contractor the balance to be paid under this Contract and execute such documents as are necessary to authorize the escrow agent to pay to the Contractor the funds in the escrow account, including both specifying the part of the escrowed principal to be released from the escrow and the person to whom that portion is to be released. After receipt of the notice, the escrow agent shall remit the designated part of the escrowed principal and the escrowed income, minus the escrow agent's fees, to the person specified in the notice. However, nothing in this section shall prohibit Owner from requiring the escrow agent to withhold amounts necessary to complete minor items of the Contract, following substantial completion of the Contract in accordance with the provisions of paragraph 4.04.

**4.04** **Withholding Funds for Completion of Contract If**, upon substantial completion of the Contract, there still remains minor Contract work that needs to be completed, or minor Contract work that needs to be performed to the satisfaction of the Owner, Owner may direct the escrow agent to retain in the escrow account, and withhold from payment to the Contractor, an amount equal to two hundred percent (200%) of the value of said work. The value of said work shall be determined by the architect/engineer. The escrow agent shall release the funds withheld under this section after receipt of notice from the Owner that all work on the Contract has been satisfactorily completed. In the event that said work is not completed by the Contractor, but by Owner or another party under contract with the Owner, said funds shall be released to the Owner.

**ARTICLE 5.** **GENERAL PROVISIONS**

**5.01** CONTRACTOR agrees to indemnify and hold harmless CITY and its officers, agents, officials and employees for any and all claims, actions, causes of action, judgments and liens arising out of any negligent act or omission by CONTRACTOR or any of its officers, agents, officials, employees, or subcontractors or any defect in materials or workmanship of any supply, materials, mechanism or other product or service which it or any of its officers, agents, officials, employees, or subcontractors has supplied to CITY or has used in connection with this Agreement and regardless of whether or not it is caused in part by a party indemnified herein under. Such indemnity shall include attorney's fees and all costs and other expenses arising there from or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein.

## 5.02 Abandonment, Default and Termination

**5.02.01** CITY shall have the right to abandon the work contracted for in this Agreement without penalty. If CITY abandons the work described herein, CONTRACTOR shall deliver to CITY all surveys, notes, drawings, specifications and estimates completed or partially completed and these shall become the property of CITY. The earned value of the work performed shall be based upon an estimate of the proportion between the work performed by CONTRACTOR under this Agreement and the work which CONTRACTOR was obligated to perform under this Agreement. This proportion shall be mutually agreed upon by CITY and CONTRACTOR. The payment made to CONTRACTOR shall be paid as a final payment in full settlement of his services hereunder.

**5.02.02** If CONTRACTOR defaults or fails to fulfill in a timely and proper manner the obligations pursuant to this Agreement, CITY may, after seven (7) days' written notice has been delivered to CONTRACTOR, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to CONTRACTOR. In the alternative, CITY, at its option, may terminate this Agreement and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by CONTRACTOR, and may finish the project by whatever method it may deem expedient, and if the such action exceeds the unpaid balance of the sum amount, CONTRACTOR or his surety, shall pay the difference to CITY.

**5.02.03** **Default**: If CONTRACTOR breaches this Agreement or fails to perform the work in an acceptable manner, he shall be considered in default. Any one or more of the following will be considered a default:

Failure to begin the work under this Agreement within the time specified.

Failure to perform the work with sufficient supervision, workmen, equipment and materials to insure prompt completion of said work within the time limits allowed.

Unsuitable performance of the work as determined by CITY ENGINEER or his representative.

Neglecting or refusing to remove defective materials or failure to perform anew such work as shall have been rejected.

Discontinuing the prosecution of the work or any part of it.

Inability to finance the work adequately.

If, for any other reason, CONTRACTOR breaches this Agreement or fails to carry on the work in an acceptable manner.

**5.02.04** CITY shall send CONTRACTOR a written notice of default. If CONTRACTOR, or his Surety, within a period of ten (10) days after such notice, fails to remedy the default, then CITY shall have full power and authority, without violation of the Contract, to take the prosecution of the work out of the hands of said CONTRACTOR, to appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable, and may, at its option, turn the work over to the Surety, or enter into an agreement with another Contractor for the completion of the Agreement according to the terms and provisions thereof, or CITY may use such other methods as, in its opinion, shall be required for the completion of said Contract in an acceptable manner.

