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**PROPOSED:**

**7<sup>th</sup> Street Protected Bike Lane Improvements**

**LETTING DATE: April 26<sup>th</sup>, 2021**

**AWARD DATE: April 27<sup>th</sup>, 2021**

**or subsequent BPW Meeting**

**FOR:**

**THE CITY OF BLOOMINGTON**

**ENGINEERING DEPARTMENT**

**POST OFFICE BOX 100**

**BLOOMINGTON, INDIANA**

**SUBMITTED BY:**

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Company or Firm Name

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Street and Number

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City or Town

State

Zip Code

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## CONTENTS

SECTION I.	INVITATION TO BIDDERS
SECTION II.	<a href="#"><u>INSTRUCTIONS TO BIDDERS</u></a>
SECTION III.	<a href="#"><u>BID FORM</u></a> , <a href="#"><u>UNIT PRICES</u></a> , <a href="#"><u>SAMPLE BOND FORMS</u></a> , <a href="#"><u>ESCROW AGREEMENT</u></a>
SECTION IV.	<a href="#"><u>AFFIRMATIVE ACTION PLAN REQUIREMENTS</u></a>
SECTION V.	<a href="#"><u>STATE FORM NO. 96, QUESTIONNAIRE/NON-COLLUSION AFFIDAVIT</u></a> <a href="#"><u>REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND</u></a> <a href="#"><u>CERTIFICATION</u></a>
SECTION VI.	<a href="#"><u>GENERAL CONDITIONS</u></a>
SECTION VII.	<a href="#"><u>SPECIAL CONDITIONS</u></a> AND <a href="#"><u>SUPPLEMENTARY CONDITIONS</u></a>
SECTION VIII.	<a href="#"><u>SAMPLE AGREEMENT</u></a> WITH ATTACHMENTS
SECTION IX.	SPECIFICATIONS

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## **SECTION I**

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### 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.

### 7th Street Protected Bike Lane Improvements

*This project shall include, but is not limited to, the installation of a protected bike lane along 7<sup>th</sup> Street from the B-line trail to the intersection of East 7<sup>th</sup> Street and North Woodlawn Avenue.*

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/engineering/bids>. Sealed bids shall be received by the Department of Public Works, at City Hall, 401 North Morton Street, Atrium, Bloomington, Indiana, at or before 11:30 AM local time on April 26th, 2021. Bids will be publicly opened and read aloud at 12:00 Noon local time on April 26th, 2021, at a virtual meeting. Any bids received after the designated time will be returned unopened. Bids will be reviewed and the award may be made at the April 27th, 2021, virtual meeting or a subsequent virtual 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;
- (4) a properly executed Trench Safety Systems Affidavit, if project may require creation of a trench of at least five (5) feet in depth;
- (5) a properly executed Employee Drug Testing Program Affidavit for a public works project estimated to cost at least \$150,000; and
- (6) a copy of the bidder's written plan for an employee drug testing program to test the employees of the bidder for drugs.

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 both a performance bond and a payment bond for one hundred percent (100%) of the contract amount prior to the execution of the contract, and the performance bond and the payment bond shall remain in effect for a period of one (1) year after final acceptance of the work.

**A pre-bid virtual meeting will be held on Tuesday, April 20th, 2021, at 1:00 PM local time.**

All potential Bidders are encouraged to attend, however this virtual meeting is not mandatory. Detail for attending this virtual meeting can be found on the Projects Webpage at <https://bloomington.in.gov/engineering/bids>.

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. Bidders who fail to submit acceptable plans by the deadline are subject to disqualification. Each Bidder must insure that all employees and applicants for employment are not discriminated against because of race, religion, color, sex, national origin, ancestry, disability, sexual orientation, gender identity, veteran status or housing status. 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.

Each Bidder required to submit an affirmative action plan now must also submit a harassment plan. The harassment plan must, at minimum, include a definition of harassment, the name or title of the individual designated to receive and investigate complaints and a statement that the contractor will not retaliate against an employee for complaining about harassment. A model harassment policy is included for your convenience, which you may amend and adapt as your own. Please note that this harassment policy requirement is new, adopted by the Bloomington Common Council in June 2019.

In accordance with Indiana Code 36-1-12-24, each Contractor that submits a bid for a public works project that is estimated to cost \$150,000 or more shall submit with his/her bid a written plan for an employee drug testing program that complies with Indiana Code 4-13-18 *et seq.*

For Bids in excess of \$300,000 on Public Works projects that are not for the construction, alteration or repair of a highway, street or alley, the Contractor must be pre-qualified with the Indiana Public Works Certification Board in accordance with Indiana Code 4-13.6-4-2.5.

If the project may require creation of a trench of at least five (5) feet in depth, the low bidder shall be required to submit a trench safety plan to the project engineer at least ten (10) days prior to beginning work on the project.

The Board of Public Works reserves the right to waive any informality and to accept or reject any or all bids submitted. 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  
Dana Palazzo, President

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## **SECTION II**

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### 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 Bond and the Payment Bond
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/engineering/bids>. The Owner will not be responsible for any other explanations or interpretations of the proposed contract documents.

**1.04 PRE-BID CONFERENCE:** A non-mandatory pre-bid conference may be held at the time and location indicated in the Advertisement or Invitation to Bid. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference; however, attendance at this conference is not required to submit a Bid. Information

presented at the pre-bid conference does not alter the Contract Documents. Owner will issue Addenda to make any changes to the Contract Documents that result from discussions at the pre-Bid conference. Information presented, and statements made at the pre-bid conference will not be binding or legally effective unless incorporated in an Addendum.

**1.05 INTERPRETATIONS AND ADDENDA:** Owner on its own initiative may issue Addenda to clarify, correct, supplement, or change the Bidding Documents.

Bidder shall submit all questions about the meaning or intent of the Bidding Documents to Engineer in writing. Contact information and submittal procedures for such questions are as follows:

City of Bloomington  
Attn: Roy Aten  
Email; [atenro@bloomington.in.gov](mailto:atenro@bloomington.in.gov)  
Phone: 812-349-3591

Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all registered plan holders. Questions received fewer than four (4) working days prior to the date for opening of Bids may not be answered.

Only responses set forth in an Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. Responses to questions are not part of the Contract Documents unless set forth in an Addendum that expressly modifies or supplements the Contract Documents.

**2.00 BIDS:** Pursuant to the "Invitation to Bidders" sealed Bids for performing the work shall be received by the Department of Public Works, at City Hall, 401 North Morton Street, Atrium, Bloomington, Indiana, at or before 11:30 AM local time on April 26th, 2021. Bids will be publicly opened and read aloud at 12:00 Noon local time on April 26th, 2021, at a virtual meeting. Any bids received after the designated time will be returned unopened. Bids will be reviewed and the award may be made at the April 27th, 2021, virtual meeting or a subsequent virtual meeting of the Board of Public Works. If requested by project manager, the City's Substitute IRS W-9 form shall be executed by Bidder and received by the City prior to the issuance of a Notice to Proceed to Bidder.

**2.01 BASIS OF BID:** Bidders must submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form. The "Bid Price" (sometimes referred to as the extended price or Bid Amount) for each unit price Bid item will be the product of the "Approximate Quantity", which Owner or its representative has set forth in the Bid Form, for the item and the corresponding "Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 11.06 of the General Conditions.

**2.02 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. Please indicate on the Bid Form whether you would want to receive a Single Lump Sum Payment following acceptance of this project or if you would want to receive Progressive Payments during the course of this project.

**2.03 BID SIGNATURES:** Each Bidder shall sign his/her Bid using his/her usual signature and giving his/her 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 his/her signature the word "president" or "secretary", "agent", or other designation without disclosing his/her 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.

- 2.04 BID SUBMISSION:** Each Bid submitted shall be enclosed in a sealed envelope or wrapping, identified on the outside with the words "SEALED BID", and the name of the project, and shall be received by the Department of Public Works at City Hall, 401 North Morton Street, Atrium, Bloomington, Indiana, on the date and at the time provided above in 2.00 BIDS.
- 2.05 INDIANA LEGAL REQUIREMENTS:** Each bidder shall submit under oath with his/her Bid a statement of his/her 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.
- 2.06 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.
- 2.07 RETURN OF BID GUARANTEE:** The Bid Guarantee deposit of each unsuccessful Bidder will be returned when his/her 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.
- 2.08 WITHDRAWAL OF BID:** No Contractor may withdraw his/her 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 his/her 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.
- 2.09 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 his/her 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.

**3.01 PRE-QUALIFICATION OF CONTRACTORS:** For bids in excess of \$300,000 on Public Works projects that are not considered the construction, alteration, or repair of a highway, street, or alley, the Contractor shall be pre-qualified with the Indiana Public Works Certification Board prior to starting work.

**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 fifteen (15) days after notice that the Contract has been awarded to him/her. 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 may 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 his/her 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 sixty (60) 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 fifteen (15) calendar days after the date of the notice to proceed. All work shall be completed within one hundred fifty (150) calendar days after the date of the notice to proceed. 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 or more, the Bidder to whom a contract is awarded will be required to furnish a Performance Bond to the Owner in an amount equal to one hundred percent (100%) 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 in the amount of \$100,000.00 or more, the Bidder to whom a contract is awarded will be required to furnish a Payment Bond to the Owner in an amount equal to one hundred percent (100%) 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 Payment Bond cannot be released until one year after the Board's final settlement with the Contractor, and the bond is required to insure payment of subcontractors, laborers, material suppliers, and persons furnishing services. 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, his/her written Affirmative Action Plan at least twenty-four (24) hours prior to the deadline for submission of Bids. Bidders who fail to submit acceptable plans by the deadline are subject to disqualification. Each Bidder must insure that all employees and applicants for employment are not discriminated against because of race, religion, color, sex, national origin, ancestry, disability, sexual orientation, gender identity, veteran status or housing status. 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 he/she 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 Harassment Policy:** Each Bidder required to submit an affirmative action plan now must also submit a harassment plan. The harassment plan must, at minimum, include a definition of harassment, the name or title of the individual designated to receive and investigate complaints and a statement that the contractor will not retaliate against an employee for complaining about harassment. A model harassment policy is included for your convenience in Section IV of this bidding packet, which you may amend and adapt as your own. Please note that this harassment policy requirement is new, adopted by the Bloomington Common Council in June, 2019.

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

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## **SECTION III**

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BID FORM

UNIT PRICES

SAMPLE BOND FORMS

ESCROW AGREEMENT

## BID FORM

This BID Summary Sheet shall be completed and submitted with all other BID Documents.

The total project bid amount to complete the 7th Street Protected Bike Lane Improvement including all associated work per plans and specification is;

\_\_\_\_\_, \$ \_\_\_\_\_

For projects requiring submission of Trench Safety Systems Affidavit, the portion of the total project bid cost provided above which is attributable to trench safety systems is \$ \_\_\_\_\_.

Requested Form of Payment (Choose one):	<input type="checkbox"/>	A Single Lump Sum Payment following completion of the project. Invoice shall be submitted within sixty (60) days following acceptance of the project.
	<input type="checkbox"/>	Progressive Payments for work completed and invoiced throughout the project.

All work shall be completed within one hundred fifty (150) calendar days after the date of the Notice to Proceed.

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 _____

Final Invoice shall be submitted within thirty (30) days following final acceptance of the project.

### SIGNATURE OF BIDDER

Name of Bidder: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name & Title Printed: \_\_\_\_\_

Bidder Address: \_\_\_\_\_

Telephone: \_\_\_\_\_



**City of Bloomington  
Engineering Department**

# UNIT PRICES

Letting Date: April 26th, 2021

Proposal Schedule of Items (Unit Prices)

Page 1 of 4

Project Title : 7th Street Protected Bike Lane Improvements

LINE	ITEM	DESCRIPTION	Approximate Quantity and Units	UNITS	UNIT PRICE	BID AMOUNT
001	105-06845	CONSTRUCTION ENGINEERING	1 LS		-	-
002	109-08359	LIQUIDATED DAMAGES	1 DOL		\$1.00	\$1.00
003	110-01001	MOBILIZATION AND DEMOBILIZATION	1 LS		-	-
004	201-02255	TREE 18 IN., REMOVE	7 EACH		-	-
005	201-52370	CLEARING RIGHT OF WAY	1 LS		-	-
006	202-02240	PAVEMENT REMOVAL	1710 SYS		-	-
007	202-02637	PIPE ABANDON AND GROUT FILL	155 LFT		-	-
008	203-02000	EXCAVATION, COMMON	2080 CYS		-	-
009	205-12108	STORM WATER MANAGEMENT BUDGET	7000 DOL		\$1.00	\$7,000.00
010	207-08264	SUBGRADE TREATMENT, TYPE II	1120 SYS		-	-
011	207-09935	SUBGRADE TREATMENT, TYPE IC	725 SYS		-	-
012	211-09265	STRUCTURE BACKFILL, TYPE 2	68 CYS		-	-
013	301-12234	COMPACTED AGGREGATE NO 53	285 CYS		-	-
014	302-07455	DENSE GRADED SUBBASE	15 CYS		-	-
015	304-07491	HMA PATCHING, TYPE C	480 TON		-	-
016	306-08034	MILLING, ASPHALT, 1 1/2 IN.	14450 SYS		-	-
017	401-10258	JOINT ADHESIVE, SURFACE	6370 LFT		-	-
018	401-10259	JOINT ADHESIVE, INTERMEDIATE	105 LFT		-	-
019	401-11785	LIQUID ASPHALT SEALANT	6370 LFT		-	-
020	402-07434	HMA SURFACE, TYPE C	1425 TON		-	-
021	402-07439	HMA INTERMEDIATE, TYPE C	120 TON		-	-
022	402-07442	HMA BASE, TYPE C	340 TON		-	-
023	406-05521	ASPHALT FOR TACK COAT	17745 SYS		-	-
024	502-09531	PCCP, PEDESTRIAN CROSSINGS	141 SYS		-	-
025	506-06333	PCCP PATCHING, FULL DEPTH	990 SYS		-	-
026	604-06070	SIDEWALK CONCRETE, 4 IN	245 LFT		-	-

Continued on next page.



**City of Bloomington  
Engineering Department**

Letting Date: April 26th, 2021

Proposal Schedule of Items (Unit Prices)

Page 2 of 4

Project Title : 7th Street Protected Bike Lane Improvements

LINE	ITEM	DESCRIPTION	Approximate Quantity and Units	UNITS	UNIT PRICE	BID AMOUNT
027	604-08086	CURB RAMP, CONCRETE	355 SYS		-	-
028	604-12083	DETECTABLE WARNING SURFACES	125 SYS		-	-
029	604-95344	HAND RAIL, PEDESTRIAN	85 LFT		-	-
030	604-07824	STAMPED CONCRETE, 6 IN	655 SYS		-	-
031	604-07825	STAMPED CONCRETE, 10 IN	430 SYS		-	-
032	605-06120	CURB, CONCRETE (VERTICAL)	3665 LFT		-	-
033	605-06235	CENTER CURB, D CONCRETE MODIFIED	980 LFT		-	-
034	605-06121	CURB, CONCRETE B (SLOPING)	4280 LFT		-	-
035	605-90726	CURB, CONCRETE B (DEPRESSED)	830 LFT		-	-
036	610-08446	PCCP FOR APPROACHES, 6 IN.	98 SYS		-	-
037	621-01004	MOBILIZATION AND DEMOBILIZATION FOR SEEDING	2 EACH		-	-
038	720-07308	CHANNEL DRAIN & GRATE	24 EACH		-	-
039	616-11736	DECORATIVE STONE	42 TON		-	-
040	301-12233	COMPACTED AGGREGATE NO 8	57 TON		-	-
041	401-93813	SAND (ASTM C33)	30 TON		-	-
042	621-09908	BIOSOIL	133 CYS		-	-
043	621-06570	PLANTING SOIL MIX	23 CYS		-	-
044	621-10164	STRUCTURAL SOIL	713 CYS		-	-
045	621-06575	SODDING, NURSERY	168 SYS		-	-
046	621-98038	MULCH HARDWOOD SHREDDED BARK	30 CYS		-	-
047	622-05639	PLANT, DECIDUOUS SHRUB, 18 TO 24 IN.	78 EACH		-	-
048	622-05650	PLANT, DECIDUOUS TREE, SINGLE STEM, OVER 2 IN. TO 2.5 IN.	34 EACH		-	-
049	622-05654	PLANT, PERENNIAL	97 EACH		-	-
050	622-05654	PLANT, PERENNIAL, 4" POT	239 EACH		-	-
051	715-05149	PIPE, TYPE 2, CIRCULAR, 12 IN.	360 LFT		-	-
052	715-91742	WATER METER RELOCATE	2 EACH		-	-
053	720-44000	CASTING, ADJUST TO GRADE	3 EACH		-	-
054	720-45042	INLET, HA5	3 EACH		-	-

Continued on next page.





