



2020 PAVING PROGRAM BID PACKET

LETTING DATE: July 14, 2020

TENTATIVE AWARD DATE: July 14, 2020

or subsequent meeting of the Whiteland Town Council

For:

The Town of Whiteland, Indiana

549 E Main St.

Whiteland, IN 46184

SUBMITTED BY:

Company of Firm Name

Street Address

City / Town

State

Zip Code

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SECTION I: Invitation to Bidders

INVITATION TO BIDDERS

Notice is hereby given that the Town of Whiteland, Indiana will receive sealed bids for the below described work at the locations indicated:

2020 TOWN OF WHITELAND PAVING PROGRAM

This project shall include replacement of sidewalks, driveway approaches, and curb and gutters, pavement milling, pavement overlay and pavement markings on road segments identified in the attached bid form and as described below. All work must be performed per the INDOT Paving specifications, the Town of Whiteland Design Standards and Specifications Manual, and the Town of Whiteland Typical Construction Guidelines and Details, which are available on the Town's website (www.townofwhiteland.com) along with the Bid Packet (which includes the Scope of Work). In the event of a conflict between the two, the Town of Whiteland specifications shall take priority, unless specifically stated to the contrary below.

Forum Drive:

- ☐ Milling of existing roadways at a depth of up to 5 inches (as directed by the Town/Owner) with scarification at the center line to promote adhesion.
- ☐ 3.5 inches of 19mm HMA Intermediate and a 1.5-inch overlay consisting of HMA 9.5mm Surface (PG76-22) with Tack Coat
- ☐ Thermoplastic stop bars, where applicable.

Greensprings Court:

- ☐ Milling a depth of up to 5 inches (as directed by the Town/Owner) across the entire width of the segment with scarification.
- ☐ 3.5 inches of 19mm HMA Intermediate and a 1.5-inch overlay consisting of HMA 9.5 mm Surface (PG76-22) with Tack Coat
- ☐ Thermoplastic stop bars, where applicable.

Greensprings Drive:

- ☐ Milling of existing roadways at a depth of up to 5 inches (as directed by the Town/Owner) with scarification.
- ☐ 3.5 inches of 19mm HMA Intermediate and a 1.5-inch overlay consisting of HMA 9.5mm Surface (PG76-22) with Tack Coat.

Any disturbed areas during construction shall be repaired to original condition. One lane of all streets must remain open to thru traffic during construction unless prior approval is granted by the Town of Whiteland. All submitted bids shall include unit pricing and disposal of millings off-site by the contractor.

A complete list of street segments, lengths, widths, and other detailed information can be found on the sheet Labeled "Bid Detail - Unit Prices" attached to the bid sheet.

Bids are to be submitted in proper form, as described in the "Instructions to Bidders" included in the Bid Packet found at the Town's website (www.townofwhiteland.com). Sealed bids shall be received by the Whiteland Clerk-Treasurer, at the Whiteland Town Hall, 549 E Main Street, Whiteland, IN 46184, at or before 7:00 PM local time on Tuesday, July 14, 2020. Bids will be publicly opened and read aloud by the Town Council at their regular meeting beginning at 7:00 PM local time on July 14, 2020 at the Whiteland Town Hall, 549 E. Main Street, Whiteland IN 46184. Any bids received after the designated time will be returned unopened. Bids will be reviewed and award may be made at the July 14, 2020 meeting or a subsequent meeting of the Town Council.

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 made payable to the Town of Whiteland, drawn on an acceptable bank, or a Bid Bond equal to five percent (5%) of the total amount of the bid; (4) a properly executed Employee Drug Testing Program Affidavit for a public works project estimated to cost at least \$150,000.00; and (5) a copy of the bidder's written plan for an employee drug testing program to test the employees of the bidder for drugs. For bids of \$100,000.00 or more, the successful bidder shall furnish performance and payment bonds for one hundred percent (100%) of the contract amount prior to the execution of the contract, **in the forms included in the Bid Packet**, and said bonds shall remain in effect for a period of one (1) year after the final acceptance of the Project Work.

The Town of Whiteland 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.

In accordance with Indiana Code 4-13-18-5, each Contractor that submits a bid for public works project that is estimated to cost \$150,000.00 or greater shall submit with his or her bid a written plan for an employee drug testing program to test the employees of the Contractor and Subcontractors for drugs.

The award of the contract will be based on the completion of the bid form and bidding requirements, bonding capabilities, contractor qualifications, unit prices submitted multiplied by the estimated quantities in the Bid Detail spreadsheet, and availability of manpower and equipment to complete the work. Owner will pay the Contractor in a single payment after final completion of the Project Work, and no progress payments will be processed or paid. The Town of Whiteland reserves the right to waive any informality or variances or allow a Bidder to correct errors, omissions or other irregularities in Bid Documents that are found not to have afforded the Bidder a substantial competitive advantage over other Bidders and to accept or reject any or all bids submitted. Bids may be held by the Town of Whiteland for a period of not-to-exceed sixty (60) days from the date of opening of Bids for the purpose of reviewing the Bids and investigating the qualifications of the Bidders prior to awarding the contract.

Norm Gabehart, Town Manager
Town of Whiteland, Indiana



SECTION II: Instructions to Bidders

INSTRUCTIONS TO BIDDERS

1.00 Contract Documents:

Contract Documents that will form the Contract are:

- The Agreement and its Attachments
- The Invitation to Bidders
- The Instructions to Bidders
- General Conditions
- The Performance and Payment Bonds
- W-9 Form
- All addenda to the Bid Documents
- 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.
- Contractor's Bid Submittal Documents
- The current Indiana Department of Transportation Standard Specifications, the Town of Whiteland Design Standards and Specifications Manual, and the Town of Whiteland Typical Construction Guidelines and Details, and latest addenda.

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 work and thoroughly and fully inform themselves of the 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 and 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 preparation of the Bidder's Bid. There will be no subsequent financial adjustments to any contract for lack of such prior information or its effects on the cost of work.