**5.02.05** All cost of completing the work under the Contract shall be deducted from the monies due or which may become due to said CONTRACTOR. In case the expenses so incurred by CITY shall be less than the sum which would have been payable under the Contract if it had been completed by said CONTRACTOR, CONTRACTOR shall be entitled to receive the difference. However, in case such expense shall exceed the sum which would have been payable under the Contract, CONTRACTOR and his Surety will be liable and shall pay to CITY the amount of said excess. By taking over the prosecution of the work, CITY does not forfeit the right to recover damages from CONTRACTOR or his Surety for his failure to complete the work in the time specified.

**5.02.06** Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of the Agreement by CITY are at any time not forthcoming or are insufficient, through failure of any entity to appropriate the funds or otherwise, then CITY shall have the right to terminate this Agreement without penalty by giving prior written notice documenting the lack of funding in which instance, unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void.

**5.02.07** CITY agrees that it will make its best effort to obtain sufficient funds, including but not limited to, including in its budget for each fiscal period during the term hereof a request for sufficient funds to meet its obligations hereunder in full.

**5.03 Successors and Assigns**

**5.03.01** Both parties agree that for the purpose of this Agreement, CONTRACTOR shall be an Independent Contractor and not an employee of CITY.

**5.03.02** No portion of this Agreement shall be sublet, assigned, transferred or otherwise disposed of by CONTRACTOR except with the written consent of CITY being first obtained. Consent to sublet, assign, transfer, or otherwise dispose of any portion of this Agreement shall not be construed to relieve CONTRACTOR of any responsibility of the fulfillment of this Agreement.

**5.04 Extent of Agreement: Integration**

**5.04.01** This Agreement consists of the following parts, each of which is as fully a part of this Agreement as if set out herein:

1. This Agreement and its Attachments.
2. All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto.
3. All Addenda to the Bid Documents.
4. The Invitation to Bidders.
5. The Instructions to Bidders.
6. The Special Conditions.
7. All plans as provided for the work that is to be completed.
8. The Supplementary Conditions.
9. The General Conditions.
10. The Specifications.
11. The current Indiana Department of Transportation Standard Specifications and the latest addenda.
12. CONTRACTOR'S submittals.
13. The Performance and Payment Bonds.
14. The Escrow Agreement.
15. Request for Taxpayer Identification number and certification: Substitute W-9.

**5.04.02** In resolving conflicts, errors, discrepancies and disputes concerning the Scope of Work to be performed by CONTRACTOR, and other rights and obligations of CITY and CONTRACTOR, the document expressing the greater quantity, quality or other scope of work in question, or imposing the greater obligation upon CONTRACTOR and affording the greater right or remedy to CITY shall govern; otherwise the documents shall be given precedence in the order as enumerated above.

**5.05 Insurance**

**5.05.01**

CONTRACTOR shall, as a prerequisite to this Agreement, purchase and thereafter maintain such insurance as will protect him from the claims set forth below which may arise out of or result from CONTRACTOR'S operations under this Agreement, whether such operations be by CONTRACTOR or by any SUBCONTRACTORS or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

| Coverage | Limits |
|---|---|
| A. Worker's Compensation & Disability | Statutory Requirements |
| B. Employer's Liability Bodily Injury by Accident | $100,000 each accident |
| Bodily Injury by Disease | $500,000 policy limit |
| Bodily Injury by Disease | $100,000 each employee |
| C. Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property damage, contractual liability, products-completed operations, General Aggregate Limit (other than Products/Completed Operations) | $1,000,000 per occurrence and $2,000,000 in the aggregate |
| Products/Completed Operation | $1,000,000 |
| Personal & Advertising Injury Limit | $1,000,000 |
| Each Occurrence Limit | $1,000,000 |
| Fire Damage (any one fire) | $50,000 |
| D. Comprehensive Auto Liability (single limit, owned, hired and non-owned) | $1,000,000 each accident |
| Bodily injury and property damage | |

| | | |
|---|---|---|
| E. | Umbrella Excess Liability | $5,000,000 each occurrence and aggregate |
| | The Deductible on the Umbrella Liability shall not be more than | $10,000 |