**City of Bloomington  
Engineering Department**

Letting Date: April 26th, 2021

Proposal Schedule of Items (Unit Prices)

Page 3 of 4

Project Title : 7th Street Protected Bike Lane Improvements

LINE	ITEM	DESCRIPTION	Approximate Quantity and Units	UNITS	UNIT PRICE	BID AMOUNT
054	720-45270	PIPE CATCH BASIN, 18 IN.	9 EACH		-	-
055	720-45410	MANHOLE, C4	4 EACH		-	-
056	720-90984	MANHOLE, C2	3 EACH		-	-
057	720-97008	FIRE HYDRANT ASSEMBLY RELOCATE	2 EACH		-	-
058	720-98174	INLET, B15	7 EACH		-	-
059	720-98555	INLET, C15	6 EACH		-	-
060	801-01093	TEMPORARY WORKSITE SPEED LIMIT SIGN ASSEMBLY	2 EACH		-	-
061	801-03290	CONSTRUCTION SIGN, C	2 EACH		-	-
062	801-04308	ROAD CLOSURE SIGN ASSEMBLY	15 EACH		-	-
063	801-06625	DETOUR ROUTE MARKER ASSEMBLY	36 EACH		-	-
064	801-06640	CONSTRUCTION SIGN, A	34 EACH		-	-
065	801-06645	CONSTRUCTION SIGN, B	25 EACH		-	-
066	801-06775	MAINTAINING TRAFFIC	1 LS		-	-
067	801-07118	BARRICADE, III-A	324 LFT		-	-
068	802-05701	SIGN POST, SQUARE TYPE 1 REINFORCED ANCHOR BASE	208 LFT		-	-
069	802-09838	SIGN, SHEET, WITH LEGEND, 0.080 IN.	17 SFT		-	-
070	802-09840	SIGN, SHEET, WITH LEGEND, 0.100 IN.	96 SFT		-	-
071	805-01300	TRAFFIC SIGNAL EQUIPMENT, REMOVE	2 EACH		-	-
072	805-01828	TRAFFIC SIGNAL HEAD REALIGN	6 EACH		-	-
073	805-02087	TRANSPORTATION OF SALVAGEABLE SIGNAL EQUIPMENT	1 LS		-	-
074	805-04782	VIDEO VEHICLE DETECTOR SYSTEM, ADJUST	2 EACH		-	-
075	805-78205	TRAFFIC SIGNAL HEAD, 3 SECTION, 12 IN.	2 EACH		-	-
076	805-78205	TRAFFIC SIGNAL HEAD, 3 SECTION, 12 IN. (ARROW)	1 EACH		-	-
077	805-78205	TRAFFIC SIGNAL HEAD, 3 SECTION, 12 IN. (BIKE)	8 EACH		-	-
078	805-78420	DISCONNECT HANGER	3 EACH		-	-
079	805-78485	SIGNAL CABLE, CONTROL, COPPER, 5C/14 GA	500 LFT		-	-
080	805-78490	SIGNAL CABLE, CONTROL, COPPER, 7C/14 GA	800 LFT		-	-

Continued on next page.



**City of Bloomington  
Engineering Department**

Letting Date: April 26th, 2021

Proposal Schedule of Items (Unit Prices)

Page 4 of 4

Project Title : 7th Street Protected Bike Lane Improvements

LINE	ITEM	DESCRIPTION	Approximate Quantity and Units	UNITS	UNIT PRICE	BID AMOUNT
081	805-78510	SIGNAL CABLE, DETECTOR LEAD-IN, COPPER, 2C/16 GA	84 LFT		-	-
082	805-78795	SAW CUT FOR ROADWAY LOOP DETECTOR AND SEALANT	44 LFT		-	-
083	808-02977	PAVEMENT MESSAGE MARKING, THERMOPLASTIC, BIKE SYMBOL	31 EACH		-	-
084	808-03439	TRANSVERSE MARKING, THERMOPLASTIC, CROSSWALK LINE, WHITE, 24 IN.	1805 LFT		-	-
085	808-06609	PAVEMENT MESSAGE MARKING, THERMOPLASTIC, RAISED PEDESTRIAN PAVEMENT MARKING	13 EACH		-	-
086	808-06609	PAVEMENT MESSAGE MARKING, THERMOPLASTIC, GREEN CHEVRON	92 EACH		-	-
087	808-06609	PAVEMENT MESSAGE MARKING, THERMOPLASTIC, CHEVRON, WHITE	4 EACH		-	-
088	808-06701	LINE, THERMOPLASTIC, BROKEN, WHITE, 4 IN.	70 LFT		-	-
089	808-06703	LINE, THERMOPLASTIC, SOLID, WHITE, 4 IN.	910 LFT		-	-
090	808-10118	"SHARKS TEETH", THERMOPLASTIC, YIELD LINE, WHITE	61 EACH		-	-
091	808-11493	LINE, THERMOPLASTIC, DOTTED, YELLOW, 4 IN.	635 LFT		-	-
092	808-75215	LINE, THERMOPLASTIC, SOLID, WHITE, 12 IN.	40 LFT		-	-
093	808-75240	LINE, THERMOPLASTIC, BROKEN, YELLOW, 4 IN.	75 LFT		-	-
094	808-75245	LINE, THERMOPLASTIC, SOLID, YELLOW, 4 IN.	6955 LFT		-	-
095	808-75260	TRANSVERSE MARKING, THERMOPLASTIC, CROSSHATCH LINE, WHITE, 12 IN.	75 LFT		-	-
096	808-75278	TRANSVERSE MARKING, THERMOPLASTIC, CROSSHATCH LINE, YELLOW, 12 IN.	24 LFT		-	-
097	808-75297	TRANSVERSE MARKING, THERMOPLASTIC, STOP LINE, WHITE, 24 IN.	205 LFT		-	-
098	808-75320	PAVEMENT MESSAGE MARKING, THERMOPLASTIC LANE INDICATION ARROW	36 EACH		-	-
099	808-96075	LINE, THERMOPLASTIC, BROKEN, WHITE, 6 IN.	173 LFT		-	-
100	808-99199	TRANSVERSE MARKING, PREFORMED PLASTIC, 36" SOLID GREEN	370 LFT		-	-
101	808-09968	PAVEMENT MARKING, GREEN LANE	1700 SFT		-	-
102	808-95935	CURB PAINTING, BLUE	30 LFT		-	-
103	808-95936	CURB PAINTING, GRAY	19 LFT		-	-
104	808-95933	CURB PAINTING, YELLOW	185 LFT		-	-
105	808-12274	TRANSVERSE MARKING, THERMOPLASTIC, PARKING "T", 3'X3', 4"	30 LFT		-	-
106	802-04089	SIGN, REMOVE	6 EACH		-	-
107	808-06716	LINE, REMOVE	270 LFT		-	-

**BID:**

Bidder acknowledges that:

- each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and
- estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Work will be based on actual quantities, determined as provided in the Contract Documents.

## BID BOND

<b>Bidder</b> Name: <b>[Full formal name of Bidder]</b> Address <i>(principal place of business)</i> : <b>[Address of Bidder's principal place of business]</b>	<b>Surety</b> Name: <b>[Full formal name of Surety]</b> Address <i>(principal place of business)</i> : <b>[Address of Surety's principal place of business]</b>
<b>Owner</b> Name: <b>[Full formal name of Owner]</b> Address <i>(principal place of business)</i> : <b>[Address of Owner's principal place of business]</b>	<b>Bid</b> Project <i>(name and location)</i> : <b>[Owner project/contract name, and location of the project]</b>  Bid Due Date: <b>[Enter date bid is due]</b>
<b>Bond</b> Penal Sum: <b>[Amount]</b> Date of Bond: <b>[Date]</b>	
Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth in this Bid Bond, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.	
Bidder	Surety
_____ <i>(Full formal name of Bidder)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature) (Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Note: Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary. (3) Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.</i>	

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 will be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder occurs 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 will 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 does not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action will 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 will be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder must 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 Postal Service registered or certified mail, return receipt requested, postage pre-paid, and will 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 will 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 governs and the remainder of this Bond that is not in conflict therewith continues in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

## PERFORMANCE BOND

<b>Contractor</b> Name: <b>[Full formal name of Contractor]</b> Address <i>(principal place of business)</i> : <b>[Address of Contractor's principal place of business]</b>	<b>Surety</b> Name: <b>[Full formal name of Surety]</b> Address <i>(principal place of business)</i> : <b>[Address of Surety's principal place of business]</b>
<b>Owner</b> Name: <b>[Full formal name of Owner]</b> Mailing address <i>(principal place of business)</i> : <b>[Address of Owner's principal place of business]</b>	<b>Contract</b> Description <i>(name and location)</i> : <b>[Owner's project/contract name, and location of the project]</b>  Contract Price: <b>[Amount from Contract]</b> Effective Date of Contract: <b>[Date from Contract]</b>
<b>Bond</b> Bond Amount: <b>[Amount]</b> Date of Bond: <b>[Date]</b> <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 16	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <div style="text-align: center;"><i>(Signature)</i></div>	By: _____ <div style="text-align: center;"><i>(Signature)(Attach Power of Attorney)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>	Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

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 will 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 may 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 will 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 does 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 does 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 will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will 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 will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
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 must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must 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 will be applicable.
12. Notice to the Surety, the Owner, or the Contractor must 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 will be deemed deleted therefrom and provisions conforming to such statutory or other legal

requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will 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 will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
16. A modification, omission, or addition to the terms and conditions of the public work contract, plans, specifications, drawings, or profile, or any defect in the public work contract or in the proceedings preliminary to the letting and awarding of the public work contract does not discharge the surety.
17. Modifications to this Bond are as follows: **[Describe modification or enter “None”]**



# PAYMENT BOND

<b>Contractor</b> Name: <b>[Full formal name of Contractor]</b> Address <i>(principal place of business)</i> : <b>[Address of Contractor's principal place of business]</b>	<b>Surety</b> Name: <b>[Full formal name of Surety]</b> Address <i>(principal place of business)</i> : <b>[Address of Surety's principal place of business]</b>
<b>Owner</b> Name: <b>[Full formal name of Owner]</b> Mailing address <i>(principal place of business)</i> : <b>[Address of Owner's principal place of business]</b>	<b>Contract</b> Description <i>(name and location)</i> : <b>[Owner's project/contract name, and location of the project]</b>  Contract Price: <b>[Amount, from Contract]</b> Effective Date of Contract: <b>[Date, from Contract]</b>
<b>Bond</b> Bond Amount: <b>[Amount]</b> Date of Bond: <b>[Date]</b> <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 18	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i> <hr/>	<i>(Full formal name of Surety) (corporate seal)</i> <hr/>
By:     _____ <div style="text-align: center;"><i>(Signature)</i></div>	By:     _____ <div style="text-align: center;"><i>(Signature)(Attach Power of Attorney)</i></div>
Name:     _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name:     _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title:     _____ 	Title:     _____ 
Attest:     _____ <div style="text-align: center;"><i>(Signature)</i></div>	Attest:     _____ <div style="text-align: center;"><i>(Signature)</i></div>
Name:     _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name:     _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title:     _____ 	Title:     _____ 
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

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 will 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 will 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 will 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 will 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 will 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 will 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 satisfying 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.
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 will 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 will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will 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 will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will 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:
    - 16.1.1. The name of the Claimant;
    - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
    - 16.1.3. 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;
    - 16.1.4. A brief description of the labor, materials, or equipment furnished;

- 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
- 16.1.7. The total amount of previous payments received by the Claimant; and
- 16.1.8. 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 is 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 will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
18. A modification, omission, or addition to the terms and conditions of the public work contract, plans, specifications, drawings, or profile, or any defect in the public work contract or in the proceedings preliminary to the letting and awarding of the public work contract does not discharge the surety.
19. Modifications to this Bond are as follows: **[Describe modification or enter “None”]**

## **ESCROW AGREEMENT**

### **7th Street Protected Bike Lane Improvements**

THIS ESCROW AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Bloomington, Indiana, Board of Public Works (the "Owner"), and \_\_\_\_\_, (the "Contractor"), and First Financial Bank, an Ohio state chartered bank (the "Escrow Agent"). The Owner and Contractor shall be collectively referred to as the "Parties" herein.

WHEREAS, the Owner and Contractor entered into an Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the amount of \$100,000.00 or more, for the construction of a public works project (the "Construction Agreement"); and

WHEREAS, said Construction Agreement provides that portions of payments by Owner to Contractor shall be retained by Owner (the "Retainage") and shall be placed in the escrow account created hereby.

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 Construction Agreement 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. Such deposit shall be made within three (3) business days after the date such payments are made to Contractor.

The Escrow Agent shall open a "Money Market" account that invests primarily in short-term, interest bearing bank deposit accounts, and/or investment grade securities and deposit said Retainage promptly into the account; however, the Escrow Agent makes no representation as to the yield of such investment and will not bear liability for any delays in depositing the Retainage or for any failure to achieve the maximum possible yield from such Deposit.

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 specific escrow fund so that a quarterly accounting can and shall be made to the Contractor of all investments made in such funds and all income, fees, payments, deposits, and other activities related to the escrow funds.

The Deposit, less any and all transaction or account fees or charges and out-of-pocket expenses of Escrow Agent attributable to, or incurred in connection with, the deposit thereof in accordance with the terms of this Agreement which items may be deducted by the Escrow Agent from the Deposit as set forth below (such net sum being the "Net Deposit"), will be delivered by Escrow Agent in accordance with the terms of this Escrow Agreement to the person or persons entitled thereto or, herein, to a substitute impartial party or a court of competent jurisdiction. Escrow Agent agrees to provide the Parties with copies of each monthly statement for the Escrow Account for the period for which the Deposit is held by Escrow Agent. As a condition to the delivery of any funds constituting part of the Deposit, Escrow Agent may require from the recipient a receipt therefor and, upon final payment or

disposition, may require its release from any liability arising out of the execution or performance hereof, such release to be in a form reasonably satisfactory to Escrow Agent.

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, Net Deposit, plus any accrued interest thereon, less any expenses, including but not limited to attorneys' fees, thereof only upon the execution and delivery to it of a Payment Certificate attached here as Exhibit A, 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 Payment Certificate the Escrow Agent shall remit the designated part of escrowed principal and the same proportion of the escrowed income to the person(s) specified in the Payment Certificate. 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.

Although statutorily entitled to a fee, the Escrow Agent agrees to waive the monthly statement fee and the monthly minimum balance.

All income earned on the escrowed principal shall be paid to the Contractor.

In lieu of the presentation of the Payment Certificate described above, any document purporting to be a certificate will be deemed by the Escrow Agent to be a proper certificate, or will suffice as a joint instruction, if it contains: (i) the name of the payee; (ii) the amount of the payment to be made; (iii) the manner of payment (i.e., by certified or cashier's check, by account-to-account transfer, or by wire transfer, whichever is applicable); and (iv) the signatures of each of the Parties hereto, excluding the Escrow Agent.

Escrow Agent will be entitled to rely upon the authenticity of any signature (and upon any facsimile of a signature as if it were an original signature) and the genuineness and/or validity of any writing received by Escrow Agent from either of the Parties pursuant to or otherwise relating to this Escrow Agreement.

Each signatory to this Escrow Agreement warrants that it has full and complete authority to enter into this Escrow Agreement.