1.03 Omissions and Discrepancies: If any person who contemplates submitting a Bid is in doubt as to the true meaning of any part of the Specifications, or other proposed contract documents, or if any such persons should find any discrepancies in or omissions from the contract documents, such person should at once notify the Owner by contacting Norm Gabehart, Whiteland Town Manager 549 Main Street, Whiteland, Indiana, (317) 535-5531, and request an interpretation thereof. Such person shall be responsible for the prompt delivery of such request. Interpretation of the proposed contract documents will be made only by addendum, a copy of which will be mailed or otherwise delivered by the Town of Whiteland, Indiana, to each person who has obtained a set of contract documents from the offices of the Town of Whiteland, Indiana. A copy of each addendum will also be posted on the Town's Website (www.townofwhiteland.com). The Town will not be responsible for any other explanations or interpretations, written or oral, of the proposed contract documents. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of unit prices. Discrepancies between indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

2.00 Bids: Pursuant to the "Invitation to Bidders" sealed Bids for performing the work shall be received by the Town of Whiteland at Town Hall 549 E Main St; Whiteland IN 46184 at or before 7:00 PM local time on July 14, 2020. Bids will be

publicly opened and read aloud by the Town Council at its meeting on July 14, 2020, beginning at 7:00 PM in the Council Chambers of the Whiteland Town Hall at 549 E Main Street; Whiteland IN 46184. Any Bid received after the designated time will be returned unopened. Bids will be reviewed and the award may be made at the July 14, 2020, meeting or a subsequent meeting of the Town Council.

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

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

2.03 Bid Submission: Each Bid submitted shall be enclosed in a sealed envelope or wrapping, addressed to the Town of Whiteland, 549 E Main St; Whiteland IN 46184, identified on the outside with the words "SEALED BID" and the name of the project, and shall be filed with the Town Manager at the Whiteland Town Hall at 549 E Main Street; Whiteland IN 46184.

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

2.05 Bid Guarantee: Each Bid shall be accompanied by a cashier's check or a certified check drawn on an acceptable bank, or an acceptable Bidder's Bond in an amount of not less than five percent (5%) of the total Bid. No personal and / or company checks will be accepted or the Bid shall be deemed unresponsive. The Bid guarantee shall be made payable to the Town of Whiteland, Indiana, without condition, 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 fails to satisfy the conditions for receiving Notice to Proceed, within fifteen (15) days after the Notice of Award is delivered to the Bidder.

2.06 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 whom the Contract is awarded will be returned when the successful Bidder executes a contract and files a satisfactory performance and payment bond and otherwise satisfies the conditions for receiving Notice to Proceed. 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 submittal of bonds by the successful Bidder.

2.07 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 his / her 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.

2.08 Acceptance and Rejection of Bids: The Owner reserves the right to accept the bid submitted by the lowest responsible Bidder; to reject any or all Bids; and to waive any informality or variances or allow a Bidder to correct errors,

omissions or other irregularities in Bid Documents that are found not to have afforded the Bidder a substantial competitive advantage over other Bidders. 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 of these Instructions to Bidders and in Section 12.00 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 fill out completely and accurately, and execute, the current version of "Form 96" of the Indiana State Board of Accounts and IRS Form W-9 "Request for taxpayer identification number and certification" and shall file the same with their bid. The information contained therein shall be used by the Owner to determine the ability, experience, and capital resources of the Bidder. In determining the Bidder's qualifications, the following factors will be considered: whether the Bidder (A) maintains a permanent place of business; (B) has adequate plant and equipment to perform the work 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 Town of Whiteland. 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 its ability to finance the work covered by such Bid or to provide suitable equipment for its proper prosecution and completion.

4.00 Execution of Contract: Any Bidder whose Bid shall be accepted will be required to appear at the Office of the Town Manager in person, or, if a firm or corporation, a duly authorized representative shall so appear, to execute the Agreement within fifteen (15) days after notice that the Contract has been awarded to them. The formal written contract between the Owner and the successful bidder shall be in substantively the form included in the bid packet. Failure or neglect to do so shall constitute a breach of the agreement effected by the acceptance of the Bid, and in such event the amount of the Bid Guarantee accompanying the Bid of such Bidder may be retained by the Town 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 Town of Whiteland may at its option, determine that such Bidder has abandoned the Contract and thereupon its 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 by Electronic Funds Transfer (EFT) or check, by the Owner within forty-five (45) days after the completion and final acceptance of the Work covered by the contract and the submission of an acceptable Application for Payment for such Work. Applications for Payments will be processed 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 Project Work within 30 calendar days after the date of the notice to proceed. All work shall be completed within 90 calendar days after the date of the notice to proceed. Calendar and work days shall be defined in the General Conditions of the Contract 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 any and all necessary permits.

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

4.06 Performance Bond: The Bidder to whom the contract is awarded shall 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 after the Owner's final settlement with the Contractor, 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: The Bidder to whom the contract is awarded shall 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 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 for one year after the Owner's final settlement with the Contractor, 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. The Payment Bond is required to insure payment of subcontractors, laborers, material supplies, and persons furnishing services.

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

4.10 Materials: All materials shall conform to Indiana State Highway Specifications. All asphalt shall be obtained from an Indiana Department of Transportation certified asphalt plant.

4.11 Castings: Existing Storm Sewer and Sanitary castings are to be adjusted to the appropriate height for the new construction to ensure proper flow and operation of the storm sewer system. Contractor shall be responsible for and repair or replacement, to the Town Manager's satisfaction, any damaged castings or related structures.

4.12 Clean-Up: Contractor shall do final cleanup of all areas of the Project, including storm sewer inlets, sanitary sewer castings, streets, and curbs. This work shall be done to the satisfaction of the Town Manager.

4.13 Unit Based Contract Price: The contract amount will be based on the actual quantities used in the Work. The Contractor shall supply the Owner with records showing the actual quantities of material used, including the actual gallons of tack coat used on each roadway. Owner will pay the Contractor in a single payment after final completion of the Project Work, and no progress payments will be processed or paid.



SECTION III: Bid Form, Bid Detail Worksheet, Bond Forms

BID FORM

This Bid Summary Sheet shall be completed and submitted with all other Bid Documents. The base Contract Price (based on the unit prices submitted multiplied by the estimated quantities in the Bid Detail spreadsheet) to complete the 2020 Paving Program including all associated work per plans and specifications is:

\$ _____ (Total Base Bid)

UNIT PRICE BIDDING

The primary factor in determining Bid acceptance will be unit prices for work associated with the Bid as follows:

(Contractor is responsible for Disposal of Millings)

	BASE BID
Asphalt Surface/Ton 9.5 mm (PG76-22) Surface	
Asphalt 19 mm HMA Intermediate/Ton	
5" asphalt milling/Square Yard	
Thermoplastic Stop Bars (Each)	
24" Roll Curb/Linear Foot	
4" Sidewalk/Square yard	
6" PCCP Driveway/Square Yard	
TOTAL	

Application Specific Pricing:

The price of work associated with Community Crossings Matching Grant Application #8086 (Greensprings Court, Greensprings Drive, Forum Drive) is:

\$ _____ (Total Base Bid)

All work shall be completed within 90 days after receipt of the Notice to Proceed.