**5.05.02** CONTRACTOR'S comprehensive general liability insurance shall also provide coverage for the following:

Premises and operations;

Contractual liability insurance as applicable to any hold-harmless agreements;

Completed operations and products; which also must be maintained for a minimum period of two (2) years after final payment and CONTRACTOR shall continue to provide evidence of such coverage to CITY on an annual basis during the aforementioned period;

Broad form property damage - including completed operations;

Fellow employee claims under Personal Injury; and

Independent Contractors.

**5.05.03** With the prior written approval of CITY, CONTRACTOR may substitute different types or amounts of coverage for those specified as long as the total amount of required protection is not reduced.

**5.05.04** Certificates of Insurance showing such coverage then in force (but not less than the amount shown above) shall be on file with CITY prior to commencement of work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled or non-renewed until at least sixty (60) days' prior written notice has been received by CITY. The CITY shall be named as an additional insured on the Commercial General Liability, Automobile Liability, and Umbrella Excess Liability policies. The CONTRACTOR shall agree to a waiver of subrogation on its Worker's Compensation policy.

**5.06** **Necessary Documentation** CONTRACTOR certifies that it will furnish CITY any and all documentation, certification, authorization, license, permit or registration required by the laws or rules and regulations of the City of Bloomington, the State of Indiana and the United States. CONTRACTOR further certifies that it is now and will maintain in good standing with such governmental agencies and that it will keep its license, permit registration, authorization or certification in force during the term of this Agreement.

**5.07** **Applicable Laws** CONTRACTOR agrees to comply with all federal, state, and local laws, rules and regulations applicable to CONTRACTOR in performing work pursuant to this Agreement, including, but not limited to, discrimination in employment, prevailing wage laws, conflicts of interest, public notice, accounting records and requirements. This Agreement shall be governed by the laws of the United States, and the State of Indiana, and by all Municipal Ordinances and Codes of the City of Bloomington. Venue of any disputes arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.

**5.08** **Non-Discrimination**

5.08.01 CONTRACTOR and subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, training, conditions or privileges of

employment, because of race, sex, color, religion, national origin, ancestry, age, handicap, or disabled veteran status. Breach of this covenant may be regarded as a material breach of the Agreement.

5.08.02 CONTRACTOR certifies for itself and all its subcontractors compliance with existing laws of the State of Indiana and the United States regarding:

Prohibition of discrimination in employment practices on the basis of race, sex, color, religion, national origin, ancestry, age, handicap, or any other legally protected classification;

The utilization of Minority and Women Business Enterprises. CONTRACTOR further certifies that it:

a. Has formulated its own Affirmation Action plan for the recruitment, training and employment of minorities and women, including goals and timetable; which has been approved by the City's Contract Compliance Officer.

b. Encourages the use of small business, minority-owned business and women-owned business in its operations.

**5.08.03** FURTHER, PURSUANT TO INDIANA CODE 5-16-6-1, CONTRACTOR AGREES:

A) That in the hiring of employees for the performance of work under this Agreement or any sub agreement hereunder, no contractor, or subcontractor, nor any person acting on behalf of such CONTRACTOR or subcontractor, shall by reason of race, sex, color, religion, national origin, ancestry, or any other legally protected classification, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates.

B) That no contractor, subcontractor, or any person on their behalf, shall, in any manner, discriminate against or intimidate any employee hired for performance of work under this Agreement on account of race, religion, color, sex, national origin, ancestry, disability, or any other legally protected classification.

C) That there may be deducted from the amount payable to CONTRACTOR, by CITY, under this Agreement, penalty of Five Dollars ($5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement. Any such person discriminated against retains the right to file a discrimination complaint with the appropriate civil rights agency or court.

D) That this Agreement may be canceled or terminated by CITY and all money due or to become hereunder may be forfeited, for a second or any subsequent violations of the terms or conditions under this section of the Agreement.