The Escrow Agent may at any time request written instructions from the Parties with respect to the interpretation hereof or of action to be taken or suffered or not taken hereunder and, notwithstanding any other provision hereof, will be entitled to withhold (and will not be under any liability to any person for withholding) action hereunder until it has received written instructions signed by all of the Parties.

In the event of the receipt by the Escrow Agent of any notice, demand, or certificate not provided for or in compliance with this Escrow Agreement or of any inconsistent or conflicting notices or certificates, the Escrow Agent will be protected in taking no action whatsoever with reference to any such notice or demand, unless such inaction constitutes gross negligence or willful misconduct on the part of the Escrow Agent. In case of: (i) receipt of contradictory instructions from the Parties; (ii) any dispute as to any matter arising under this Agreement; or (iii) any uncertainty as to the meaning or applicability of any of the provisions hereof, Escrow Agent may, at its option at any time thereafter, deposit the Deposit and/or documents or assets then being held by it in escrow into a court having appropriate jurisdiction, or take such affirmative steps as it may elect in order to substitute an impartial bank of comparable

financial and industrial standing to hold the Deposit and/or documents and will thereby be discharged and relieved of any and all liability hereunder.

The Escrow Agent may resign at any time by giving a minimum of thirty (30) days' prior written notice of resignation to the Parties, such resignation to be effective on the date specified in such notice. The Deposit, and any other assets held by the Escrow Agent under the terms of this Escrow Agreement as of the effective date of the resignation, will be delivered to a successor escrow agent designated in writing jointly by the Parties. If no successor escrow agent has been appointed as of the effective date of the resignation, all obligations of the Escrow Agent hereunder will nevertheless cease and terminate, except that the Escrow Agent's sole responsibility thereafter will be to keep safely the Deposit then held by it and to deliver the same to a person designated by both Parties or in accordance with the direction of a final order or judgment of a court of competent jurisdiction.

The Escrow Agent has no responsibility concerning compliance by the Parties with their duties to each other under this Escrow Agreement or any other agreements. Escrow Agent will have only such duties and obligations as are specifically imposed upon it by the terms and conditions of this Escrow Agreement and no implied duties or obligations will be read into this Escrow Agreement against Escrow Agent.

The Parties, jointly and severally, agree to indemnify and hold harmless Escrow Agent from and against any and all costs including its attorney's fees, claims or damages howsoever occasioned that may be incurred by Escrow Agent acting under this Escrow Agreement or to which Escrow Agent may be put in connection with Escrow Agent acting under this Escrow Agreement arising from the Parties' willful misconduct or negligence.

In the absence of such a joint written authorization and in the absence of the termination of the Contractor as provided above, the escrowed funds shall be paid 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 account shall be a commercial money market account set up by the Escrow Agent to hold the retainage, and there shall be no fees and no minimum balance required. The account shall earn interest rate based on balances. The Parties agree to reimburse Escrow Agent for all reasonable expenses, disbursements and advances incurred or made by Escrow Agent in the performance of its duties hereunder (including reasonable fees, expenses and disbursements of its counsel).

The Escrow Agent will not be required to use its own funds in the performance of any of its obligations or duties or the exercise of any of its rights or powers, and will not be required to take any action which in Escrow Agent's reasonable judgment would cause it to incur expense or liability unless furnished with security and indemnity which it reasonably deems to be satisfactory.

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, other than loss or damage directly caused by Escrow Agent's own gross negligence or willful misconduct.

This Escrow Agreement may be amended, modified, superseded, cancelled, renewed or extended, and the terms or covenants hereof may be waived only by a written instrument executed by all the Parties hereto.

This Escrow Agreement contains the entire agreement between the Parties with respect to the escrow transaction contemplated herein and may not be changed or terminated orally.

This Escrow Agreement shall be governed by the laws of the State of Indiana.

This Escrow Agreement will be binding upon and inure solely to the benefit of the Parties hereto and their respective heirs, administrators, successors and assigns, and will not be enforceable by or inure to the benefit of any third party, except any successor escrow agent. No party may assign any of its rights or obligations under this Escrow Agreement without the written consent of the other parties, except that either of the Parties may assign its rights and obligations hereunder in connection with a permitted assignment of its rights and obligations under the Agreement in which case any signatures required hereunder will be those of such assignee.

This Escrow Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same agreement. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

All notices, waivers, consents, approvals and other communications hereunder shall be in writing and shall be deemed to have been properly given on the date of service if delivered personally or on the date of mailing if deposited in the United States mail, first class postage prepaid, to the extent required by applicable law, and will comply with the requirements of the Uniform Commercial Code then in effect, addressed appropriately as follows:

If to Owner:

City of Bloomington Board of Public Works  
401 N. Morton Street, Suite 130  
Bloomington IN 47404  
Attn: Andrew Cibor, City Engineer

If to Escrow Agent:

First Financial Bank  
536 N. College Ave.  
Bloomington, IN 47404  
Attn: Cindy Kinnarney

If to Contractor:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State: \_\_\_\_\_  
Attn: \_\_\_\_\_



In Witness Whereof, the undersigned have executed this Escrow Agreement as of the day and year first above written.

**OWNER:**

City of Bloomington, Board of Public Works

By: \_\_\_\_\_  
Dana Palazzo, President

**CONTRACTOR:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Tax I.D. No.: \_\_\_\_\_

**ESCROW AGENT:**

First Financial Bank

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

# AUTHORIZATION TO RELEASE ESCROW FUNDS

\_\_\_\_\_(Date)

First Financial Bank  
536 N. College Avenue  
Bloomington, IN 47404

Attn: Cindy Kinnarney

Ladies and Gentlemen:

Pursuant to that certain Escrow Agreement dated as of \_\_\_\_\_, 20\_\_\_\_, by and among you as Escrow Agent and the undersigned (the "Escrow Agreement"), the undersigned hereby jointly notify and instruct you to issue a check for the balance in the Escrow Account as follows:

Escrow Account for Retainage on Project: \_\_\_\_\_  
Account Holder/Contractor: \_\_\_\_\_  
Primary Account Number: \_\_\_\_\_

The undersigned, in consideration of the release of funds being held by Escrow Agent, and other good and valuable consideration, receipt of which is hereby acknowledged, hereby release, acquit and forever discharge the Escrow Agent, and it employees, officers, directors, agents, accountants, attorneys and parent companies, and all directors, agents, accounts and attorneys of such parent companies and all employees, officers, and heirs, executors, administrators, successors and assigns of all of the foregoing, jointly and severally (collectively, the "Bank Parties"), of and from all and any manner of action, actions, cause and causes of action, suits, debts, dues, sums of money, accounts, bonds, bills, covenants, contracts, agreements, promises, obligations, defenses, offsets, counterclaims, damages, judgments, claims, demands and liabilities of any kind or character whatsoever, known or unknown, suspected or unsuspected, in contract or in tort, in law or in equity, that any one or more of the undersigned had, have, may have or may in the future have against any one or more of the Bank Parties arising out of, for or by reason of or resulting from or in any way related, directly or indirectly, to the Escrow Agreement. In addition, the undersigned, jointly and severally, agree not to commence, aid, cause, permit, join in, prosecute or participate in any suit or other proceeding in a position which is adverse to any of the Bank Parties, which suit or proceeding arises from or relates to, in whole or in part, directly or indirectly, any of the foregoing matters.

Sincerely,

## THE ESCROW PARTIES:

The City of Bloomington

Contractor

By: \_\_\_\_\_  
Andrew Cibor, City Engineer  
City of Bloomington

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Reviewed and Approved By:

Title: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey Underwood, Controller  
City of Bloomington

Escrow Agent  
First Financial Bank

By: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

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## **SECTION IV**

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### **AFFIRMATIVE ACTION PLAN REQUIREMENTS**

**Director/Assistant City  
Attorney  
Barbara E. McKinney**



**City of Bloomington  
Human Rights Commission**

Updated January 1, 2021

To: Prospective Bidders/Vendors

RE: Affirmative Action, Harassment Policy, Living Wage Ordinance and Drug Testing Policy FROM: Barbara

E. McKinney, Human Rights Director/ Contract Compliance Officer

**AFFIRMATIVE ACTION:** All bidders and vendors 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 applicants and 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, disability, sexual orientation, gender identity, veteran status and/or housing status.

Even if your company already has a plan on file with the City, you must check with me to make sure it complies with our current requirements, including having a workforce breakdown form that is no more than six months out of date. 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, quote or proposal deadline. You must submit your plan to me separately from your bid or quote.

Twenty-four hours will give me sufficient time to review your and the other plans. I recommend you submit your affirmative action plan to me earlier, if possible, so 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 submittal deadline. We will make every effort to work with you to clear up any problems. However, it remains your responsibility to confirm that I have 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 submit a bid or quote. 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 all of the required protected classes listed above are included in your plan. In addition to other requirements, your plan MUST include a current 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 form (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 submit a copy of that form instead of using our form. Your workforce breakdown data cannot be more than six months old. 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 your plan omits any elements on the checklist, your plan will not be approved.
3. A sample affirmative action plan that you may amend and adapt as your own.

These documents may be useful if your company has not designed an affirmative action plan before. Feel free to adopt this plan as your own or to amend it to meet your needs.

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

**HARASSMENT POLICY:** All bidders and vendors required to submit an affirmative action plan now must also submit a harassment plan. The harassment plan must, at minimum, include a definition of harassment, the name or title of the individual designated to receive and investigate complaints and a statement that the contractor will not retaliate against an employee for complaining about harassment. A model harassment policy is included for your convenience as part of our attached model affirmative action plan, which you may amend and adapt as your own. Please note that this harassment policy requirement is new, adopted by the Bloomington Common Council in June, 2019.

**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](http://www.bloomington.in.gov/livingwage), or call me. For 2021, the living wage for covered employees is \$13.29 an hour.

**DRUG TEST POLICY:** Finally, please be aware that if you are submitting a bid for a public works project with an estimated cost of \$150,000.00 or more, you will need to submit your company's written drug testing plan with your bid. Your plan must comply with I.C. 4-13-18-1. Failure to do so may make you ineligible to be awarded a bid or contract. Please see your bid packet for more details.

If you have any questions, contact me at 812.349.3429 or email me at [mckinneb@bloomington.in.gov](mailto:mckinneb@bloomington.in.gov). My office hours are Monday through Friday, 8-5.

Thank you.

Model Affirmative Action Plan and Harassment  
Policy

\_\_\_\_\_, 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, gender identity, veteran status, or housing status. 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 this 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 to 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 notices of our policy in paycheck envelopes, and/or
- 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 ask only job-related questions on our employment applications.

We shall keep affirmative action information on each applicant who voluntarily provides this information, 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, gender identity, veteran status or housing status.

## GRIEVANCE PROCEDURE

If an employee or applicant feels she or he has been discriminated against on the basis of race, sex, religion, color, national origin, ancestry, disability, sexual orientation, gender identity, veteran status or housing status, she or he may bring the complaint to her or his immediate supervisor. If the complaint is not resolved readily at that level, she or he may submit it to \_\_\_\_\_ (personnel officer, corporate president, other) who will make a final decision on its validity. This grievance process does not preclude him or her from 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.

### Policy prohibiting harassment in the workplace

It is the policy of \_\_\_\_\_ (company name) to maintain a workplace free of harassment on the basis of race, sex, color, ancestry, national origin, religion, disability, age, sexual orientation, gender identity, housing status or veteran status. Harassment, as defined herein, is strictly prohibited in the workplace, and is punishable by appropriate discipline up to and including termination.

Harassment means any unwelcome or offensive conduct, whether written, verbal or physical, which is

- (a) directed at or to an employee because of his or her actual or perceived race, sex, color, ancestry, national origin, religion, disability, age, sexual orientation, gender identity, housing status or veteran status or
- (b) directed toward any person concerning an individual, or a class of individuals, because of the race, sex, color, ancestry, national origin, religion, disability, age, sexual orientation, gender identity, housing status or veteran status of the individual or class of individuals. For example, racial or ethnic slurs or derogatory epithets are prohibited in the workplace, regardless of whether a member of the racial or ethnic group is present when the statement is made.

Harassment does not refer to occasional compliments or other statements of a socially acceptable nature. Harassment refers to behavior which is unwelcome and which is offensive and/or persistent enough to create, or has the potential of creating an intimidating, hostile or offensive working environment for any employee.

Harassment includes unwelcome sexual advances or requests for sexual favors, unwelcome touching of a sexual nature and unwelcome and/or offensive sexual comments.

- 2. This policy applies to all full-time, part-time, permanent and temporary employees, including supervisors and department heads, as well as to volunteers.
- 3. It is a violation of this policy to use an individual's submission to or rejection of harassing conduct as the basis for any employment decision affecting the individual.
- 4. An employee who believes she, he or they have been subjected to harassment as defined in this policy shall promptly report the harassment to her, his or their supervisor and/or the director of human resources or designee. \_\_\_\_\_ (company name) will make reasonable efforts to insure that a human resources representative of each sex is available to receive such complaints. The human resources department shall conduct a thorough and prompt investigation and, if appropriate, take disciplinary action against any offender, including but not limited to discharge. Staff will keep the complaint as confidential as reasonably possible. No one will be retaliated against for filing a harassment complaint.

5. All supervisory personnel who observe or otherwise learn of or have reason to suspect any conduct which may violate this policy shall promptly report such facts to the director of human resources or designee, and shall cooperate fully in any investigation or disciplinary action undertaken pursuant to this policy. Failure to comply with this section shall be grounds for appropriate disciplinary action, up to and including termination.
6. \_\_\_\_\_(company name) will provide regular training to employees and supervisors on the subject of harassment in the workplace. We will include information about this policy in our orientation and in our personnel policy. A copy of this policy will be posted on a prominent bulletin board. We take this matter seriously and will do all that is reasonably necessary to maintain a harassment-free workplace for our employees.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



# AFFIRMATIVE ACTION PLAN AND HARASSMENT POLICY CHECKLIST

NOTE: This is not an Affirmative Action Plan

Company Name: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Contractor: Plan MUST Include:		Yes	No	Comments:
Policy statement of equal employment opportunity		<input type="checkbox"/>	<input type="checkbox"/>	
Covers:	Applicants for employment	<input type="checkbox"/>	<input type="checkbox"/>	
	Employees	<input type="checkbox"/>	<input type="checkbox"/>	
On basis of:	Race	<input type="checkbox"/>	<input type="checkbox"/>	
	Religion	<input type="checkbox"/>	<input type="checkbox"/>	
	Color	<input type="checkbox"/>	<input type="checkbox"/>	
	Sex	<input type="checkbox"/>	<input type="checkbox"/>	
	National Origin	<input type="checkbox"/>	<input type="checkbox"/>	
	Ancestry	<input type="checkbox"/>	<input type="checkbox"/>	
	Disability	<input type="checkbox"/>	<input type="checkbox"/>	
	Sexual Orientation	<input type="checkbox"/>	<input type="checkbox"/>	
	Gender Identity	<input type="checkbox"/>	<input type="checkbox"/>	
	Veteran Status	<input type="checkbox"/>	<input type="checkbox"/>	
	Housing Status	<input type="checkbox"/>	<input type="checkbox"/>	
Designates a person responsible for implementation of the Plan		<input type="checkbox"/>	<input type="checkbox"/>	
Provides for communication of the policy:				
Within the Organization		<input type="checkbox"/>	<input type="checkbox"/>	
Outside the Organization		<input type="checkbox"/>	<input type="checkbox"/>	
(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)		<input type="checkbox"/>	<input type="checkbox"/>	
Provision for: Recruitment from minority groups		<input type="checkbox"/>	<input type="checkbox"/>	
Provision for: Equal access to training programs		<input type="checkbox"/>	<input type="checkbox"/>	
Grievance Procedure		<input type="checkbox"/>	<input type="checkbox"/>	
Prohibits retaliation for filing grievances		<input type="checkbox"/>	<input type="checkbox"/>	
Workforce Breakdown		<input type="checkbox"/>	<input type="checkbox"/>	
(figures up to date within 6 months)				

## HARASSMENT POLICY CHECKLIST

Definition of harassment	<input type="checkbox"/>	<input type="checkbox"/>
Designates a person to receive and Investigate harassment complaints	<input type="checkbox"/>	<input type="checkbox"/>
Prohibits retaliation for filing a harassment complaint	<input type="checkbox"/>	<input type="checkbox"/>

## WORKFORCE BREAKDOWN FORM

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

REPRESENTATIVE: \_\_\_\_\_

PHONE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

[illegible]

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: \_\_\_\_\_

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## **SECTION V**

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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

(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?