In addition to this Bid Sheet, Contractor must utilize the attached worksheet titled "Bid Detail-Unit Prices 2020 Paving Program" to determine individual segment estimates, as well as application and alternate estimates. Said Bid Detail provides additional information regarding the road segments, milling, and pavement markings to ensure accurate Bid estimates.

Any and all Subcontractors performing work valued over \$10,000.00 shall be listed below. Any subcontractor not listed at the time of Bid, must be approved by the Town of Whiteland 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.

Subcontractor	Address	Type of Work

In Submitting this Bid, Bidder represents that:

1. 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.
2. Bidder has examined and carefully studied the Bidding Documents, and the other related data identified in the Bidding Documents.

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

Signature of Bidder

Name of Bidder

Date

Printed Name & Title of Signor

Telephone

Bidder Address

State

Zip

Signature

Email Address

BID DETAIL-UNIT PRICES 2020 PAVING PROGRAM

Road Name	Greensprings Court	Greensprings Drive	Forum Drive
Start	Greensprings Drive	Cardinal Drive	Greensprings Drive
End	End	Forum Drive	West Street
Existing Pavement Material	Asphalt	Asphalt	Asphalt
Distance	167 LF	450 LF	1,320 LF
Width	51 LF	25 LF	25 LF
Cul-De-Sac Bulb sq.ft.	2,042	0	0
Overlay Depth	1.5 inches	1.5 inches	1.5 inches
Asphalt Tonnage	260	366	1,009
Milling (sq.yd.)	946	1,330	3,667
Stop Bars	1	0	2
24" Roll Curb	447 LF	975 LF	2,640 LF
6" PCCP Driveway	200 SYDS	133 SYDS	967 SYDS
4" Sidewalk	25 SYDS	478 SYDS	733 SYDS
Asphalt UP/Ton			
Milling UP/SQYD			
Curb UP/LF			
Driveway UP/SQYD			
Sidewalk UP/SQYD			
Stop Bar UP			
Segment Total	\$	\$	\$

TOTAL BASE BID:

\$ _____

CONSTRUCTION PERFORMANCE BOND

Bond No. _____

Town of Whiteland, Indiana

Instructions:

- Successful Bidder must use this form or such other form with the same material conditions and provisions if approved by Owner in writing.
- Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute bond.
- Surety company executing this bond shall appear on the most current list of "Surety Companies Acceptable on Federal Bonds," as specified in the U.S. Treasury Department Circular 570, as amended, and be authorized to transact business in the State of Indiana.

This PERFORMANCE BOND is governed by the terms provided on the attached Bond Terms. Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

Town of Whiteland, Indiana
549 E. Main St.
Whiteland, IN 46184

CONSTRUCTION CONTRACT

Date: _____, 20____
Amount: \$ _____
Description (Name and Location): _____

BOND

Date: _____, 20____
Amount: \$ _____

Modifications to this Bond Form: _____

EXECUTED:

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____

Company: _____

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

Bond Terms

1. By executing and delivering this Bond, the Contractor and the 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, in accordance with the terms contained herein.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. The Surety's obligation under this Bond shall arise after:
 - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
 - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense, perform one of the following two alternatives:
 - 4.1 Perform the alternative listed below that is chosen by the Owner:
 - 4.1.1 Arrange for the Contractor to perform and complete the Construction Contract; or
 - 4.1.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
 - 4.1.3 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 the contractor selected with the Owner's 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 6 in excess of the Balance of the Contract Price insured by the Owner resulting from the Contractor's default.
 - 4.2 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
 - 4.2.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or
 - 4.2.2 Deny liability in whole or in part and notify the Owner citing the reasons therefor.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen 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 Subparagraph 4.2, and the Owner refuses the payment tendered 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.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elected to act under Subparagraph 4.1 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
 - 6.1 The responsibilities of the Contractor for correction of defective work, completion of the work to be performed under the Construction Contract, and fulfillment of all other terms of the Construction Contract;
 - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, including such costs resulting from the actions or failure to act of the Surety under Paragraph 4;
 - 6.3 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;
 - 6.4 All reasonable attorney's fees and court costs incurred by the Owner to enforce this Bond; and
 - 6.5 Interest at the maximum legal rate from the date of demand following Surety's failure to satisfy its obligations pursuant to this Bond.
7. Any suit, action, or proceeding, legal or equitable, under this Bond shall be tried in a court of competent jurisdiction in the location in which the work or part of the work is to be permanently located and shall be instituted within two years after 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 maximum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable. This Bond shall be governed by and construed exclusively in accordance with the internal laws of the State of Indiana.
8. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. If any provision of this Bond or its application to any person or circumstance is adjudged invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Bond or the application of such provision to other persons or circumstances will not be affected by such adjudication. If any provision or application of this Bond is invalid or unenforceable, then a suitable and equitable provision will be substituted for such provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of this Bond, including the invalid or unenforceable provision. This Bond shall be liberally construed to accomplish the intent and purpose of the Bond.
9. Definitions.

- 9.1 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 to the Contractor of 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.
- 9.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 9.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract, for which Owner has declared a Contractor Default in a writing delivered to the Contractor.
- 9.4 Owner Default: Failure of the Owner, which have neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof, for which Contractor has declared an Owner Default in a writing delivered to the Owner.
- 9.5 Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

10. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the signature page. No modification, omission, or addition to the terms and conditions of the Construction Contract (including plans, specifications, drawings, or profiles related thereto); no defect in the Construction Contract; and no defect or irregularity in the Construction Contract or proceedings preliminary to the letting and awarding of the Construction Contract, shall operate to release or discharge the Surety. No delay by the Owner in enforcement of the Construction Contract or this Bond shall in anyway affect the Surety's obligations pursuant to this Bond. Surety hereby waives notice of any such change, including changes of time, alteration, or addition to the terms of the Construction Contract or to related subcontracts, purchase orders, and other obligations, or to the work. No final settlement between the Owner and the Contractor shall abridge any right of the Owner hereunder as to any claim that may remain unsatisfied.