## 5.09 Workmanship and Quality of Materials

**5.09.01** CONTRACTOR shall guarantee the work for a period of one (1) year from the date of substantial completion. Failure of any portion of the work within one (1) year due to improper construction, materials of construction, or

design may result in a refund to CITY of the purchase price of that portion which failed or may result in the forfeiture of CONTRACTOR's Performance Bond.

**5.09.02** OR EQUAL: Wherever in any of the Agreement Documents an article, material or equipment is defined by describing a proprietary product, or by using the name of a manufacturer or vender, the term "Or Equal" or the term "The Equivalent" if not inserted, shall be implied, and it is done for the express purpose of establishing a basis of durability and efficiency and not for the purpose of limiting completion. Whenever material or equipment is submitted for approval as being equal to that specified, the submittal shall include sufficient information and data to demonstrate that the material or equipment conforms to the Contract requirements. The decision as to whether or not such material or equipment is equal to that specified shall be made by the ENGINEER. The approval by the ENGINEER of alternate material or equipment as being equivalent to that specified, shall not in any way relieve CONTRACTOR of responsibility for failure of the material or equipment due to faulty design, material, or workmanship, to perform the function required by the Contract Documents. Specifications as determined by other entities within the City of Bloomington such as City Utilities shall only be substituted or changed by their approval which shall be submitted in writing to the ENGINEER.

**5.09.03** CITY shall be the sole judge of the sufficiency of workmanship and quality of materials. Disputes shall be resolved by the Director of Public Works and are not subject to arbitration.

**5.10** **Safety**. CONTRACTOR shall be responsible for the safety of employees at all times and shall provide all equipment necessary to insure their safety. CONTRACTOR shall ensure the enforcement of all applicable safety rules, regulations, ordinances and laws, whether federal, state or local. Contractor's Superintendent of Safety shall make daily inspections upon the arrival and leaving of the site at the close of each workday.

**5.11 Amendments/Changes**

5.11.01 Except as provided in Paragraph 5.11.02, this Agreement may be amended only by written instrument signed by both CITY and CONTRACTOR.

5.11.02 Without invalidating the Agreement and without notice to any surety, CITY may, at any time or from time to time, order, in writing, additions, deletions, or revisions in the work. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the work involved, which will be performed under the applicable conditions of the Agreement Documents.

5.11.03 If CONTRACTOR believes that any direction of CITY under paragraph 5.11.02, or any other event or condition, will result in an increase in the Contract time or price, he shall file written notice with CITY no later than twenty (20) calendar days after the occurrence of the event giving rise to the claim and stating the general nature of the claim with supporting data. No claim for any adjustment of the Contract time or price will be valid if not submitted in accordance with this Paragraph.

5.11.04 CONTRACTOR shall carry on the work and adhere to the progress schedule during all disputes or disagreements with CITY. No work shall be delayed or postponed pending resolution of any dispute or disagreement except as CONTRACTOR and CITY may otherwise agree in writing.

**5.12 Performance Bond and Payment Bond**

**5.12.01** For contracts in excess of $100,000, CONTRACTOR shall provide CITY with a Performance Bond and a Payment Bond in the amount of one hundred percent (100%) of the contract amount.

**5.12.02** Failure by CONTRACTOR to perform the work in a timely or satisfactory fashion may result in forfeiture of CONTRACTOR'S Performance Bond.

**5.12.03** If the surety on any bond furnished by CONTRACTOR becomes a party to supervision, liquidation, or rehabilitation action pursuant Indiana Code 27-9 et seq. or its right to do business in the State of Indiana is terminated, CONTRACTOR shall, within thirty (30) calendar days thereafter, substitute another bond and surety, both of which must be acceptable to CITY.

**5.13** **Payment of Subcontractors** CONTRACTOR shall pay all subcontractors, laborers, material suppliers and those performing services to CONTRACTOR on the project under this Agreement. CITY may, as a condition precedent to any payment hereunder, require CONTRACTOR to submit satisfactory evidence of payments of any and all claims of subcontractors, laborers, material suppliers, and those furnishing services to CONTRACTOR. Upon receipt of a lawful claim, CITY shall withhold money due to CONTRACTOR in a sufficient amount to pay the subcontractors, laborers, material suppliers, and those furnishing services to CONTRACTOR.