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

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## 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.)*

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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.

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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.

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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.

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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.

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### **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 or she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him or her, 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 or she 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: \_\_\_\_\_



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**BID OF**

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*(Contractor)*

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*(Address)*

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**FOR**

**PUBLIC WORKS PROJECTS**

**OF**

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Filed \_\_\_\_\_

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Action taken \_\_\_\_\_

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**JOHN HAMILTON  
MAYOR**

## SUBSTITUTE W-9 & BANK/EFT FORM

CITY OF BLOOMINGTON CONTROLLER'S OFFICE

401 N Morton St  
Post Office Box 100  
Bloomington IN 47402

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/DBA (if different than above):									
Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. <u>Enter the tax classification</u> (C=C corporation, S=S corporation, P=Partnership) ▶ _____ <input type="checkbox"/> Other ▶ _____		<b>Exemptions:</b> 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:	Email:							
Check all that apply: <input type="checkbox"/> State or Local Government <input type="checkbox"/> City Employee <input type="checkbox"/> Contractual Employee <input type="checkbox"/> Farmer's Market Vendor <input type="checkbox"/> Not for Profit - 501(c)									
List city department(s) you are doing business with (Parks, Fire, Utilities etc.):		Commodities or Services provided:							
		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Primary NAICS Code:</td> <td style="padding: 2px;">DUNS #:</td> </tr> </table>	Primary NAICS Code:	DUNS #:					
Primary NAICS Code:	DUNS #:								
<b>Taxpayer Identification Number (TIN)</b> Enter your 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 <i>How to get a TIN</i> on page 3 of IRS Form W-9.		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; padding: 2px;">Social security number</td> </tr> <tr> <td style="text-align: center; padding: 5px;"> <div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; 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### 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 code(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.

<b>SIGN HERE</b>	Signature of U.S. person ▶	Date ▶
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## CITY OF BLOOMINGTON ELECTRONIC FUNDS TRANSFER FORM (EFT)

**THE CITY'S REQUIRED METHOD OF PAYMENT IS EFT**  
(Electronic Funds Transfer)  
**PLEASE COMPLETE THE SECTION BELOW TO ENROLL**

### **EFT INFORMATION**

Bank Name:	
Type of Account:	<input type="checkbox"/> Checking <input type="checkbox"/> 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		

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## **SECTION VI**

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### GENERAL CONDITIONS

## GENERAL CONDITIONS

For

### Construction

#### INDEX TO THE ARTICLES OF THE GENERAL CONDITIONS

DEFINITIONS	CHANGES IN CONTRACT PRICE
EXECUTION OF DOCUMENTS	CHANGE OF CONTRACT TIME
CORRELATION, INTERPRETATION AND INTENT OF DOCUMENTS	LIQUIDATED DAMAGES
AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS	WARRANTY AND GUARANTEE: TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.
BONDS AND INSURANCE	PAYMENTS AND COMPLETION.
CONTRACTOR'S RESPONSIBILITIES	SUSPENSION OF WORK AND TERMINATION.
WORK BY OTHERS	ARBITRATION.
OWNER'S RESPONSIBILITIES	ENVIRONMENTAL REQUIREMENTS.
ENGINEER'S RESPONSIBILITIES DURING CONSTRUCTION	MISCELLANEOUS.
CHANGES IN THE WORK	

**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 document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is 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.
- 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 Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
- 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 Owner to a Bidder of Owner's acceptance of the Bid.
- 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 or her 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. PROGRESS SCHEDULE.** A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
- 1.25. 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.
- 1.26. RESIDENT PROJECT REPRESENTATIVE.** The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
- 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. WORK CHANGE DIRECTIVE.**—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

**1.35. MISCELLANEOUS DEFINITIONS**

**1.35.1. 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.

**1.35.2. 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.

**1.35.3. 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 AND EVIDENCE OF INSURANCE.** When the executed Agreements are delivered to the Owner, the Contractor shall also deliver to the Owner such Bonds and evidence of insurance as he or she may be required to furnish in accordance with the Agreement.
- 2.03. COPIES OF DOCUMENTS.** The Owner, upon request from the Contractor, shall furnish to the Contractor the number of copies of the Contract Documents set forth in the Special Conditions or a minimum of 1 set of complete documents.
- 2.04. CONTRACTOR'S PRE-AWARD REPRESENTATIONS.** The Contractor represents that Contractor has familiarized themselves with, and assumes full responsibility for having familiarized themselves



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 the Contractor has correlated their study, observations and site visits with the requirements of the Contract Documents. The Contractor also represents that the Contractor 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 the Contractor deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that the Contractor 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 fifteen (15) 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 fifteen (15) 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 three (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 twenty-four (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. The Contractor shall at once report in writing to the Engineer any conflict, error, or discrepancy which the Contractor may discover. However, Contractor shall not be liable to the Owner or Engineer for the Contractors failure to discover any conflict, error, or discrepancy in the Drawings or Specifications.
- 2.08. SUBMISSION OF SCHEDULES.** Within ten (10) 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 fewer than sixty (60) calendar days completion time, fewer than thirty-five (35) work days, or fewer than sixty (60) days between the date of 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 three (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, the Contractor shall call it to the Engineer's attention in writing at once. Before proceeding with the Work affected thereby, the Contractor shall not be liable to the Owner or Engineer for their 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 their responsibility with regard to errors and omissions, or from the Contractor's 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 date of 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 the Contractor to an extension of the Contract Time, the Contractor 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 the Owner's 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. The Contractor 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 the Contractor's 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 **SUPPLEMENTARY CONDITIONS**. The Payment Bond shall also be in an amount at least equal to 100% of the Contract Price, unless otherwise listed in **SUPPLEMENTARY 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 (5) 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 the Contractor 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 the Contractor's 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 or her 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 Contractor 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 (15) 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 the Contractor's best skill and attention. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but the Contractor 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 the Contractor's 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 the Contractor is responsible for the acts and omissions of persons directly employed by the Contractor. 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, the Contractor 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, the Contractor shall bear all costs arising there from; however, it shall not be the Contractors 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 the Contractor 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 may obtain an Indiana General Sales Tax Exemption Certificate from the Owner.

**6.08. Use of PREMISES.** The Contractor shall confine their equipment, the storage of materials and equipment and the operations of the Contractor's 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 the Contractor 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 the Engineer 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. The Contractor 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. The Contractor 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 or her 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 the Contractor's discretion, to prevent threatened damage, injury or loss. The Contractor 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 the Contractor in an emergency which arose from causes beyond the Contractor's control entitles the Contractor to an increase in the Contract Price or an extension of the Contract Time, the Contractor 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, the Engineer's 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 or her 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 its own forces, or the Owner 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 Owner is performing the additional work) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate the Contractor's 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. The Contractor's failure to so report shall constitute an acceptance of the other work as fit and proper for the relationship of the Contractor's Work except as to defects and deficiencies which may appear in the other work after the execution of the Contractor's Work.

The Contractor shall do all cutting, fitting, and patching of the Contractor's 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 the Contractor in additional expense or entitles the Contractor to an extension of the Contract Time, the Contractor 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 the Owner under the Contract Documents promptly and shall make payments to the Contractor promptly after they are due.

In addition to the Owner's 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 the Engineer 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 the Contractor to an increase in the Contract Price, the Contractor 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). The Engineer 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 the Engineer's capacity as interpreter and judge he/she will exercise his/her best efforts to insure faithful performance by



both Owner and Contractor. He or she 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 the Engineer 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/her decision or (b) the tenth day after the parties have presented their evidence to the Engineer if he/she has not rendered his/her written decision before that date. No demand for arbitration shall be made later than thirty (30) days after the date on which the Engineer rendered his/her 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 (30) day 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 the Engineer 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, manufacturer, 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 the Engineer 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 Contractor's 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 or Work Change Directive 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 or Work Change Directives. If the Contractor believes that any minor change or alteration authorized

by the Engineer entitles Contractor to an increase in the Contract Price, the Contractor may make a claim therefore.

Additional work performed by the Contractor without authorization of a Change Order will not entitle him or her 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 or her 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 the Contractor's 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 (20) 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 (45) 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 the Owner 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, the Contractor shall be paid for the Contractor's 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, expeditors, timekeepers, clerks, and other personnel employed by the Contractor, whether at the site or in the Contractor's 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 the Contractor's 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 the Contractor's 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.

**11.06. UNIT PRICE WORK.** Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the approximate quantity of each item as indicated in the Agreement.

The approximated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order.

## **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 (20) 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 (45) 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 the Contractor 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 One Thousand Five Hundred Dollars (\$1500.00) 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 the Contractor's 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 the Contractor's 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/her obligations to perform the Work in accordance with the Contract Documents.

**14.03. ACCESS TO WORK.** Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

**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 by the Contractor for the Engineer's 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 the Contractor 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/her 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 non-defective 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 the Contractor's correction, removal or replacement of his/her 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, the Engineer or Owner 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 (7) days written notice to the Contractor may, without prejudice to any other remedy the Owner 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 thirty (30) days make an estimate of the value of the Work completed, and submit an Application for Payment. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 11.06. 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.

**15.01.01.** At least twenty (20) days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

**15.01.02.** If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation *establishing full payment by Contractor for the materials and equipment*; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

**15.01.03.** Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor



have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

**15.01.03.** The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

**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 the Engineer may request to aid in the review and approval of such Estimates. The Engineer will, within five (5) 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 the Engineer's 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 (45) days after receipt of Application. The escrow agent, Owner, and Contractor shall enter into a written escrow agreement. Under that agreement, the Owner shall withhold five percent (5%) of the dollar value of all work satisfactorily completed until the Contract work is complete. 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/her 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 the Engineers observation and review of the Work during construction, his/her final inspection and his/her 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/her obligations under the Contract Documents, the Engineer will, within ten (10) 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, the Engineer will return the Application to the Contractor, indicating in writing his/her 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 forty-five (45) days of presentation to the Owner 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 (90) 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 the Contractor 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 the Contractor makes a general assignment for the benefit of his/her creditors, or if a trustee or receiver is appointed for the Contractor or for any of his/her property, or if the Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, or if the Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if the Contractor repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment or if the Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or if the Contractor disregards the authority of the Engineer, or if he or she 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 the Contractor's Surety seven (7) 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 the Owner 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 (90) 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 (30) 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 (30) days of its approval and presentation, then the Contractor may, upon seven (7) 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 (7) days' notice to the Owner and Engineer stop the Work until the Contractor 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) thirty (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 thirty (30) days after the date on which Engineer has rendered a written decision in respect thereof; and the failure to demand arbitration within said thirty (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 thirty (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 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 is 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, or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.
- 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.
- 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 2018 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.
- 19.04. MAINTENANCE OF TRAFFIC.** For all maintenance of traffic, including pedestrian routes, the Contractor shall follow the current Indiana Manual on Uniform Traffic Control Devices (MUTCD) 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 routes in accordance with the Draft Public Right of Way Accessibility Guidelines (PROWAG) and must be approved by the Department of Planning and Transportation.
- 19.05. LIMITATION OF DAMAGES.** With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.
- 19.06. NO WAIVER.** A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.
- 19.07. SURVIVAL OF OBLIGATIONS.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

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## **SECTION VII**

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SPECIAL CONDITIONS  
SUPPLEMENTARY CONDITIONS

# Special Conditions

## CONTRACT COMPLETION DATE

Intermediate completion date requirements are to be met on or before August 9th, 2021. Intermediate completion shall include the completion of all work and the removal of traffic restrictions for the area east of Indiana Avenue. An exception will be given for final landscaping, HMA surface, and pavement markings. Substantially complete shall include, but is not limited to, all asphalt paving (up through the final surface layer), curb and gutter, rain garden, approach, storm sewer systems, landscaping, lighting, and roadway signs are 100% completed. The work shall be 100% complete including the final surface pavement lift in all locations, pavement markings, site cleanup, punch-list items, etc. on or before the Contract Completion Date.

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## FAILURE TO COMPLETE ON TIME FOR CALENDAR COMPLETION DATE

The CONTRACTOR shall be prepared to be 100% complete with work on or before the Contract Completion Date.

If the project is not 100% complete by the date mentioned above \$1,500.00 per day for each calendar day of delay until the work is 100% completed will be assessed as liquidated damages, not as a penalty, but as damages sustained for each calendar day the Contract Final Completion Date or Intermediate Completion Date are not met.

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## CONSTRUCTION RESTRICTIONS

During the Indiana University Academic School year, construction activities east of Indiana Avenue will be temporarily halted during timespans described below to avoid potential inconveniences to the travelling public in proximity to the construction site. Full access must be open and maintained for all curb ramps at all intersections, street approaches, and mainline roadway of 7<sup>th</sup> Street during these timespans:

No Construction Activities permitted east of Indiana Avenue from:  
Notice to Proceed through May 7, 2021  
August 9<sup>th</sup>, 2021 through December 15<sup>th</sup>, 2021

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## NOTICE OF CONSTRUCTION

Indiana University, emergency service providers, and local school corporations, shall be contacted at least two weeks prior to construction to allow these entities to prepare for traffic delays.

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## UTILITY INFORMATION

## 7th Street Protected Bike Lane Improvements Construction

### (a) Utilities

The status of all utility companies and organizations potentially involved with the work to be performed are described below as known at the time this contract was prepared. The active engagement of the Utility Coordinator does not minimize nor negate the responsibility of the Contractor to perform duties per the Standard Specifications.

The facilities of AT&T Distribution exist within the project limits, but are not expected to be affected by the proposed construction. The facilities consist two underground duct runs. The first is a six - 4" ducts with 2 - 1200 pair copper cables, 1500 pair copper cable, 2100 pair copper cable, and 2400 pair copper cable and 1 air pipe. The second duct run is a 12 duct run with 2 air pipes, two 216 fiber cables, 96 fiber cable, 72 fiber cable, 48 fiber cable, 6 fiber cable. Two 1200 pair copper cables, 1500 pair copper cable, 1800 pair copper cable, 900 pair copper cable, 158 special copper cable. These two duct runs are from Washington heading west to N Rogers St. The utility has a twenty 4" duct run from Washington heading east to N Lincoln St with three 2700 pair copper cables, two 1800 pair copper cables, and two 1500 pair copper cables. The utility has a 360 fiber cable, 216 fiber cable, 96 fiber cable, 72 fiber cable, two 24 fiber cables and a couple foreign owned fiber cables and 1 air pipe. There is a 4" conduit that runs from the AT&T manhole on the northwest corner of N Walnut St and 7<sup>th</sup> St heading west to the alley and heads south across 7<sup>th</sup> St down the alley toward 6<sup>th</sup> St with a 300 pair copper. The utility has 3 foreign fibers heading south out of this same manhole. The utility has a 6 duct run from manhole near 7<sup>th</sup> and Morton on the north side of 7<sup>th</sup> 50ft east of Morton, the six 4" duct head west out of the manhole and head south on Morton as shown. The utility has a 24 fiber cable, a 48 fiber cable, 900 pair copper cable and 1200 pair copper cable in this duct run. The utility will protect in place all conduit runs and have INDOT/Municipality contractor pothole all conduit runs prior to crossing to verify elevations of conduits and adjust to small storm inlets if required to adjust storm sewer pipe elevations. There is no anticipated relocation and no new facilities for this proposed project. If questions arise, Russell Owen of the utility may be contacted at (812) 606-2973 or emailed at [rol325@att.com](mailto:rol325@att.com). The work plan was approved on March 26, 2021.