LABOR AND MATERIAL PAYMENT BOND

Bond No. _____

Town of Whiteland, Indiana

Instructions:

- *Successful Bidder must use this form or such other form with the same material conditions and provisions if approved by Owner in writing.*
- *Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute bond.*
- *Surety company executing this bond shall appear on the most current list of "Surety Companies Acceptable on Federal Bonds," as specified in the U.S. Treasury Department Circular 570, as amended, and be authorized to transact business in the State of Indiana.*

This PAYMENT BOND is governed by the terms provided on the attached Bond Terms. Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

Town of Whiteland, Indiana
549 E. Main St.
Whiteland, IN 46184

CONSTRUCTION CONTRACT

Date: _____, 202_

Amount: _____ (\$ _____) Dollars

Description (Name and Location): Street Paving Contract 2020
Whiteland, Indiana

BOND

Date: _____, 202_

Amount: _____ (\$ _____) Dollars

Modifications to this Bond Form: _____

CONTRACTOR AS PRINCIPAL
Company:

SURETY
Company:

By: _____

By: _____

Printed _____

Printed _____

Title _____

Title _____

Bond Terms

1. The Contractor and the 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 the use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with the Contractor:
 1. Have furnished notice to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
 2. Have furnished written notice of such claim to the Contractor with a copy of such claim and either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing such notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner and Contractor, stating that a claim is being made under this Bond and enclosing a copy of the previous written notices furnished to the Contractor and Owner.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and that basis for challenging any amounts that are disputed.
 - 6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
9. 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 payment of any costs or expenses of Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
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. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable. This Bond shall be governed by and construed exclusively in accordance with the internal laws of the State of Indiana.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
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 the Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS
 - 15.1 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 Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of 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.
 - 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.



SECTION IV:
General Conditions

GENERAL CONDITIONS FOR CONSTRUCTION

INDEX TO THE ARTICLES OF THE GENERAL CONDITIONS

- 1.00 *Definitions*
- 2.00 *Execution of Documents*
- 3.00 *Correlation, Interpretation & Intent of Documents*
- 4.00 *Availability of Lands; Physical Conditions; Reference Points*
- 5.00 *Bonds & Insurance*
- 6.00 *Contractor's Responsibilities*
- 7.00 *Work by Others*
- 8.00 *Owner's Responsibilities*
- 9.00 *Changes in the Work*
- 10.00 *Changes in Contract Price*
- 11.00 *Change of Contract Time*
- 12.00 *Liquidated Damages*
- 13.00 *Warranty & Guarantee: Tests & Inspections, Correction, Removal or Acceptance of Defective Work*
- 14.00 *Payments & Completion*
- 15.00 *Suspension of Work & Termination*
- 16.00 *Environmental Requirements*
- 17.00 *Miscellaneous*

1.00 Definitions: The Owner, Contractor, and the Town Manager, 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 executed Contractual Agreement between the Contractor and Owner.

1.03 Application for Payment: The form used by contractor in requesting payments, including accompanying documentation required by the Contract Documents.

1.04 Bid: The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the work to be performed.

1.05 Bidder: Any person, firm, or corporation submitting a Bid for the Work.

1.06 Bonds: Bid, performance, and payment bonds and other instruments of security, furnished by the Contractor and his surety in accordance with the Contract Documents.

1.07: Calendar Day: Every day shown on the Calendar.

1.08 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 Contract Time issued after execution of the Agreement.

1.09 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 Town Manager 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

- 1.10 **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 Town Manager, Invitation to Bidders, Instructions to Bidders, Proposal, Non-Collusion Affidavit, Questionnaire, Contractor's Bid, the Bonds, Notification Procedures, General Equipment Stipulations, the Notice of Award, the Notice to Proceed, these General Conditions, the Special Conditions, the Specifications, Drawings, and Modifications.
- 1.11 **Contract Price:** The total amount payable to the Contractor under the Contract Documents.
- 1.12 **Contract Time:** The number of days stated in the Agreement for the completion of the Work, computed as provided in these General Conditions; or by the date set forth in the Agreement. Contract days are not to be determined from the usage of the Indiana Department of Transportation (I.N.D.O.T.) Standard Specifications Manual.
- 1.13 **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.
- 1.14 **Day:** A calendar day of twenty-four hours measured from midnight to the next midnight.
- 1.15 **Date of Contract:** The date written in the first paragraph of the Contractual Agreement.
- 1.16 **Field Order:** A written order issued by the Town Manager which clarifies or interprets the Contract Documents or orders minor changes in the Work.
- 1.17 **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 Town Manager. (d) A written order for a minor change or alteration in the Work issued by the Town Manager. A Modification may be issued only after execution of the Agreement.
- 1.18 **Notice of Award:** The Written notice by the Owner to the apparent successful Bidder stating that upon compliance with the conditions precedent to be fulfilled by him within the time specified, the Owner will execute and deliver the Agreement to him.
- 1.19 **Notice to Proceed:** A written notice given to the Contractor by the Owner (with a copy to the Town Manager) fixing the date on which the Contract Time will commence to run and on which the Contractor shall start to perform his obligations under the Contract Documents.
- 1.20 **Owner:** The Town of Whiteland named and designated in the Agreement as "Owner" acting thru its Town Council and its authorized agents. All notices, letters, and other communication directed to the Owner shall be addressed and delivered to the Whiteland Town Hall, 549 E Main St; Whiteland IN 46184.
- 1.21 **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.
- 1.22 **Responsible Bidder:** One who is fully capable of performing the contract requirements and who has the integrity and reliability to insure faithful performance.
- 1.23 **Responsive Bidder:** One who has submitted a Bid conforming in all material respects to the Contract Documents.
- 1.24 **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.
- 1.25 **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, 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 Agreement. Any work performed without prior approval will not be compensated for.

- 1.26 **Substantial Completion:** The date as determined by the Owner 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.
- 1.27 **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.
- 1.28 **Miscellaneous Definitions**
 - 1.28.1 **As Ordered, As Directed, As Required, As Permitted, As Allowed:** The order, directions, requirement, permission, or allowance of the Owner is intended only to the extent of judging compliance with the Contract Documents. The terms do not imply that the Owner has any authority or responsibility for supervision of the Contractor's forces or construction operations. Such supervision is the sole responsibility of the Contractor.
 - 1.28.2 **Reasonable, Suitable, Acceptable, Proper, Satisfactory:** The terms reasonable, suitable, acceptable, proper, and satisfactory mean such to the Owner and are intended only to the extent of judging compliance with the Contract Documents.
 - 1.28.3 **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 Agreement.