**5.14** **Written Notice** Written notice shall be considered as served when delivered in person or sent by mail to the individual, firm, or corporation, or to the last business address of such known to CONTRACTOR who serves the Notice. Notice shall be sent as follows:

| TO CITY: | | TO CONTRACTOR: |
|---|---|---|
| City of Bloomington | | |
| Attn: Matt Smethurst, Project Manager | | |
| P.O. Box 100 Suite 130 | | |
| Bloomington, Indiana 47402 | | |

**5.15** **Severability and Waiver** In the event that any clause or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any other provision of this Agreement. Failure of either party to insist on strict compliance with any provision of this Agreement shall not constitute waiver of that party's right to demand later compliance with the same or other provisions of this Agreement.

**5.16** **Notice to Proceed** CONTRACTOR shall not begin the work pursuant to the "Scope of Work" of this Agreement until it receives an official written Notice to Proceed from the City. Contractor shall start active and continuous work on the Agreement within five (5) calendar days after the date of the Notice to Proceed. In no case shall work begin prior to the date of the Notice to Proceed. If a delayed starting date is indicated in the proposal, the five (5) calendar day limitation will be waived. Work day charges will then begin on a date mutually agreed upon, but not later than the delayed starting date specified. In the event that any Agreement is canceled after an award has been made but prior to the issuing of the Notice to Proceed, no reimbursement will be made for any expenses accrued relative to this contract during that period.

**5.17** **Steel or Foundry Products**

5.17.01 To comply with Indiana Code 5-16-8, affecting all contracts for the construction, reconstruction, alteration, repair, improvement or maintenance of public works, the following provision shall be added: If steel or foundry products are to be

utilized or supplied in the performance of any contract or subcontract, only domestic steel or foundry products shall be used. Should CITY feel that the cost of domestic steel or foundry products is unreasonable; CITY will notify CONTRACTOR in writing of this fact.

5.17.02 Domestic Steel products are defined as follows:

> "Products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two (2) or more of such operations, from steel made in the United States by open hearth, basic oxygen, electric furnace, Bessemer or other steel making process."

5.17.03 Domestic Foundry products are defined as follows:

> "Products cast from ferrous and nonferrous metals by foundries in the United States."

5.17.04 The United States is defined to include all territory subject to the jurisdiction of the United States.

5.17.05 CITY may not authorize or make any payment to CONTRACTOR unless CITY is satisfied that CONTRACTOR has fully complied with this provision.

**5.18 Verification of Employees' Immigration Status**

Contractor 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). Contractor shall sign an affidavit, attached as Attachment B, affirming that Contractor 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 8 U.S. Code Chapter 12 or by the U.S. Attorney General.

Contractor 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 Contractor or any of its subcontractors learns is an unauthorized alien. If the City obtains information that the Contractor or any of its subcontractors employs or retains an employee who is an unauthorized alien, the City shall notify the Contractor or its subcontractors of the Agreement violation and require that the violation be remedied within thirty (30) calendar days of the date of notice. If the Contractor 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 Contractor or its subcontractor did not knowingly employ an unauthorized alien. If the Contractor or its subcontractor fails to remedy the violation within the thirty (30) calendar day period, the City shall terminate the Agreement, unless the City determines that terminating the Agreement would be detrimental to the public interest or public property, in which case the City may allow the Agreement to remain in effect until the City procures a new contractor. If the City terminates the Agreement, the Contractor or its subcontractor is liable to the City for actual damages.

Contractor shall require any subcontractors performing work under this Agreement to certify to the Contractor 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. Contractor shall maintain on file all subcontractors' certifications throughout the term of this Agreement with the City.

**5.19 No Investment in Iran**: Contractor 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.) Contractor shall sign an affidavit, attached as Attachment C, affirming that Contractor is not engaged in said investment activities.

Attachment C is attached hereto and incorporated herein by reference as though fully set forth.

IN WITNESS WHEREOF, the parties of this Agreement have hereunto set their hands.