The facilities of City of Bloomington-I.T.S. exist within the project limits, but are not expected to be affected by the proposed construction. The facilities consist of both active fiber optic conduit in the ground with the average depth of conduit being 36". There is active fiber at 7<sup>th</sup> and B-line with the conduit running north and south on the east side of the trail, and active fiber from 7<sup>th</sup> and Lincoln St. on the south side of the street under sidewalk, there is no fiber conduit underground from 7<sup>th</sup> and Washington St. to Woodlawn. If relocation is required for their utilities, they request 14-21 days for activities in the project limits. If questions arise, Michael Crump of the utility may be contacted at (812) 349-3454 or emailed at [michael.crump@bloomington.in.gov](mailto:michael.crump@bloomington.in.gov). A work plan is pending.

The facilities of City of Bloomington Utilities (CBU) exist within the project limits, but are expected to be affected by the proposed construction. The facilities consist of multiple sizes and types of water infrastructure, gravity sanitary sewer infrastructure, storm sewer infrastructure that are both active and inactive with the majority as indicated on the plans. The water infrastructure facilities consist of a 20" water main running north-south along the west curb line of Morton St, 4" and 8" water mains in westbound lane of 7th St. between Morton and College Ave, a hydrant and valve in the landscape area at Sta. 20+26 on the north side of 7th St., valve box will need lowered, 1" water main crossing south side of 7th St. at Sta. 21+94, 12" water main paralleling College Ave approximately 19' west of the centerline, hydrant and valve in the landscape area at Sta. 24+14 on north side of 7th St., valve



box will need to be lowered and hydrant protected during construction, a water valve in 7th St. near Sta. 24+46, 12" water main crossing 7th St. around Sta. 25+36, 6" water main paralleling Walnut St. approximately 15' west of the centerline, 1.5' water main crossing the south side of 7th St. around Sta. 30+16. 8" water main paralleling Washington St. approximately 6' east of the centerline, not shown north of 7th St. 4" water main crossing the south side of 7th St. around Sta. 32+42, a valve at northeast corner of Lincoln & 7th St. Sta. 34+50, 16" water main running north-south in the centerline of N. Dunn St, 6" water main under north curb line between Dunn St and Indiana Ave, and a 6" water main running north-south in the centerline of N. Indiana Ave. The gravity sanitary sewer infrastructure consists of an 8" sanitary sewer in the west bound lane of 7th St. from Morton St. to College Ave, 8" sanitary sewer running north-south in the centerline of Walnut St, 16" sanitary sewer force main running along west side of Lincoln St. crossing 7th St. The force main is not shown in the drawings except for a small portion at the south end of Lincoln, 8" sanitary sewer in the west bound lane of 7th St. beginning Sta. 28+80 to the centerline of Grant St, 8" sanitary sewer running north to southeast crossing the intersection of Grant & 7th St, and a 15" sanitary sewer south of the 7th St. south curb from Grant St to 40+60, switching to the centerline of 7th St at 40+71 running east to N Indiana Ave. The storm sewer infrastructure facilities consist of a storm manhole in sidewalk ramp at southeast corner of Morton & 7th cannot be lowered. It rests directly on the top of a box culvert, an inlet on north side of 7th St at Sta. 20+52 to be removed, a 15" storm under proposed improvements between Morton and College. The existing inlet and pipe at the northeast corner of the intersection of College & 7th St. will need to be removed since it is being replaced by Str. No. 106. Multiple small pipes (8) crossing 7th St. perpendicularly between Walnut and Grant tying into the storm sewer trunk line running along the north R/W line of 7th St. Existing inlet at northeast corner of Washington/7th St. will need to be removed as Str. No. 108 is replacing them. Existing inlet at the northwest, northeast, and southwest corner of the intersection of Lincoln & 7th St will need to be removed due to new catch basins replacing them, existing inlet at Str. No. 114 and Str. No. 117 will need removed, a large 48"x84" concrete box culvert crossing 7th St at Sta. 40+45, and a 12"-15" storm sewer trunk line running along the south side of 7th St. from Fess to Woodlawn. The facilities that require relocation or removal are a hydrant and valve in the landscape area at Sta. 20+26 on the north side of 7th St., valve box will need lowered, a hydrant and valve in the landscape area at Sta. 24+14 on north side of 7th St., valve box will need lowered and hydrant protected during construction, 8" water paralleling Washington St approximately 6' east of the centerline, not shown north of 7th St, a water valve at northeast corner of Lincoln & 7th St. Sta. 34+50, valve box will need to be raised. Inlet on north side of 7th St at Sta. 20+52, to be removed. The existing inlet and pipe at the northeast corner of the intersection of College/7th St. will need removed since it is being replaced by Str. No. 106. The existing inlets for Str. No. 108, 110, 111, 112, 114, and 117 will need to be removed. Coordination between CBU and the contractor will be required for proposed water valve adjustments. If during construction there is a relocation required within the project limits, CBU would require 7 days' notice to schedule relocation and 1 day to relocate each fire hydrant, and require 7 days' notice and 2 days to relocate each water meter. If CBU must replace any sidewalk and grass disturbed, an additional 3 days will be required. If questions arise, Phil Peden of the utility may be contacted at (812) 349-3634 or emailed at [pedenp@bloomington.in.gov](mailto:pedenp@bloomington.in.gov). A work plan is pending.

The facilities of Comcast Communications exist within the project limits, but are not expected to be affected by the proposed construction. The facilities consist of an active underground and aerial coax with the active underground in a front easement and aerial in a rear easement as well as aerial crossings. The utility has one area of concern at the intersection of N. Morton and W 7<sup>th</sup> Street, but do not anticipate relocation for their lines or equipment. If questions arise, Richard Miller of the utility may be contacted at (317) 945-2670 or emailed at [Richard.Miller3@cable.comcast.com](mailto:Richard.Miller3@cable.comcast.com). The work plan was approved on March 25, 2021.

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The facilities of Duke Energy Distribution exist within the project limits, but are not expected to be affected by the proposed construction. The facilities consist of an existing 3Ø 12.47 kV UG facilities crossing under 7th St on the east side of Morton St through the construction limits. These facilities turn and run along the south side of 7th St to a transformer and then split: (a) to continue along the south side of 7th to feed two more transformers, (b) continue along the south side of 7th St then turning south along the west side of College Ave, (c) turning back west before turning south along the east side of Morton St, an existing 3Ø 12.47 kV & 240 V OH facilities crossing over 7th St at an unnamed alley east of College Ave, and an existing 3Ø 12.47 kV UG facilities crossing under 7th St at the unnamed alley east of Walnut St. Any inactive facilities should be considered abandoned in place, and therefore, subject to neither removal nor preservation by Duke Energy. The excavation for Structure 104 encroaches upon Duke Distribution facilities. City of Bloomington contractors will need to take care and protect these facilities in place during excavation in this area. If questions arise, Jared Dickey of the utility may be contacted at (812) 343 - 6271 or emailed at [jared.dickey@duke-energy.com](mailto:jared.dickey@duke-energy.com). The work plan was approved on March 25, 2021.

The facilities of Duke Energy Lighting exist within the project limits. The facilities consist of existing 240V lighting with several poles and UG conductor running along the north and south side of the project limits. The facilities that require relocation are: a pole 166-439 located at Sta. 16+87.42, Rt. "Line PR-A" moved approximately 30' south; re-span conductor along the south side of 7th St from approximate station 40 + 00 to 49 + 00, Rt. moving it 5' south of the proposed curb and out of conflict with Str. 115 and the existing conductor will be abandoned in place; relocating decorative pole located north east intersection of Dunn St & 7<sup>th</sup> at Sta. 50+27.48, Lt. Line "PR-C" and moving approximately 5' North; and the current UG feed from the west will be abandoned in place. Relocating pole MNI-5443 at Sta. 52+32.87, Lt. approx. 5 feet north. Existing UG conductor will be abandoned in place. Relocating pole 154-685 located at Sta. 60+08.03, Lt. Line "PR-C" approx. 7 feet north. The utility will be able to complete their involvement with the project once they acquired ROW, RR, State and Federal permits before relocation construction begins and have acquired "possessory rights" needed for the approved relocation plan before relocation construction begins, and do not anticipate acquiring easements for this project. It is anticipated that the utility will take approximately 30 calendar days for preconstruction activities, the material reservation is contingent on the work plan approval and scheduling is contingent on notice to proceed. The utility will need approximately 10 calendar days to adjust its facilities in such area. The utility is not willing to have a INDOT/ LPA's contractor perform the required relocation. The removal of Duke Energy's pole(s) is dependent upon the removal of attachers to our poles. The attachers must remove their facilities before the existing poles can be removed. If the existing attacher is transferring their facilities to our new poles, the existing attacher's construction schedule may begin only after Duke Energy's relocation construction is completed. Duke Energy has no control over the start date or finish date for attachers vacating our existing poles. If questions arise, Craig Barker of the utility may be contacted at (317) 452-3743 or emailed at [Craig.Barker@duke-energy.com](mailto:Craig.Barker@duke-energy.com). The work plan was approved on March 25, 2021. Notice to proceed for pre-construction activities was provided on March 25, 2021.

The facilities of Smithville Communications exist within the project limits, but are not expected to be affected by the proposed construction. The facilities consist of buried fiber optic cable in duct, buried vacant duct, aerial fiber optic cable and handle hole and are shown as indicated on the plans. If questions arise, Joe Bryniarski of the utility may be contacted at (812) 320 - 9317 or emailed at [joe.bryniarski@smithville.com](mailto:joe.bryniarski@smithville.com). The work plan was approved on March 25, 2021.

The facilities of US Signal exist within the project limits, but are not expected

to be affected by the proposed construction. The facilities consist of active fiber optic cables, one 24-count fiber and one 48-count fiber. The fibers that enter and exit 301 N Washington St. (AT&T Central Office) run in AT&T conduit from the NW corner of N Walnut St. & W 7<sup>th</sup> St. into their central office. There is conduit that runs from the same AT&T manhole heading east to the alley way between Walnut and Washington St. that is owned by US Signal. If questions arise, Rob Fisher of the utility may be contacted at (616) 862-7102 or emailed at [rfisher@tkns.net](mailto:rfisher@tkns.net). The work plan was approved on March 25, 2021.

The facilities of Windstream Communications exist within the project limits, and are not be affected by the proposed construction. The facilities consist of fiber optic cable in AT&T ducts. If questions arise, Daniel Leskinen of the utility may be contacted at (812) 455 - 9558 or emailed at [Daniel.Leskinen@windstream.com](mailto:Daniel.Leskinen@windstream.com). The work plan was approved on March 25, 2021.

The facilities of Vectren Distribution exist within the project limits, and are expected to be affected by the proposed construction. The active facilities consist of 2" MP PL along the south side of 7th St from Sta. 14+00 to Sta. 17+00, 4" MP PL along the south side of 7th St from Sta. 17+00 to Sta. 22+00 & running north across 7th St at Sta. 21+80, 6" MP PL along the east side of Morton Rd running south at Sta. 17+10, 4" MP PL along the south side of 7th St from Sta. 25+35 to Sta. 26+40 & across 7th St at Sta. 25+35, 4" MP PL along the south side of 7th St from Sta. 28+90 to Sta. 30+90, across 7th St at Sta. 28+90 and Sta. 30+90, & along the east side of Washington St, 4" MP PL along the south side of 7th St from Sta. 32+50 to Sta. 34+00., 2" MP PL along the south side of 7th St from Sta. 34+70 to Sta. 37+60 & crosses 7th St at Sta. 36+10., 2" MP PL along the south side of 7th St from Sta. 37+70 to Sta. 38+50, crosses 7th St at Sta. 37+70 and runs along the west side of Grant St, 2" MP PL along the south side of 7th St from Sta. 42+70 to Sta. 54+50, runs south along the west side of Dunn St, crosses 7th St at Sta. 54+50, & runs along the west side of Indiana Ave, 4" MP PL crosses 7th St at Sta. 63+10 & runs north along the west side of Woodlawn Ave. The inactive facilities consist of 6" LP Cast Iron along the south side of 7th St from Madison St to Sta. 28+90, 4" LP Cast Iron crossing 7th St at Sta. 28+90, 4" LP Cast Iron crossing 7th St at Sta. 25+45, 4" LP Cast Iron crossing 7th St at Sta. 21+70, 2" LP STL crossing 7th St at Sta. 20+20, 6" LP STL along the south side of 7th St from Dunn St to Indiana Ave, crossing 7th St at Sta. 54+45. The retired facilities consist of a 4" MP PL from Sta. 30+30 to Sta. 30+50, 40' of 4" MP PL along Washington St. under the Str. No. 108 outlet pipe (Sta. 30+90), and 20' of 2" MP PL at Str. No. 118 (Sta. 50+10 to Sta. 50+30). The proposed facilities consist of a 4" MP PL along 7th St. offset 6' from ex. gas main. Ties into ex. 4" PL at Sta. 30+30 and Sta. 30+50. Depth dependent on existing storm invert, a 4" MP PL along Washington St. offset 3' from ex. gas main. Installed at a depth of 7' below ex. Grade, and a 2" MP PL along 7th St. from Sta. 50+10 to Sta. 50+30 and offset 3' from ex. gas main. The proposed work will require 30 calendar days to require permits, 60 calendar days to obtain materials, and 60 to 90 calendar days to schedule work crews. If questions arise, Mostafa Khallad of the utility may be contacted at (765) 287-2150 or emailed at [Mostafa.khallad@centerpoint.com](mailto:Mostafa.khallad@centerpoint.com). The work plan was approved on March 25, 2021. Notice to proceed for pre-construction activities was provided on March 25, 2021.

The facilities of Zayo Communications exist within the project limits, but are not expected to be affected by the proposed construction. The facilities consist of existing underground HDPE duct, fiber optic cable, tone wire and access structures. The facilities are located from 7th and Walnut St. to 7th and Washington St. along Line "PR-B" Zayo has facilities in the project area. Zayo facilities come into the project area from the North on Walnut St to 7th St. into an access structure. Zayo path exits access structure and continues in the north side right-of-way heading east. Zayo duct path enters another access structure at Sta. +46.4, 28.5'. Zayo path exits

structure to the southeast and crosses line "PR-B" to an access structure on the southwest corner of 7th St. and Washington St. at Sta. +55.7, 34.3'. Zayo Path continues south out of access structure and leaves project area. Buried fiber optic cable in duct, buried vacant duct, aerial fiber optic cable and handle hole and are shown as indicated on the plans. If questions arise, Waylon Higgins of the utility may be contacted at (765) 341 - 1199 or emailed at [waylon.higgins@zayo.com](mailto:waylon.higgins@zayo.com). The work plan was approved on March 25, 2021.

(b) Right-of-Way

There is no current involvement of additional right-of-way for the contract.

(c) Encroachments

There is no involvement of encroachments for the contract.

(d) Other Noteworthy Conditions

There are no other noteworthy conditions which may affect the prosecution and progress of the contract.

(e) Preconstruction Conference Notification

The Contractor shall provide notification during the preconstruction conference about known corrections to or omissions of the information presented in 107.26(a) through 107.26(d) above. Otherwise, notification shall be provided as required in 105.06. Notifications regarding such corrections or omissions shall not alleviate the Contractor's inquiry or interpretation obligations as contained in 105 IAC 11-3-7.

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#### UNDISTRIBUTED QUANTITIES

The schedule of pay items contains the following undistributed quantities in addition to known plan quantities:

SUBGRADE TREATMENT, TYPE IC .....	725 SYS
HMA Patching, Type C .....	480 TON
SIDEWALK, CONCRETE, 4 IN .....	70 SYS
CURB RAMP, CONCRETE .....	48 SYS
CURB, CONCRETE .....	500 LFT

The Contractor shall inform, and obtain approval from, the Engineer prior to placement of an undistributed quantity. The exact location of the undistributed quantity, if required, will be determined by the Engineer during the time of construction.

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#### REMOVAL ITEMS

The following removal items are not itemized for payment on an individual unit basis. These items include, but are not necessarily limited to, brush, vegetation, pipes, manholes, inlets, pipe anchors, headwalls, concrete barrier, fence, parking meter post, paved side ditches and any other removal items not otherwise specified or

directly paid for in the Schedule of Pay Items. The cost of labor, equipment, materials and all other incidentals necessary to perform the required work in accordance with 201 and 202 shall be included in the cost of "Clearing Right-of-Way" as appropriate.