2.00 Execution of Agreement

- 2.01 **Execution of Agreement:** The Agreement and other Contract Documents will be executed as set forth in the Special Conditions.
- 2.02 **Delivery of Bonds:** When the executed Agreements are delivered to the Owner, the Contractor shall also deliver to the Owner such Bonds as he may be required to furnish in accordance with the Agreement.
- 2.03 **Copies of Documents:** The Owner shall furnish to the Contractor a minimum of 3 sets of complete documents.
- 2.04 **Contractor's Pre-Award Representations:** The Contractor represents that he has familiarized himself with, and assumes full responsibility for having familiarized himself with, the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work, and represents that he has correlated his study, observations and site visits with the requirements of the Contract Documents. The Contractor also represents that he has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Specifications and made such additional surveys and investigations as he deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that he has correlated the results of all such data with the requirements of the Contract Documents.
- 2.05 **Commencement of Contract Time; Notice to Proceed:** Unless otherwise provided, the Contractor shall start active and continuous work on the Project Work within 30 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 30 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 Owner shall be notified at least 3 days in advance of the date on which the work is expected to begin. Should the prosecution of the work for any reason be discontinued, the Owner shall be notified at least 24 hours in advance of resuming operations.

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

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

3.00 Correlation, Interpretation, and Intent of Contract Documents: It is the intent of the Specifications and Drawings to describe a complete Project to be constructed in accordance with the Contract Documents. The Contract Documents comprise the entire Agreement between the Owner and the Contractor. They may be altered only by a Modification. The Contract Documents are complementary. What is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error, or discrepancy in the Contract Documents, he shall call it to the Owner's attention in writing at once. Before proceeding with the Work affected thereby, he shall not be liable to the Owner for his failure to discover any conflict, error or discrepancy in the Specifications or Drawings. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards. In case of discrepancy, and subject to the terms of the Agreement between Owner and Contractor, calculated dimensions will govern over scaled dimensions; plans will govern over specifications; special conditions will govern over the plans and specifications. The instructions to Bidders and the description of the pay items listed in the itemized proposal will govern over plans, specifications, and special conditions. The precedence outlined herein shall not absolve the Contractor of his responsibility with

regard to errors and omissions, or from his requirement to follow all IOSHA, OSHA, any local safety ordinances, and general good construction practices. Advantage shall not be taken of any apparent error or omission in the plans or specifications. In the event such an error or omission is discovered, the Town Manager shall be notified immediately in writing. Such corrections and interpretations as may be deemed necessary for fulfilling the intent of the plans and specifications will then be made.

4.00 Availability of Lands; Physical Conditions; Reference Points

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

4.02 Physical Conditions; Surveys; and Reports: 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 Owner in preparation of the Drawings and Specifications, refer to special conditions.

4.03 Unforeseen Physical Conditions: The Contractor shall promptly notify the Owner in writing of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents. The Owner will promptly investigate those conditions and advise, 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 Contractor. If the Owner finds that the results of such surveys or tests indicate that there are subsurface or latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by the Contractor, a Change Order shall be issued incorporating the necessary revisions.

4.04 Reference Points: The Owner shall provide engineering surveys for construction to establish reference points which in his judgment are necessary to enable the Contractor to proceed with the Work. The Contractor shall be responsible for surveying and laying out the Work, and shall protect and preserve the established reference points and shall make no changes or reallocations without the prior written approval of the Owner. He shall report to the Town Manager 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 & Insurance

5.01 Performance, Payment and Other Bonds: When Contractor delivers the executed counterparts of the Agreement to Owner, the Contractor shall furnish a Performance Bond, Payment Bond, and other Bonds specified in Agreement as security for the faithful performance and payment of all his obligations under the Contract Documents. The Performance Bond shall be in an amount at least equal to 100% of the Contract Price. Bonds shall be executed on the forms (when provided) included in the Contract Documents and with such sureties as are licensed to conduct business in the state of Indiana and are named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in Circular

570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. The surety shall have an "A" minimum rating of performance and a financial rating strength of five times the Contract Price, all as stated in "Best's Key Rating Guide, Property-Liability". Each Bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety and certified to include the date of the Bond.

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

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

6.00 Contractor's Responsibilities

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

6.02 Resident Superintendent: The Contractor shall keep on the Work site at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to the Owner and Town Manager. 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, & 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 Town Manager, the Contractor shall

furnish satisfactory evidence as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the contract Documents. The Contractor shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them, and of persons and organizations for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between the Owner or Town Manager 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 Town Manager 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 Town Manager 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 & 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 Town Manager 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 Town Manager 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 Town of Whiteland, or their assigned designee.

6.06 Laws and Regulations: The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If the Contractor observes that the Specifications or Drawings are in conflict therewith, he shall give the Town Manager 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 Town Manager, he shall bear all costs arising there from; however, it shall not be his primary responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations.

- 6.07 Taxes:** The Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by him in accordance with the law of the place where the work is to be performed. The Owner is exempt from sales tax on products permanently incorporated into the work. The Contractor may obtain sales tax exemption for such materials, products, and equipment and shall obtain an Indiana General Sales Tax Exemption Certificate from the Owner.
- 6.08 Use of Premises:** The Contractor shall confine his equipment, the storage of materials and equipment and the operations of his workmen to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with materials or equipment. During Construction all roadways must be maintained for traffic at all times with a minimum of one lane open with proper traffic control. No roadway shall be closed completely at any time without prior written approval from the Town Manager. The Contractor shall not load nor permit any part of any structure or road to be loaded with weights that will endanger the structure or road, nor shall he subject any part of the Work to stresses or pressures that will endanger it.
- 6.09 Record Drawings:** The Contractor shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. These shall be available to the Town Manager and shall be delivered to him for the Owner upon completion of the Project and prior to final payment.
- 6.10 Safety and Protection:** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. He shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to: all employees on the Work and other persons who may be affected thereby, and 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, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. This also includes ensuring the safety of pedestrians, bicyclist, and motorists who are allowed to access the site during the Project. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall notify owners of adjacent utilities when prosecution of the Work may affect them. All damage, injury or loss to any property caused directly or indirectly, in whole or in part, by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by the Contractor: except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the Owner or Town Manager 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 Town Manager has issued a notice to the Owner and Contractor that the Work is acceptable.
- 6.11 Supervisor of Safety:** The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent

unless otherwise designated in writing by the Contractor to the Owner. The Superintendent of Safety shall be responsible for the maintenance of traffic control devices and personnel in accordance with the Manual on Uniform Traffic Control Devices (M.U.T.C.D.) for work zone safety.