DATE: _____

City of Bloomington
Bloomington Board of Public Works

BY:

_____
Charlotte Zietlow, President, Board of Public Works

_____
Duane Busick, Member, Board of Public Works

_____
Frank Hrisomalos, M.D., Member, Board of Public Works

_____
Mark Kruzan, Mayor of Bloomington

BY:

_____
Contractor Representative

_____
Printed Name

_____
Title of Contractor Representative

**ATTACHMENT 'A'**

"SCOPE OF WORK"

West Bloomfield Road Sidepath, Intersection, and Signal Improvements Project

This project shall include, but is not limited to the placement of a new asphalt sidepath on the north side of West Bloomfield Road, the installation of a new traffic signal, and the installation of new drives and curb. All work shall be completed as shown on the plans and specifications included with this packet.

**ATTACHMENT B**

"AFFIDAVIT"

STATE OF INDIANA )
)SS:
COUNTY OF _____ )

AFFIDAVIT

The undersigned, being duly sworn, hereby affirms and says that:

1. The undersigned is the _____ of _____.
   a. (job title) (company name)
2. The company named herein that employs the undersigned:
   i. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
   ii. is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned herby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

_____

Signature

_____

Printed Name

STATE OF INDIANA )
)SS:
COUNTY OF _____ )

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 20____.

_____

Notary Public's Signature

_____

Printed Name of Notary Public

My Commission Expires: _____

County of Residence: _____

## Attachment C

STATE OF INDIANA )

) SS:

COUNTY OF_____)

AFFIDAVIT

The undersigned, being duly sworn, hereby affirms and says that:

1. The undersigned is the _____ of _____.

(job title) (company name)

2. The company named herein that employs the undersigned:

has contracted with or is seeking to contract with the City of Bloomington to provide services; OR

is a subcontractor on a contract to provide services to the City of Bloomington.

3. As required by Indiana Code 5-22-16.5-13, the undersigned hereby certifies under penalties of perjury that the company named herein is not engaged in investment activities in Iran.

_____

Signature

_____

Printed name

STATE OF INDIANA )

) SS:

COUNTY OF_____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 20____.