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#### EXISTING CURB AND SIDEWALK

The existing curb and sidewalk adjacent to the proposed construction shall not be disturbed. If the existing curb or sidewalk is damaged during construction including, but not limited, to chipped panels, broken panels or curb, settlement of panels due to construction, or any other damage, the entire panel or length of curb which has sustained the damage shall be removed and replaced. Any damage to the existing sidewalk or curb as a result of the construction operations shall be replaced at the sole cost of the Contractor.

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#### COMMON EXCAVATION

If existing brick is encountered under existing HMA material, it is to be included and measured for payment under the Excavation, Common (CYS) pay item.

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#### PARKING METER, REMOVE

##### **Description**

This work shall consist of removing the existing parking meters along 7<sup>th</sup> Street.

##### **Construction Requirements**

The existing parking meter heads shall be removed by City of Bloomington Parking Enforcement staff. The Contractor shall make requests for parking meter removal at least 48 hours before the removal is required. The Contractor shall contact RayeAnn Cox, Parking Enforcement Division Manager, 812-349-3571 or [coxr@bloomington.in.gov](mailto:coxr@bloomington.in.gov) to request parking meter removal. The Contractor shall be responsible for removing the parking meter's base post. The Contractor shall remove base post at bottom, grind flush, and install grout to fill void.

##### **Method of Measurement**

The removal of parking meter and post will be measured by each base post unit removed.

##### **Basis of Payment**

The removal of the parking meter and post will be paid for as "Clearing of Right-of-Way". The cost of all items required to fill the voids shall be included in the cost of other items.

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#### MILLING

A milled surface shall not be left open to traffic longer than 5 calendar days. If the milled surface is not overlaid after 5 calendar days, a \$200.00 per calendar day

per street shall be assessed as Liquidated Damages, not as a penalty, but as damages sustained for each calendar day that the milled area remains open to traffic.

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#### HAND RAIL, PEDESTRIAN

Hand rails shall be Stainless Steel. The finish shall be smooth and consistent throughout matching the finish and quality of existing hand rails on the Indiana University Bloomington campus. The hand rail shall resist a linear load of fifty (50) pounds per linear foot and a concentrated load of 200 pounds in accordance with Section 4.5.1 of ASCE 7. The hand rail shall not be less than forty-two (42) inches high from the adjacent surface.

SECTION 604, BEGIN LINE 298, INSERT AS FOLLOWS:

The cost of caissons, anchor bolts, base plates, concrete, and all other incidentals shall be included in the cost of the hand rails.

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#### DETECTABLE WARNING ELEMENTS

Detectable warning elements for Concrete Curb Ramps shall be Cast Iron material per INDOT Standard Specs 905.05.

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#### BRICK PAVER, RESET

The project does not include any new or proposed brick paving. The Contractor shall salvage enough existing bricks from existing ramps to have a supply for repairs for any area which is damaged or disturbed by the Work. Ramp areas are to be carefully sawn and removed by hand or light mechanical methods so as to not disturb the brick areas that remain. There is a detail provided in the plans that indicates the proper construction if a brick area is repaired or replaced. There will be no separate payment for this work. It will be included in the costs of the ramps. Extra bricks are to be disposed of once paved areas are completed and bricks will no longer be needed.

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#### RAIN GARDENS

Construction of all new inlets involving existing structures shall be accomplished such that the existing pipe structure shall not be damaged.

Where a new casting is to be fitted to an existing catch basin or an existing casting is to be fitted to a new inlet, all dimensions and conditions shall be checked in the field. The Contractor shall assume responsibility for their correctness and fit.

The costs of the removal of headwalls and cleanup of the existing pipe shall be included in the costs of the pay items for the new drainage structures.

All existing structures damaged during construction shall be replaced with no additional payment.

### **Description**

This work shall consist of furnishing and installing rain gardens along the 7<sup>th</sup> Street improvements in Bloomington, IN as shown on streetscape plans and details.

### **Materials**

Unless otherwise noted, modified curbs shall be custom, cast in place concrete with reinforcement and dimensions as noted in drawing details. Widths of each rain garden vary based on the adjacent roadway improvements and are to match dimensions on all detail drawings.

### **Construction Requirements**

Composition and Materials:

Cement shall be Portland cement conforming to ASTM C-150 Types I or III. Aggregates for concrete shall conform to ASTM C-33 with a maximum size of  $\frac{3}{4}$  inch. Minimum strength of 4,000 PSI at 28 days of age as determined by compression testing. All admixtures shall conform to ASTM 494 and 260. All custom designed cast concrete products shall be reinforced.

Size:

Rain Garden planting areas all vary in dimension based on the adjacent pavement and existing conditions.

Components:

Finish grade shall be a maximum 6" from the lowest adjacent elevation to allow for a 'ponding zone' within the garden.

Decorative Stone ('L-Gravel') shall be installed at 4" Depth over a 3" layer of planting soil. 21" of 'Biosoil' planting medium is to be provided for infiltration (See Biosoil special provision), and a 2" to 3" sand filtration layer is to be installed over non-woven geotextile fabric at the base of the garden.

A decorative stone catch basin is to be installed per drawings over a lightly compacted aggregate base to capture and slow runoff, and reduce erosion within the bed. Aggregate base is to be wrapped in non-woven geotextile fabric per drawings.

An overflow outlet may be provided in beds that do not have a designed runoff 'outlet' for severe weather event. Overflow outlets are to be installed above existing stormwater fixtures and retrofitted using a flat casting cover or a bee-hive casting.

Items shall include all necessary materials to complete the work including but not limited to labor, reinforcement, excavation, removal, fill material, and any other necessary accessory materials for a full and complete installation as detailed.

The cost including all materials and labor shall be included in the cost of the other pay items. The cost of all miscellaneous hardware related to installation shall be included in the cost of other pay items.

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## PLANTS

Prevailing Specifications: INDOT 2020 Standard Specifications Section 622

A. Additions:

B. This work shall consist of placing trees, shrubs and perennials in locations shown on the plans, and will include installing mulch at all planting locations.

1. Construction Requirements:

a. Submittals:

- (i) Product Data: For each type of product indicated.
- (ii) Plant Availability Verification: Contractor shall provide Owner or Owner's representative proof of purchase from supplier and scheduled delivery date for all specified plant material no more than 30 days from the award of contract. Proof of purchase shall include botanical and common names for all plant material, sizes of all plant material, and source(s) of all plant material. This is to ensure that all specified plant material will be ready for installation as required to meet construction schedule and authorized planting periods.
- (iii) Product Certificates: For each type of manufactured product, signed by product manufacturer.
- (iv) Planting Schedule: Indicating anticipated planting dates for exterior plants.
- (v) Maintenance Instructions: Recommended procedures to be established by Owner for maintenance of exterior plants during a calendar year. Submit before expiration of required



maintenance periods. Notify Owner of expiration of Contractor maintenance period.

## 2. Quality Assurance

- a. Installer Qualifications: A qualified landscape installer whose work has resulted in successful establishment of exterior plants.
- b. Installer's Field Supervision: Require Installer to maintain an experienced full-time supervisor on Project site when exterior planting is in progress.
- c. Tree and Shrub Measurements: Measure according to ANSI Z60.1 with branches and trunks or canes in their normal position. Do not prune to obtain required sizes. Take caliper measurements 6 inches (150 mm) above ground for trees up to 4-inch (100-mm) caliper size, and 12 inches (300 mm) above ground for larger sizes. Measure main body of tree or shrub for height and spread; do not measure branches or roots tip-to-tip.

## 3. Delivery, Storage, and Handling:

- a. Deliver exterior plants freshly dug.
- b. Do not prune trees and shrubs before delivery. Protect bark, branches, and root systems from sun scald, drying, sweating, whipping, and other handling and tying damage. Do not bend or bind-tie trees or shrubs in such a manner as to destroy their natural shape. Provide protective covering of exterior plants during delivery. Do not drop exterior plants during delivery.
- c. Handle planting stock by root ball.
- d. Deliver exterior plants after preparations for planting have been completed and install immediately. If planting is delayed more than six hours after delivery, set exterior plants trees in shade, protect from weather and mechanical damage, and keep roots moist.
- e. Coordination: Plant trees and shrubs after finish grades are established and before planting lawns, unless otherwise acceptable to Owner.

## 4. Coordination:

- a. Planting Restrictions: Plant during one of the following periods. Coordinate planting periods with maintenance periods to provide required maintenance from date of Substantial Completion.

(i) Spring Planting: April 1 to June 15.

(ii) Fall Planting: September 1 to October 1.

(iii) Woody material may be planted earlier or later than these dates if stock is dug during dormancy.

b. Weather Limitations: Proceed with planting only when existing and forecasted weather conditions permit.

c. Coordination with Lawns: Plant trees and shrubs after finish grades are established and before planting lawns, unless otherwise acceptable to Landscape Architect.

(i) When planting trees and shrubs after lawns, protect lawn areas and promptly repair damage caused by planting operations.

#### 5. Preparation:

a. Protect structures, utilities, sidewalks, pavements, and other facilities, and lawns and existing exterior plants from damage caused by planting operations.

b. Provide erosion-control measures to prevent erosion or displacement of soils and discharge of soil-bearing water runoff or airborne dust to adjacent properties and walkways.

c. Apply antidesiccant to trees and shrubs using power spray to provide an adequate film over trunks, branches, stems, twigs, and foliage to protect during digging, handling, and transportation. If deciduous trees or shrubs are moved in full leaf, spray with antidesiccant at nursery before moving and again two weeks after planting.

#### 6. Plant Excavation:

a. Pits and Trenches: Excavate circular pits with sides sloped inward. Trim base leaving center area slightly raised to support root ball and assist in drainage. Do not further disturb base. Scarify sides of plant pit smeared or smoothed during excavation.

(i) Excavate approximately three times as wide as ball diameter for balled and burlapped or container-grown stock.

b. Obstructions: Notify Engineer if unexpected rock or obstructions detrimental to trees or shrubs are encountered in excavations.

c. Drainage: Notify Engineer if subsoil conditions evidence unexpected water seepage or retention in tree or shrub pits.

(i) Fill excavations with water and allow water to percolate away before positioning trees and shrubs.

7. Tree and Shrub Planting:

- a. Plant tree and shrub material in accordance with the details included in the plan set.
- b. Mulching:
  - (i) Apply 3-inch (101-mm) average thickness of organic shredded hardwood bark mulch extending 12 inches (300 mm) beyond edge of planting pit or trench. Do not place mulch within 2 inches (50 mm) of trunks or stems.

8. Perennial Planting:

- a. Set out and space plants as indicated.
- b. Dig holes large enough to allow spreading of roots, and backfill with planting soil and water management gel polymer.
- c. Work soil and water management gel polymer around roots to eliminate air pockets and leave a slight saucer indentation around plants to hold water.
- d. Water thoroughly after planting, taking care not to cover plant crowns with wet soil.

9. Planting Bed Mulching:

- a. Mulch backfilled surfaces of planting beds and other areas as indicated. Apply 3-inch (101-mm) average thickness of organic mulch, and finish level with adjacent finish grades. Do not place mulch against plant stems.
  - (i) Use only hardwood, natural bark mulch to be free from deleterious materials and suitable as a top dressing for all landscape.

10. Cleanup and Protection:

- a. During exterior planting, keep adjacent pavement and construction clean and work area in an orderly condition.
- b. Protect exterior plants from damage due to landscape operations, operations by other contractors and trades, and others. Maintain protection during installation and maintenance periods. Treat, repair, or replace damaged exterior planting.

11. Maintenance:

- a. Provide maintenance by skilled employees of landscape Installer. Begin maintenance immediately after plants are installed and continue until plantings are acceptably healthy and well established but for not less than one month from date of Substantial Completion.

- b. Maintain plantings by pruning, cultivating, watering, weeding, fertilizing, mulching, restoring planting saucers, adjusting and repairing tree-stabilization devices, resetting to proper grades or vertical position, and performing other operations as required to establish healthy, viable plantings. Spray or treat as required to keep trees and shrubs free of insects and disease.
- c. Submit maintenance manual and letter of notification to the Owner at end of maintenance period per Submittals section of this special provision.

12. Plant Guarantee:

- a. Trees and Shrubs shall be guaranteed for the duration of one (1) year after the end of the required maintenance period. Grasses and perennials shall be guaranteed for six (6) months. Notify Owner of expiration of Contractor maintenance period in writing.
- b. Failures include, but are not limited to, the following:
  - (i) Death and unsatisfactory growth, except for defects resulting from abuse, lack of adequate maintenance, or neglect by Owner, or incidents that are beyond Contractor's control.
  - (ii) Structural failures including plantings falling or blowing over.
  - (iii) Faulty performance of tree stabilization or edgings.
  - (iv) Deterioration of metals, metal finishes, and other materials beyond normal weathering.
- c. Replace plant material that is more than 25% dead or in an unhealthy condition at the end of the warranty period.
- d. The replacement shall be of the same variety, size, and character as specified for original planting. A limit of one replacement of each plant will be required, except for losses or replacements due to failure to comply with requirements.
- e. Repair any damage to the site or project incurred during the planting operations, including any removal and/or replacement of materials. Make replacement immediately and at no additional cost to the Owner.

13. The accepted quantity of plants will be paid for at the contract unit price per each or the following:

- a. "DECIDIOUS SHADE TREE, 2" CAL"

- b. "EVERGREEN SHRUB, 3 GAL CONTAINER"
  - c. "DECIDIOUS SHRUB, 3 GAL CONTAINER"
  - d. "ORNAMENTAL GRASS, 1 GAL CONTAINER"
  - e. "PERENNIAL/GROUND COVER, 4" POT"
  - f. "HARDWOOD BARK MULCH, CUBIC YARD"
14. The cost of furnishing and supplying the material, labor, equipment, foundation, cleanup, and necessary incidentals shall be included in the cost of this pay item.

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## PLANTING SOIL

### Description

This work shall consist of mixing and placing planting soil mix in landscape medians, beds and tree pits in locations shown on the plans.

### Materials

Topsoil Source: Import topsoil or manufactured topsoil from off-site sources. Obtain topsoil displaced from naturally well-drained construction or mining sites where topsoil occurs at least 4 inches (100 mm) deep; do not obtain from agricultural land, bogs or marshes. Topsoil should be friable organic loam.

### Construction Requirements

All landscape medians, shrub beds and tree pits shall be backfilled with a planting mixture as described below. All soil mixtures shall be mixed with amendments and other materials by hand or mechanical methods prior to placement. All topsoil shall be tested and amended per test results.

(i) Planting Soil Mix- Medians, Shrub Beds and Tree Pits:  
65% by volume topsoil, 35% by volume double hardwood mulch and soil conditioner as needed.

1. Topsoil shall consist of loose, friable soil, free of refuse stumps, large roots, rocks over two inches in diameters, brush, weeds or other material which would be detrimental to the development of vegetative growth.
2. Topsoil shall not be taken from a source known to contain noxious weeds.
3. Topsoil shall have a PH value of 6.2 to 7.4.
4. Contractor shall submit a 0.5 lb. sample for approval and certification of composition from an independent testing laboratory.

a. Thoroughly mix planting soil prior to placing.

b. Spread planting soil mix as shown on plans.

c. Thoroughly wet first layer and allow to percolate before placing remaining soil. Water thoroughly and fill in any depressions to meet proposed finish grade.

2. The accepted quantity of planting soil mix will be paid for at the contract unit price per cubic yard for PLANTING SOIL MIX.
3. The cost of furnishing and supplying the material, labor, equipment, and necessary incidentals shall be included in the cost of this pay item.

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#### BIO-SOIL MIX

##### **Definitions**

Finish Grade: Elevation of finished surface of planting soil.

Topsoil: Soil stockpiled and reused from on-site, blended with mineral soils or sand with stabilized organic soil amendments to produce planting soil.

Planting Soil: Topsoil, mixed with soil amendments.

Subsoil: Soil beneath the level of subgrade; soil beneath the topsoil layers of a naturally occurring soil profile, typified by less than 1 percent organic matter and few soil organisms.

##### **Submittals**

Product Data: For each type of product indicated.