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 Owner, is obligated to act, at his discretion, to prevent threatened damage, injury or loss. He shall give the Owner prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes and deviations involved. If the Contractor believes that additional work done by him in an emergency which arose from causes beyond his control entitles him to an increase in the Contract Price or an extension of the Contract Time, he may make a claim therefore.

6.13 Indemnification The Contractor shall indemnify and hold harmless the Owner, the Town Manager, 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, Town Manager, 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 Owner, his agents or employees arising out of: the preparation of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications.

7.00 Work by Others

The Owner may perform additional work related to the Project by himself, or he may let other direct contracts therefore which shall contain General Conditions similar to these. The Contractor shall afford the other contractors who are parties to such direct contracts (or the Owner, if he is performing the additional work himself) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate his Work with theirs. If any part of the Contractor's Work depends for proper execution or results upon the work of any such other contractor (or Owner), the Contractor shall inspect and promptly report to the Owner in writing any defects or deficiencies in such work that render it unsuitable for such proper execution and results. His failure to so report shall constitute an acceptance of the other work as fit and proper for the relationship of his Work except as to defects and deficiencies which may appear in the other work after the execution of his Work. The Contractor shall do all cutting, fitting, and patching of his Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. The Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of the Owner and of the other contractors whose work will be affected. If the performance of additional work by other contractors or the Owner is not noted in the Contract Documents prior to the execution of the contract, written notice thereof

shall be given to the Contractor prior to starting any additional work. If the Contractor believes that the performance of any such additional work by the Owner or others involves him in additional expense or entitles him to an extension of the Contract Time, he may make a claim therefore.

8.00 Owner's Responsibilities

The Owner shall issue all communications to the Contractor. The Owner shall furnish the data required of him under the Contract Documents promptly and shall make payments to the Contractor promptly after they are due. In addition to his rights to request changes in the Work, the Owner shall be obligated to execute Change Orders.

9.00 Changes in Work

Without invalidating the Agreement, the Owner may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by Change Orders and initiated through a Field Order from the 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. Minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents may be accomplished by a Field Order. If the Contractor believes that any minor change or alteration authorized entitles him to an increase in the Contract Price, he may make a claim therefore. Additional work performed by the Contractor without authorization of a Change Order will not entitle him to an increase in the Contract Price or an extension of the Contract Time, except as otherwise provided herein. The Owner shall execute appropriate Change Orders prepared by the Owner 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 Owner. It is the Contractor's responsibility to notify his Surety of any changes affecting the general scope of the Work or change in the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly.

10.00 Changes in Contract Price

The Contract Price constitutes the total compensation payable to the Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the Contractor shall be at his expense without change in the Contract Price. The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price shall be based on written notice delivered to the Owner within twenty days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within forty-five days of such occurrence unless the Owner allows an additional period of time to ascertain accurate cost data. All claims for adjustments in the Contract Price shall be determined by the Owner. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order. All changes requested by the 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 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: (1)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; (2)By mutual acceptance of a lump sum; or (3)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).

10.01 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. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Sunday or legal holidays shall be included in the above to the extent authorized by the Owner. The cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to the Contractor unless the Owner deposits funds with the Contractor with which to make payments, in which case the cash discounts shall accrue to the Owner. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they may be obtained. Payments made by the Contractor to the Subcontractors for Work performed by the Subcontractors. If required by the Owner, the Contractor shall obtain competitive bids from Subcontractors acceptable to him and shall deliver such bids to the Owner, who will then determine 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.

10.02 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, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work. Sales, use or similar taxes related to the Work, and for which the Contractor is liable, imposed by any governmental authority. Deposits lost for causes other than the Contractor's negligence, royalty payments and fees for permits and licenses. Losses, damages and expenses, not compensated by insurance or otherwise, sustained by the Contractor in connection with the execution of, and to, the Work, provided they have resulted from causes other than the negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for

whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of the Owner. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining the Contractor's fee. If, however, any such loss or damage requires reconstruction and the Contractor is placed in charge thereof, he shall be paid for his services a fee proportionate to that stated under Contractor's Fee. The cost of utilities, fuel and sanitary facilities at the site. Minor expenses such as telegrams, long distance phone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work. The cost of premiums for additional bonds and insurance required because of changes in the Work.

10.03 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 his principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications - all of which are to be considered administrative costs covered by the Contractor's Fee. Expenses of the Contractor's principal and branch offices other than his office at the site. Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work and charges against the Contractor for delinquent payments. Cost of premiums for all bonds and for all insurance policies whether or not the Contractor is required by the Contract Documents to purchase and maintain the same (except as otherwise provided above). Costs due to the negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property. Other overhead or general expense costs of any kind not specifically and expressly included in the Cost of the Work.

10.04 Contractor's Fee: The Contractor's Fee which includes his overhead and profit shall be determined as follows: A mutually acceptable fee; or, if none can be agreed upon, A fee based on the following percentages of the various portions of the Cost of the Work: for payroll costs and the cost of all materials and equipment included in the Work, the Contractor's Profit shall be ten percent. for payments to Subcontractors, the Contractor's Profit shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be ten percent, and no fee shall be payable on the basis of costs of special consultants or supplemental costs.

10.05 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 Town Manager an itemized cost breakdown together with supporting data.