_____

Notary Public

_____

Printed name

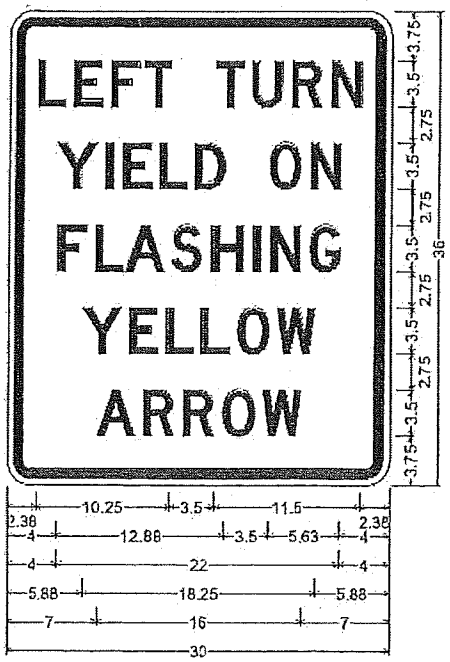
My Commission Expires:_____

County of Residence:_____

# SECTION IX
# SPECIFICATIONS

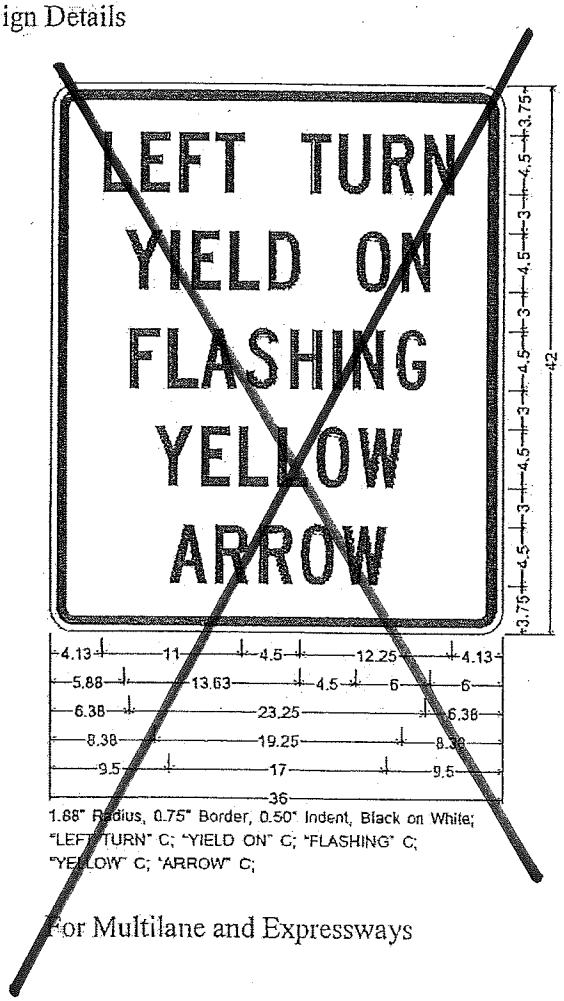
Indiana Department of Transportation Standard Specifications dated 2014 and current supplements thereto, to be used with this project.

# Appendix B – Sign Details




1.88" Radius, 0.75" Border, 0.50" Indent, Black on White;
"LEFT TURN" D; "YIELD ON" D; "FLASHING" D;
"YELLOW" D; "ARROW" D;

For 2-Lane Conventional Roads




1.88" Radius, 0.75" Border, 0.50" Indent, Black on White;
"LEFT TURN" C; "YIELD ON" C; "FLASHING" C;
"YELLOW" C; "ARROW" C;

For Multilane and Expressways

# Pattern Selection Guide

Bomanite®
The Paving Innovators

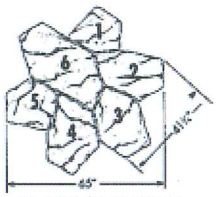
## BOMACRON TOOLS
## Slate Regular Textured Patterns

### Small Random Slate

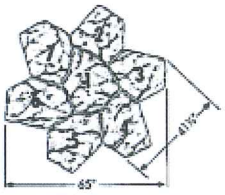
A versatile texture of "riven" slate with moderate depth of relief but rustic, random veining found throughout. Appropriate for all applications where consistent depth of impression and texture with random veining running throughout is desired. Set in a wide range of patterns from a random ashlar pattern to a random stone version with multiple tool designs and sizes.

| | |
|---|---|
| **Tool size:** | 65" x 65" |
| **Stone Size:** | N/A |
| **Joint Detail:** | .278 x .284 |
| **Stone Relief Dimensions:** | 0.22 |

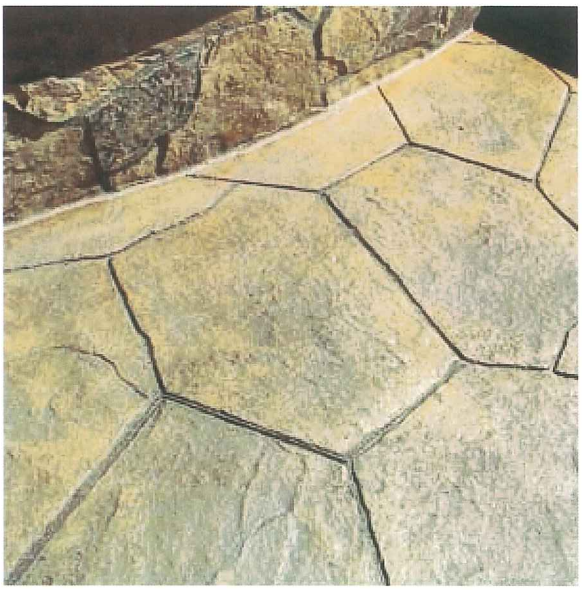
**Small Random Slate**




Tool A – Individual stones vary in size from 16" x 21" to 41" x 28"




Tool B – Individual stones vary in size from 20" x 23" to 30" x 36"
Also available as stones 2 & 3; 4 & 5; 1, 6 & 7



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COLOR: NATURAL GRAY