Samples: 2 lb of topsoil and planting soil mixes for each soil type tested, in labeled plastic bags.

Product Certificates: For soil amendments and fertilizers, signed by product manufacturer.

Qualification Data: For landscape Installer.

Material Test Reports: For existing surface soil, manufactured topsoil, and planting soil mixes.

Existing Source Soil: 1 material test report.

Manufactured Soil Mixes:

1 material test report for preliminary planting soil mix.

1 material test report for each 100 cubic yards of material from random samples.

##### **Quality Assurance**

Soil-Testing Laboratory Qualifications: An independent laboratory, recognized by the State Department of Agriculture, with the experience and capability to conduct the testing indicated and that specializes in types of tests to be performed.

Soil Analysis: Furnish soil analysis by a qualified soil-testing laboratory stating percentages of organic matter (oven-dried weight), gradation of sand, silt, and clay content; cation exchange capacity; sodium absorption ratio; deleterious material; pH and buffer pH; and mineral and plant-nutrient content of topsoil, including phosphorus, potassium, magnesium, manganese, iron, zinc, and calcium.

Provide particle size analysis according to the following gradient of mineral content:

USDA Designation	Size in mm
Gravel	+2 mm
Very coarse sand	1 - 2 mm
Coarse sand	0.5 - 1 mm
Medium sand	0.25 - 0.5 mm
Fine sand	0.1 - 0.25 mm
Very fine sand	0.05 - 0.1 mm
Silt	0.002 - 0.05 mm
Clay	Smaller than 0.002 mm

Report suitability of soil mix for plant growth. State recommended quantities of nitrogen, phosphorus, and potash nutrients and soil amendments to be added to produce satisfactory biosoil and to comply with the following ideal percentages of base saturation and pH:

Criteria	Target
pH range	5.2 - 7.0
Organic Matter	8%
Magnesium	35 lbs per acre, min.
Phosphorous	75 lbs per acre, min.
Potassium	85 lbs per acre, min.
Soluble Salts	Not to exceed 500 ppm
Clay	5%-15% by volume
Silt	15%-35% by volume
Sand	35%-60% by volume
Biosoil Depth	24" min. depth with drains below & topsoil layer above

#### **Delivery, Storage, and Handling**

Store and handle packaged materials in strict compliance with manufacturer's written instructions. Protect materials from weather, damage, injury and theft. Prohibit vehicular and pedestrian traffic on or around stockpiled soil. Handle soil materials only when the moisture content is less than field capacity. Do not handle, haul, place, or compact when soil is wet or frozen.

Weather Limitations: Proceed with preparation and installation of planting soil mixes only when existing and forecasted weather conditions permit.

#### **Inorganic Soil Amendments**

Limestone is used to raise pH and neutralize acidic soils. Add percentages of carbonates, calcium, and magnesium.

Lime: ASTM C 602, ground, palletized or pulverized, agricultural limestone containing a minimum 80 percent calcium carbonate equivalent.

Sulfur: Granular, biodegradable, containing a minimum of 90 percent sulfur, with a minimum 99 percent passing through No. 6 sieve and a maximum 10 percent passing through No. 40 sieve.

Iron Sulfate: Granulated ferrous sulfate containing a minimum of 20 percent iron and 10 percent sulfur.

Aluminum Sulfate: Commercial grade, unadulterated.

Perlite: Horticultural perlite, soil amendment grade

Agricultural Gypsum: Finely ground, containing a minimum of 90 percent calcium sulfate.

Sand: ASTM C33, clean, washed, natural or manufactured, free of limestone, shale, and slate particles, free of toxic materials and with following particle size distribution:

<u>Sieve</u>	<u>Percentage Passing</u>
3/8 in (9.5 mm)	100
No. 4 (4.75 mm)	95 - 100
No. 8 (2.36 mm)	80 - 100
No. 16 (1.18 mm)	50 - 85
No.30 (0.60 mm)	25 - 60
No.50 (0.30 mm)	10 - 30
No.100 (0.15 mm)	2 - 10

#### **Organic Soil Amendments**

Compost: well-composted, stable, and weed-free organic matter produced by composting feedstock and bearing USCC's "Seal of Testing Assurance,"  
pH range of 5.5 to 8

moisture content 35 to 55 percent by weight

100 percent passing through 1/2-inch sieve

soluble salt content of maximum 4.0 decisiemens/m

not exceeding 0.5 percent inert contaminants and free of substances toxic to plantings

Organic Matter Content: 50 to 60 percent of dry weight.

Bulk Density: 800 to 1000 pounds per cubic yard.

Feedstock: Agricultural, food, or industrial residuals; yard trimmings; or source-separated or compostable mixed solid waste.

Metals and Contaminants: Meet or exceed US EPA Standard 40.

#### **Topsoil**

Topsoil: ASTM D 5268, pH range of 5.5 to 7.5, a minimum of 5 percent organic material content; free of stones 1 inch or larger in any dimension and other extraneous materials harmful to plant growth; less than 30% clay content. Topsoil shall be 9" deep or greater.

Topsoil Source: Reuse surface soil stockpiled on-site. Verify suitability of stockpiled surface soil to produce topsoil. Clean surface soil of roots, plants, sod, stones, clay lumps, and other extraneous materials harmful to plant growth.

Supplement with imported or manufactured topsoil from off-site sources when quantities are insufficient. Obtain topsoil displaced from naturally well-drained



construction or mining sites where topsoil occurs at least 4 inches deep; do not obtain from agricultural land, bogs or marshes.

### **Fertilizer**

Fertilizer: Apply fertilizer as required by Soil Analysis.

Biosoil Mix:

No less than a 24" planting mix depth of Sandy loam (55 to 70 percent sand, 15 to 30 percent silt, 5 to 15 percent clay). Add coarse sand as needed to meet soil performance and texture requirements, achieving the criteria listed earlier in this document. Add coarse sand as needed to meet soil performance and texture requirements. Fine and Very Fine Sand Content: Less than 15 percent total.

Percent Organic Matter: 6 percent.

Percolation Rate: ASTM test D-3385 - Observed infiltration rate to be no less than ½ inch per hour minimum.

Fertilizers: As recommended in the Soil Analysis for proposed plantings and plugs.

### **Examination.**

Examine areas to receive planting soil for compliance with requirements and other conditions affecting performance. Proceed with installation only after unsatisfactory conditions have been corrected.

### **Preparation.**

Protect structures, utilities, sidewalks, pavements, and other facilities, trees, shrubs, and plantings from damage caused by planting soil mix preparation and installation operations.

Provide erosion-control measures to prevent erosion or displacement of soils and discharge of soil-bearing water runoff or airborne dust to adjacent properties and walkways.

### **Biosoil Media Preparation and Installation**

Prepare thoroughly mixed, screened and shredded soil mix off-site or spread topsoil, apply soil amendments and fertilizer on surface, and thoroughly blend soil mix. Moisten as needed to prevent separation and excessive dusting during installation.

Soil mix shall be free of stones 1 inch or larger in any dimension and other extraneous materials harmful to plant growth. Biosoil shall be 20" deep or greater.

Minimizing compaction is critical, including the bio-area base and required backfill. Compaction can significantly contribute to design failure.

When applying a topsoil planting layer over the 20" minimum depth of biosoil media, add 3"-4" of topsoil and till into the sandy media to create a gradation zone. Add 2"-3" of topsoil as the final cover for plugs.

Any mulch used for bio-area plantings shall be triple shredded hardwood mulch, preferably from an aged stockpile.

If perforated pipes or underdrains are utilized, a 3' wide x 12" deep #8 washed gravel bed wrapped in filter fabric will be required to ensure sedimentation of the pipes

does not occur. Cap ends of pipe to prevent debris. Typical pipes are 6" in diameter with 0.5% slope; refer to road drawings.

**Method of Measurement**

Biosoil will be measured in cubic yard of amended, transported, installed, and finish graded.

**Basis of Payment**

The biosoil pay item shall include the labor required to prepare the area, amend the soil, transport if required off site materials, install and any other incidental costs related to this operation. Payment shall be made according to the following units:

<u>Item</u>	<u>Unit</u>
BIOSOIL	Cubic Yard

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STRUCTURAL SOIL

**Prevailing Specifications**

None.

**Description**

The work of this section consists of all Structural Soil work and related items as indicated on the drawings or as specified herein and includes, but is not limited to, the following: CU-Soil™ is a proprietary material patented by Cornell University (US Patent #5,849,069) and marketed under the registered trademark, CU-Structural Soil®. Only licensed companies are authorized to produce this material, meeting the specifications described in this text. For a list of licensed CU-Soil™ producers, call AMEREQ, INC. at 800-832-8788.

**Samples and Submittals**

1. At least 30 days prior to ordering materials, the installing contractor shall submit to the engineer representative samples, certificates, manufacturer's literature and test results for materials specified below. No materials shall be ordered until the required samples, certificates, manufacturer's literature, producer's current license and test results have been reviewed and approved by the landscape architect and/or engineer. The engineer reserves the right to reject any material that does not meet CU-Structural Soil® specifications. Delivered materials shall closely match the approved samples.
2. Submit from licensed producer, 1/2 cubic foot representative sample of clay loam, one cubic foot representative sample of crushed stone, and one cubic foot representative sample of CU-Structural Soil® mix for approval. In the event of multiple source fields for clay loam, submit a minimum of one set of samples per source field or stockpile. The samples of all clay loam, crushed stone, and CU-Structural Soil® shall be submitted to the engineer as a record of the soil color and texture.

3. Submit soil test analysis reports for sample of clay loam from an independent soil-testing laboratory. The testing laboratory for particle size and chemical analysis may include a public agricultural extension service agency.

- i. Submit a mechanical analysis of the clay loam sample and particle size analysis including the following gradient of mineral content:

USDA Designation	Size in mm.
Gravel	+2 mm
Sand	0.05 - 2 mm
Silt	0.002 - 0.05 mm
Clay	Minus 0.002 mm

1. Sieve analysis shall be performed and compared to USDA Soil Classification System.
  2. Sieve analysis shall be done by a combined hydrometer and wet sieving using sodium hexametaphosphate as a dispersant in compliance with ASTM D422 after destruction of organic matter by hydrogen peroxide.
- ii. Submit a chemical analysis, performed in accordance with current AOAC Standards, including the following:
1. pH and buffer pH.
  2. Percent organic matter as determined by the loss of ignition of oven dried samples. Test samples shall be oven dried to a constant weight at a temperature of 230 degrees F, plus or minus 9 degrees.
  3. Analysis for nutrient levels by parts per million. Soluble salt by electrical conductivity of a 1:2 soil/water sample measured in Millimho per cm.
  4. Cation Exchange Capacity (CEC).
  5. Carbon/Nitrogen Ratio.
4. Submit one cubic foot sample of crushed stone which will be used in production of CU-Soil™.

- i. Provide particle size analysis:

USDA Designation	Size in mm.
3"	+ 76 mm
2 ½"	63-76 mm
2"	50-63 mm
1 ½"	37-50 mm
1"	25-37 mm
¾"	19-25 mm
Fine gravel	2-19 mm

- ii. Provide the manufacturers analysis of the loose and rodded unit

weight

- iii. Losses from LA Abrasion tests- not to exceed 40%
  - iv. Minimum 90% with 2 or more fractured faces
  - v. Percent pore space analysis
5. At the engineer's discretion, the sample of CU-Structural Soil® may be tested for the following:
- i. Compaction in accordance with ASTM D698/AASHTO T99 without removing oversize aggregate
  - ii. California Bearing Ratio in accordance with ASTM D1883- soaked CBR shall equal or exceed a value of 50
  - iii. Measured dry-weight percentage of stone in the mixture
6. The approved CU-Structural Soil® sample shall be the standard.
7. Any deviation from the specified crushed stone and clay loam specifications shall be approved by Amereq, Inc.

#### **Delivery, Storage and Handling**

Delivered CU-Structural Soil® shall be at or near optimum compaction moisture content as determined by AASHTO T 99 (ASTM D 698) and should not be placed in frozen, wet or muddy sites. B. Protect CU-Structural Soil® from exposure to excess water and from erosion at all times. Do not store CU-Soil™ unprotected. Do not allow excess water to enter site prior to compaction. If water is introduced into the CU-Soil™ after grading, allow water to drain to optimum compaction moisture content.

#### **Examination of Conditions**

All areas to receive CU-Structural Soil® shall be inspected by the installing contractor before starting work and all defects such as incorrect grading, compaction, and inadequate drainage shall be reported to the engineer prior to beginning this work.

#### **Quality Assurance**

Qualifications of installing contractor: The work of this section should be performed by a contracting firm which has a minimum of five years experience. Proof of this experience shall be submitted as per paragraph, SAMPLES and SUBMITTALS, of this section.

#### **Materials**

- 1. Clay Loam
  - i. Soil shall be a "loam" with a minimum clay content of 20% or a "clay loam" based on the "USDA classification system" as determined by mechanical analysis (ASTM D-422) and it shall be of uniform composition, without admixture of subsoil. It shall be free of stones, lumps, plants and their roots, debris and other extraneous matter. It shall not contain toxic substances harmful to plant growth. Clay loam shall contain not less than 2% or more than 5% organic matter as determined by the loss on ignition of oven-dried samples. Test samples shall be oven-dried to a constant weight at a temperature of 230 degrees F., plus or

minus 9 degrees.

ii. Mechanical analysis for the loam or clay loam shall be as follows:

Textural Class	% of Total Weight
Gravel	Less than 5%
Sand	20-45%
Silt	20-50%
Clay	20-40%

iii. Chemical analysis: Meet, or be amended to meet the following criteria:

1. pH between 5.5 to 6.5
2. Percent organic matter 2% - 5% by dry weight
3. Adequate nutrient levels
4. Soluble salt less than 1.0 mmho/cm
5. Cation Exchange Capacity (CEC) greater than 10
6. Carbon/Nitrogen ratio less than 33:1

iv. Loam or clay loam shall not come from USDA - classified prime farmland.

2. Fertilizer (if needed)

- i. Should nutrient analysis suggest that the loam or clay loam need additional nutrients, it shall be amended by Amereq's licensed producer.

3. Sulfur (if needed)

- i. Sulfur shall be a commercial granular, 96% pure sulfur, with material and analysis appearing on the labeled container.
- ii. Sulfur used to lower pH shall be a ferrous sulfate formulation.
- iii. Application rates shall be dependent on soil test results.

4. Lime (if needed)

- i. Agricultural lime containing a minimum of 85% carbonates.
- ii. Application rates shall be dependent on soil test results.

5. Crushed Stone

- i. The size of the crushed stone shall be 0.75 inches to 1.5 inches allowing for up to 10% being greater than 1.5 inches, and up to 10% less than 0.75 inches.
- ii. Acceptable aggregate dimensions will not exceed 2.5:1.0 for any two dimensions.
- iii. Minimum 90% with two or more fractured faces.
- iv. Results of Aggregate Soundness Loss test shall not exceed 18%.

v. Losses from LA Abrasion tests shall not exceed 40%.

6. Hydrogel

- i. Hydrogel shall be a coated potassium propenoate-propenamide copolymer (Gelscape® Hydrogel Tackifier) as manufactured by Amereq, Inc. 800-832-8788.

7. Water

- i. The installing contractor shall be responsible to furnish his own supply of water (if needed) free of impurities, to the site.

8. CU- Structural Soil

- i. A uniformly blended urban tree mixture of crushed stone, clay loam and Gelscape® Hydrogel Tackifier, as produced by an Amereq-licensed company, mixed in the following proportion:

Material	Unit of Weight
Specified crushed Stone	100 units dry weight
Specified clay loam	20 -25 units (to achieve minimum CBR of 50)
Gelscape® Hydrogel Tackifier	0.035 units dry weight
Moisture	ASTM D698/AASHTO T-99 optimum moisture

**Production and Installation Guidelines**

1. Cu-Soil™ Mixing And Quality Control Testing

- i. All CU-Structural Soil® mixing shall be performed at the licensed producer's yard using appropriate soil measuring, mixing and shredding equipment of sufficient capacity and capability to assure proper quality control and consistent mix ratios. No mixing of CU-Structural Soil® at the project site shall be permitted. Maintain adequate moisture content during the mixing process. Soils and mix components shall easily shred and break down without clumping. Soil clods shall easily break down into a fine crumbly texture. Soils shall not be overly wet or dry. The licensed producer shall measure and monitor the amount of soil moisture at the mixing site periodically during the mixing process.
- ii. Raw materials shall be mixed off-site, only at the licensed producer's facility, on a flat asphalt or concrete paved surface to avoid soil contamination.
- iii. Should the independent laboratory test results of the clay loam reveal a need to amend it, to meet specifications, the amending materials should be added to the clay loam following the rates and recommendations provided by Amereq.