11.00 Changes in 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 within twenty days of the occurrence of the event giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within forty-five days

of such occurrence unless the Owner allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by the Owner. 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 Agreement and not that of the Indiana Department of Transportation (INDOT). The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor if he makes a claim therefore as provided in the preceding paragraph. A claim for an extension of the Contract Time otherwise allowable under the Contract Documents, shall be granted only to the extent the time lost exceeds the float, using Critical Path analysis as called for in Section 2.08 above, for a delayed activity at the time of the event giving rise to the Claim. Float, whether expressly disclosed or implied in any manner, is jointly owned by the project participants. Such delays shall include, but not be restricted to, acts or neglect by any separate contractor employed by the Owner, fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God. All time limits stated in the Contract Documents are of the essence of the Agreement. The Contractor agrees to make no monetary claim for delays, interferences or hindrances of any kind in the performance of this Contract occasioned by any act or omission to act of the Owner or any other party, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work where Critical Path analysis shows such an extension of time is warranted

12.00 Liquidated Damages

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

13.00 Warranty & Guarantee: Tests & Inspections; Correction, Removal or Acceptance of Defective Work.

13.01 Warranty & Guarantee: The Contractor warrants and guarantees to the Owner 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.

13.02 Tests & 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 Owner 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 Owner 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 Owner, it must, if requested by the Owner, be uncovered for observation, and such uncovering shall be at the Contractor's expense unless the Contractor has given the Owner timely notice of his intention to cover such Work and the Owner 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 Town of Whiteland (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 Owner nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from his obligations to perform the Work in accordance with the Contract Documents.

- 13.03 Access to Work:** The Owner and his representatives and other representatives will at reasonable times have access to the Work. The Contractor shall provide proper and safe facilities for such access and observation of the Work and also for any inspection or testing thereof by others.
- 13.04 Uncovering Work:** If any Work is covered contrary to the written request of the Owner, it must, if requested by the Owner, be uncovered for his observation and replaced at the Contractor's expense. If any Work has been covered which the Owner has not specifically requested to observe prior to its being covered, or if the Owner considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the Owner's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Owner may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services, and an appropriate deductive Change Order shall be issued. If, however, such Work is not found to be defective, the Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if he makes a claim therefore.
- 13.05 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.
- 13.06 Correction or Removal of Defective Work:** If required by the Owner prior to his recommendation of final payment, the Contractor shall promptly, without cost to the Owner, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected, 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 Owner, the Owner may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and replacement, including compensation for additional professional services, shall be paid by the Contractor, and an appropriate deductive Change Order shall be issued. The Contractor shall also bear the expenses of making good all Work of others destroyed or damaged by his correction, removal or replacement of his defective Work.
- 13.07 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.

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

13.09 Neglected Work by the Contractor: If the Contractor should fail to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, the Owner, after seven days written notice to the Contractor may, without prejudice to any other remedy he may have, make good such deficiencies and the cost thereof (including compensation for additional professional services) shall be charged against the Contractor, 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.

14.00 Payments & Completion

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

14.02 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").

14.03 Review of Application for Payment: The Contractor shall furnish to the Owner such detailed information as he may request to aid in the review and approval of such Applications for Payment. The Owner will, within five working days after receipt of each Application for Payment, either recommend payment and present the Application, or return the Application to the Contractor indicating in writing his reasons for refusing to recommend payment. In the latter case, the Contractor may make the necessary corrections and resubmit the Application. Payments for all work performed under the proposed contract will be made by the Owner within forty-five (45) days after; the acceptance of the Work covered by the Application for Payment and the submission of an acceptable Application for Payment for such Work. 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.

- 14.04 Final Inspection:** When the Work has been substantially completed and at a time mutually agreeable to the Owner, and Contractor, the Owner and Contractor shall make a final walk-through inspection of the Work.
- 14.05 Application for Final Payment:** Upon the Owner's determination that Work is completed and acceptable, 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 Owner may reasonably require.
- 14.06 Final Payment:** If, on the basis of his observation and review of the Work during construction, his final inspection and his review of the final Application for Payment, all as required by the Contract Documents, the Owner is satisfied that the Work has been completed and the Contractor has fulfilled all of his obligations under the Contract Documents, the Owner will give written notice to the Contractor that the Work is acceptable subject to the provisions of the paragraph regarding waiver of claims. Otherwise, he will return the Application to the Contractor, indicating in writing his reasons for refusing to approve final payment, in which case the Contractor shall make the necessary corrections and resubmit the Application for Payment. The Owner shall, within forty-five (45) days after: completion of all the Project Work and all of Contractor's contractual requirements, Owner's acceptance of the Work covered by the final Application for Payment, and the submission of an acceptable final Application for Payment for such Work; pay the Contractor the entire sum found to be due after deducting all amounts to be retained under any provision of the Contract Documents. However, final payment may not be made on any amount that is in dispute, but final payment may be made on that part of the Project Work or those amounts that are not in dispute.
- 14.07 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 Owner, 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.
- 14.08 Waiver of Claims:** The acceptance of final payment shall constitute: a waiver of all claims by the Contractor against the Owner other than those previously made in writing and still unsettled.
- 15.00 Suspension of Work & Termination**
- 15.01 Owner may Suspend Work:** The Owner may, at any time and without cause, suspend the Work or any portion thereof for a period of ninety days by notice in writing to the Contractor, which shall fix the date on which Work shall be resumed. The Contractor shall resume the Work on the date so fixed. The Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if he makes a claim therefore as provided in these General Conditions.
- 15.02 Owner may Terminate:** If the Contractor is adjudged a bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, or if he repeatedly fails to supply sufficient skilled

workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or if he disregards the authority of the Owner, or if he otherwise violates any provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and his Surety seven days written notice, terminate the services of the Contractor and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and finish the Work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excesses shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. Such costs incurred by the Owner shall be incorporated in a Change Order. Where the Contractor's services have been so terminated by the Owner, said termination shall not affect any rights of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from liability.

15.03 Termination for Convenience: 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 for the Work properly executed.

15.04 Contractor may Stop Work or Terminate: If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety days by the Owner or under an order of court or other public authority, or the Owner fails to act on any acceptable Application for Payment within forty-five (45) days after it is submitted, then the Contractor may, upon seven days written notice to the Owner, terminate the Agreement and recover from the Owner payment for all Work executed and any expense sustained plus a reasonable profit for the Work properly executed. In addition, and in lieu of terminating the Agreement, if the Owner has failed to make any payment as aforesaid, the Contractor may upon seven days' notice to the Owner stop the Work until he has been paid all amounts then due

16.00 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.

16.01 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.

16.02 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.

16.03 Historic Preservation: Any excavation by the Contractor that uncovers an historical or archaeological artifact shall be immediately reported to the Town Manager's Office. Construction shall be temporarily halted pending the notification process and further directions issued by the Town

after consultation with the State Historic Preservation Office (SHPO).