2. Underground Utilities And Subsurface Conditions

- i. The installing contractor shall notify the engineer of any subsurface conditions which will affect the contractor's ability to install the CU-Soil™.
- ii. The installing contractor shall locate and confirm the location of all underground utility lines and structures prior to the start of any excavation.
- iii. The installing contractor shall repair any underground utilities or foundations damaged during the progress of this work.

### 3. Site Preparation

- i. Do not proceed with the installation of the CU-Structural Soil® material until all walls, curb footings and utility work in the area have been installed. For site elements dependent on CU-Structural Soil® for foundation support, postpone installation of such elements until immediately after the installation of CU-Structural Soil®.
- ii. Install subsurface drain lines as shown on the plan drawings prior to installation of CU-Structural Soil® material.
- iii. Excavate and compact the proposed subgrade to depths, slopes and widths as shown on the drawings. Maintain all required angles of repose of the adjacent materials as shown on the drawings. Do not over excavate compacted subgrades of adjacent pavement or structures.
- iv. Confirm that the subgrade is at the proper elevation and compacted as required. Subgrade elevations shall slope parallel to the finished grade and/or toward the subsurface drain lines as shown on the drawings.
- v. Clear the excavation of all construction debris, trash, rubble and any foreign material. In the event that fuels, oils, concrete washout silts or other material harmful to plants have been spilled into the subgrade material, excavate the soil sufficiently to remove the harmful material. Fill any over excavation with approved fill and compact to the required subgrade compaction.
- vi. Do not proceed with the installation of CU-Structural Soil® until all utility work in the area has been installed. All subsurface drainage systems shall be operational prior to installation of CU-Structural Soil®.
- vii. Protect adjacent walls, walks and utilities from damage. Use ½" plywood and/or plastic sheeting as directed to cover existing concrete, metal and masonry work and other items as directed during the progress of the work.
  - 1. Clean up all trash and any soil or dirt spilled on any paved surface at the end of each working day.
  - 2. Any damage to the paving or architectural work caused by the installing contractor shall be repaired, as directed by the engineer. Maintain all silt and sediment control

devices required by applicable regulations. Provide adequate methods to assure that trucks and other equipment do not track soil from the site onto adjacent property and the public right of way.

#### 4. Installation Of Cu-Structural Soil® Material

- i. Install CU-Structural Soil® in 6 inch lifts and compact each lift.
- ii. Compact all materials to at least 95% Proctor Density from a standard compaction curve AASHTO T 99 (ASTM D 698). No compaction shall occur when moisture content exceeds maximum as listed herein. Delay compaction if moisture content exceeds maximum allowable and protect CU-Structural Soil® during delays in compaction with plastic or plywood as directed by the engineer.
- iii. Bring CU-Structural Soil® to finished grades as shown on the drawings. Immediately protect the CU-Structural Soil® from contamination by toxic materials, trash, debris, water containing cement, clay, silt or materials that will alter the particle size distribution of the mix with plastic or plywood as directed by the engineer.
- iv. The engineer may periodically check the material being delivered, prior to installation for color and texture consistency with the approved sample provided by the installing contractor as part of the submittal for CU-Structural Soil®. If the engineer determines that the delivered CU-Soil™ varies significantly from the approved samples, the engineer shall contact the licensed producer.
- v. Engineer shall ensure that the delivered structural soil was produced by the approved CU-Soil™ licensee by inspecting weight tickets showing source of material. F. CU-Soil™ should not be stockpiled long-term. Any CU-Soil™ not installed immediately should be protected by a tarp or other waterproof covering.

#### 5. Fine Grading

- i. After the initial placement and rough grading of the CU-Structural Soil® but prior to the start of fine grading, the installing contractor shall request review of the rough grading by the engineer. The installing contractor shall set sufficient grade stakes for checking the finished grades.
- ii. Adjust the finish grades to meet field conditions as directed. Provide smooth transitions between slopes of different gradients and direction. Fill all dips with CU-Soil™ and remove any bumps in the overall plane of the slope. a. The tolerance for dips and bumps in CU-Structural Soil® areas shall be a 3" deviation from the plane in 10'. All fine grading shall be inspected and approved by the engineer prior to the installation of other items to be placed on the CU-Structural Soil®.
- iii. The engineer will inspect the work upon the request of the installing contractor. Request for inspection shall be received by the engineer at least 10 days before the anticipated date of inspection.

#### 6. Acceptance Standards



- i. The engineer will inspect the work upon the request of the installing contractor. Request for inspection shall be received by the engineer at least 10 days before the anticipated date of inspection.

#### 7. Clean-Up

- i. Upon completion of the CU-Structural Soil® installation operations, clean areas within the contract limits. Remove all excess fills, soils and mix stockpiles and legally dispose of all waste materials, trash and debris. Remove all tools and equipment and provide a clean, clear site. Sweep, do not wash, all paving and other exposed surfaces of dirt and mud until the paving has been installed over the CU-Structural Soil® material. Do no washing until finished materials covering CU-Structural Soil® material are in place.

#### Quantities and Unit Price

1. CU-Structural Soil® shall be measured by the Cubic Yard, completed in place and paid for as STRUCTURAL SOIL.
2. The cost of the samples, testing, labor, and all other materials and work necessary to complete the installation of the structural soil shall be included in the cost of the pay item.

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#### MAINTAINING TRAFFIC AND PEDESTRIAN ACCESS

This work shall consist of maintaining traffic and pedestrian access for all work for this project.

Maintenance of traffic and pedestrian access shall be the responsibility of the Contractor. Traffic and pedestrian access to all parcels within the project limits shall be maintained at all times except when construction operations prohibit access. If it appears that construction operations will close access to a property or location completely, the Engineer shall be contacted for approval 48 hours prior to construction. If approved, the property owner and/or resident shall be contacted by the Contractor prior to proceeding with operations. Contractor shall provide Engineer with a timeframe when access will be restored. Contractor shall minimize timeframes of closures to parcels. Contractor shall coordinate all access requirements for individual parcels. Contractor shall provide a minimum of two days notice for closure. A steel plate or compacted aggregate shall be onsite for emergency access requirements.

Pedestrian access, meeting ADA requirements, shall be maintained at all times to parcels.

At all times when maintenance of traffic temporarily converts a roadway to a one-way street, the Contractor shall install and maintain one-way signage visible from all intersecting driveways, alleys, and other intersections of the roadway.

Furnishing, placing, and maintaining signs, barricades, and other traffic control devices for construction and maintenance operations shall be in accordance with Section 801, 105.03 and the 2011 Indiana Manual on Uniform Traffic Control Devices.

Unless otherwise directed or permitted, the work specified shall be arranged and prosecuted in accordance with all applicable provisions of Sections 104.04, 107.12, 801, and as set out herein. Drainage shall be maintained at all times and labor, materials, and any other incidental costs related to maintain positive drainage during construction shall be paid for at the contract lump sum price for MAINTAINING TRAFFIC.

The cost of all labor, materials, furnishing, delivery, coordination, removal, replacement, and any other incidental costs related to the maintenance of traffic for vehicles and pedestrians shall be paid for at the contract lump sum price for MAINTAINING TRAFFIC.

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#### MATERIAL TESTING

The Contractor shall be responsible for testing and sampling of Planting Soil, Bio Soil, and Structural Soil and shall provide certification of materials in accordance with the Standard Specifications and the Indiana Department of Transportation Materials and Tests Frequency of Sampling and Testing Manual revised January 2020. The Contractor shall select an independent testing service, approved by the Engineer, to provide all laboratory tests and field tests. The Contractor shall provide certified test results and material certifications to the Engineer. The cost of providing samples and testing will not be paid for directly but shall be included in the cost of other items.

Testing for materials not specified in the preceding paragraph will be the responsibility of the City's construction inspection consultant.

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#### STORM STRUCTURE CHANGES

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In order to accommodate the reduced curb heights, storm structures #120, #116 and #115 shall be Type HA5.

## **Supplementary Conditions**

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## **SECTION VIII**

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SAMPLE AGREEMENT

# AGREEMENT

BETWEEN

CITY OF BLOOMINGTON

ENGINEERING DEPARTMENT

AND

CONTRACTOR

FOR

**7th Street Protected Bike Lane Improvements**

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

## **WITNESSETH THAT:**

WHEREAS, CITY desires to retain CONTRACTOR'S services for the installation of a protected bike lane along 7th Street from the B-line trail to the intersection of East 7th Street and North Woodlawn Avenue (more particularly described in Attachment A, "Scope of Work"; and

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 as specified or indicated in the Contract Documents. The Work is generally described in Attachment A, "Scope of Work".

**2.02** All work required under this Agreement shall be substantially completed by the CONTRACTOR within one hundred fifty (150) calendar days from the date of the Notice to Proceed, unless the parties mutually agree to a later completion date. Substantial Completion shall mean that all work is sufficiently completed in accordance with the plans and specifications, as modified by any approved change orders, so that it can be used for its intended purpose.

**2.03** 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.

**2.04** CONTRACTOR agrees that no charges or claims for damages shall be made by him or her 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** Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, subject to adjustment under the Contract, at the unit prices stated in Contractor's Bid, attached hereto as Attachment 'E'. 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 or her own and all subcontracted employees, to City Engineer or his or her 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 and for which Contractor requested Progressive Payments on its Bid Form, 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 five percent (5%) of the dollar value of all work satisfactorily completed until the Contract work is complete. 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. However, if Contractor intends to receive a Single Lump Sum payment upon acceptance of this project, retainage will not be required and an Escrow Agreement will not be required.

**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.

CONTRACTOR shall indemnify and hold harmless CITY and its officers, agents, officials and employees for any and all damages, actions, costs, (including, but not limited to, attorney's fees, court costs and costs of investigation) judgments and claims by anyone for damage to property, injury or death to persons resulting from the collapse or failure of any trenches, ditches or other excavations constructed under or associated with this contract.

### **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 or her 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 or her 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 or she 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 or her 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 or her 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 or her 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 or her Surety for his or her 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 Bond and the Payment Bond.
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 or her 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. CONTRACTOR shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination, including but not limited to employment. 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, disability, sexual orientation, gender identity, veteran status or housing 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 City of Bloomington, 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, disability, sexual orientation, gender identity, veteran status, housing status, or any other legally protected classification;

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

- a. Has formulated its own Affirmative 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.

CONTRACTOR understands that the City of Bloomington prohibits its employees from engaging in harassment or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If CONTRACTOR believes that a City employee engaged in such conduct towards CONTRACTOR and/or any of its employees, CONTRACTOR or its employees may file a complaint with the City department head in charge of the CONTRACTOR'S work and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

### **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, 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 City Engineer 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.

**5.10.01** CONTRACTOR is required to comply with IOSHA regulations 29 C.F.R 1926, Subpart P, Excavations for all trenches of at least five (5) feet in depth. All cost for trench safety systems shall be the responsibility of the CONTRACTOR and included in the cost of the principal work with which the safety systems are associated. CONTRACTOR shall sign an affidavit, attached as Attachment B, affirming that CONTRACTOR shall maintain compliance with IOSHA requirements for excavations of at least five (5) in depth.

#### **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 or she 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.

**5.13.01** The surety of the Payment Bond and Performance Bond may not be released until one (1) year after the Board's final settlement with the 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: Roy Aten		
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 fifteen (15) 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 fifteen (15) 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 C, 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 Drug Testing Plan**

In accordance with Indiana Code 4-13-18 as amended, the CONTRACTOR was required to submit with his/her bid a written drug testing policy for a public works project that is estimated to cost \$150,000 or more. Among other things, the law sets forth specific requirements that must be in the plan for a program to test the employees of the CONTRACTOR and Subcontractors for drugs. The successful CONTRACTOR must comply with all provisions of the statute. This contract is subject to cancellation if CONTRACTOR fails to implement its testing program during the term of this contract, fails to provide information regarding this testing at the request of CITY; or provides false information to CITY regarding CONTRACTOR's employee drug testing program. CONTRACTOR shall sign an affidavit, attached as Attachment D, affirming that CONTRACTOR has and shall implement CONTRACTOR'S employee drug testing program throughout the term of this project.

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

DATE: \_\_\_\_\_

City of Bloomington  
Bloomington Board of Public Works

BY:

BY:

\_\_\_\_\_  
Dana Palazzo, President

\_\_\_\_\_  
Contractor Representative

\_\_\_\_\_  
Beth H. Hollingsworth, Member

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Kyla Cox Deckard, Member

\_\_\_\_\_  
Title of Contractor Representative

\_\_\_\_\_  
John Hamilton, Mayor of Bloomington

## **ATTACHMENT 'A'**

### **"SCOPE OF WORK"**

#### **7th Street Protected Bike Lane Improvements**

This project shall include, but is not limited to, *installation of a protected bike lane along 7<sup>th</sup> Street from the B-line trail to the intersection of East 7<sup>th</sup> Street and North Woodlawn Avenue.*

## ATTACHMENT 'B'

### BIDDER'S AFFIDAVIT IN COMPLIANCE WITH INDIANA CODE 36-1-12-20 TRENCH SAFETY SYSTEMS; COST RECOVERY

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 undersigned is duly authorized and has full authority to execute this Bidder's Affidavit.
3. 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.
4. By submission of this Bid and subsequent execution of a Contract, the undersigned Bidder certifies that as successful Bidder (Contractor) all trench excavation done within his/her control (by his/her own forces or by his/her Subcontractors) shall be accomplished in strict adherence with OSHA trench safety standards contained in 29 C.F.R. 1926, Subpart P, including all subsequent revisions or updates to these standards as adopted by the United States Department of Labor.
5. The undersigned Bidder certifies that as successful Bidder (Contractor) he/she has obtained or will obtain identical certification from any proposed Subcontractors that will perform trench excavation prior to award of the subcontracts and that he/she will retain such certifications in a file for a period of not less than three (3) years following final acceptance.
6. The Bidder acknowledges that included in the various items listed in the Schedule of Bid Prices and in the Total Amount of Bid Prices are costs for complying with I.C. 36-1-12-20. The Bidder further identifies the costs to be summarized below\*:





## **“E-Verify Affidavit”**

## E-Verify AFFIDAVIT

Commission #:

**COMPLIANCE AFFIDAVIT**  
**REGARDING INDIANA CODE CHAPTER 4-13-18**  
**DRUG TESTING OF EMPLOYEES OF PUBLIC WORKS CONTRACTORS**

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

1. The undersigned is the \_\_\_\_\_ of  
(job title)  
\_\_\_\_\_  
(company name).
2. The undersigned is duly authorized and has full authority to execute this Affidavit.
3. The company named herein that employs the undersigned:
  - iii. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
  - iv. is a subcontractor on a contract to provide services to the City of Bloomington.
4. The undersigned certifies that Contractor's submitted written plan for a drug testing program to test employees of the Contractor and Subcontractor for public works projects with an estimated cost of \$150,000 is in accordance with Indiana Code 4-13-18 as amended.
5. The undersigned acknowledges that this Contract shall be subject to cancellation should Contractor fail to comply all provisions of the statute.

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\_\_\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

County of Residence: \_\_\_\_\_ Printed Name of Notary Public \_\_\_\_\_

Commission #: \_\_\_\_\_

## **ATTACHMENT 'E'**

### **"Unit Prices"**

Sample Contract, Unit Prices will be posted here.

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## **SECTION IX**

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### **SPECIFICATIONS**

Indiana Department of Transportation Standard Specifications dated 2020 and current supplements thereto, to be used with this project.