- 16.04 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 Town Manager. 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.
- 16.05 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

17.00 Miscellaneous

- 17.01 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, or by a nationally recognized overnight delivery service, to the business address provided on the Contractual Agreement.
- 17.02 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 of every day shown on the calendar. The usage of Indiana Department of Transportation (I.N.D.O.T.) standard specifications with regard to time usage or computation does not apply to this contract and therefore is not applicable.
- 17.03 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 2016 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 the Town of Whiteland Design Standards and Specifications Manual and the Town of Whiteland Typical Construction Guidelines and Details, which shall override and supersede INDOT Specifications.



SECTION V: Contractual Agreement Form

CONTRACTUAL AGREEMENT

**Between
The Town of Whiteland
and
Contractor**

For

2020 Paving Program

This Agreement, executed by and between the Town of Whiteland, Indiana, as authorized by the Town Council (hereinafter "Town"), and _____ (hereinafter "Contractor");

Witnesseth That:

Whereas; Town desires to retain Contractor's services for the 2020 Paving Program (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:

1.00 Article 1: Term

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.

2.00 Article 2: Services

2.01 Contractor shall complete all work required under this Agreement within 90 calendar days from the date of the notice to proceed, unless the parties mutually agree to a later completion date. Substantial Completion shall mean completion of all work.

2.02 It is hereby understood by both parties that time is of the essence in this Agreement. Failure of Contractor to complete all work as herein provided will result in monetary damages to Town. It is hereby agreed that Town 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 12.00 of the General Conditions for Each Day of Overrun in Contract Time. Contractor agrees to pay Town said damages or, in the alternative, Town, 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 Town's other remedies under this Agreement, or as provided by applicable law, for other damages.

2.03 Contractor agrees that no charges or claims for damages shall be made by him for any delays or hindrances, from any cause whatsoever during the progress of any portion of the services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for a reasonable period as may be mutually agreed upon between the parties, it being understood; however, that permitting Contractor to proceed to complete any service, or any part of the services / project, after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the Town of any of its rights herein.

3.00 Article 3: Compensation

3.01 Contractor shall provide the services specified in Attachment A, "Scope of Work", attached hereto and incorporated into this Agreement, in accordance with the terms of the Contract Documents.

3.02 Upon final completion and acceptance of the Work by the Town and the submittal of an acceptable Application for Payment, Town shall pay to the Contractor for the performance of the Project Work, subject to any additions or deductions provided under the Contract Documents, the sum of \$_____ as the base Contract Price. This is a unit price contract and the final contract price will be determined and paid based on the actual quantities required for the Project Work multiplied by the unit prices in the Contractor's bid. Notwithstanding any other provision(s) of the Contract Documents to the contrary, Town will pay the Contractor in a single payment after final completion of the Project Work, and no progress payments will be processed or paid. Town 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: (1) Defective Work, (2) Evidence indicating the probable filing of claims by other parties against Contractor which may adversely affect Town, (3) Failure of Contractor to make payments due to subcontractors, material suppliers, or employees, or (4) Damage to Town 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 Town's representatives at reasonable business hours.

3.05 The Town Manager shall act as the Town's representative and assume all duties and responsibilities and have all the rights and authority assigned to the Town Manager in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

3.06 **CONTRACTOR shall supply the Town with records showing the actual quantities of materials used,**

including the total gallons of tack coat used on the Project. Weigh tickets that confirm the net weight of each load of material delivered on the Project shall be provided, each day, to the Town Manager or his designee.

4.00 Article 4: General Provisions

4.01 CONTRACTOR agrees to indemnify and hold harmless TOWN and its officers, agents, officials and employees for any and all claims, actions, causes of action, damages, losses, expenses, liabilities, judgments and liens arising out of any act or omission by CONTRACTOR or any of its officers, agents, officials, employees, or subcontractors arising out of or related to this Agreement or the Project Work, 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 TOWN or has used in connection with this Agreement, regardless of whether 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 also agrees to pay all reasonable expenses and attorney's fees incurred by the TOWN to enforce this Agreement in the event of Contractor's default.

CONTRACTOR shall indemnify and hold harmless TOWN 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

4.02 Abandonment, Default, & Termination

4.02.01 TOWN shall have the right to abandon the work contracted for in this Agreement without penalty. If TOWN abandons the work described herein, CONTRACTOR shall deliver to TOWN all surveys, notes, drawings, specifications and estimates completed or partially completed and these shall become the property of TOWN. 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 TOWN and CONTRACTOR. The payment made to CONTRACTOR shall be paid as a final payment in full settlement of his services hereunder

4.02.02 If CONTRACTOR defaults or fails to fulfill in a timely and proper manner the obligations pursuant to this Agreement, TOWN 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, TOWN, at its option, may terminate this Agreement and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by CONTRACTOR, and may finish the project by whatever method it may deem expedient, and if the such action exceeds the unpaid balance of the sum amount, CONTRACTOR or his surety, shall pay the difference to TOWN.

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

- (A) Failure to begin the work under this Agreement within the time specified.
- (B) Failure to perform the work with sufficient supervision, workmen, equipment and materials to insure prompt completion of said work within the time limits allowed.
- (C) Unsuitable performance of the work as determined by Town Manager or his representative.
- (D) Neglecting or refusing to remove defective materials or failure to perform anew such work as shall have been rejected.
- (E) Discontinuing the prosecution of the work or any part of it.
- (F) Inability to finance the work adequately. Or,
- (G) If, for any other reason, CONTRACTOR breaches this Agreement or fails to carry on the work in an acceptable manner.

4.02.04 TOWN shall send CONTRACTOR a written notice of default. If CONTRACTOR, or his Surety, within a period of ten (10) days after such notice, fails to remedy the default, then TOWN 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 TOWN may use such other methods as, in its opinion, shall be required for the completion of said Contract in an acceptable manner.

4.02.05 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 TOWN shall be less than the sum which would have been payable under the Contract if it had been completed by said CONTRACTOR, CONTRACTOR shall be entitled to receive the difference. However, in case such expense shall exceed the sum which would have been payable under the Contract, CONTRACTOR and his Surety will be liable and shall pay to TOWN the amount of said excess. By taking over the prosecution of the work, TOWN does not forfeit the right to recover damages from CONTRACTOR or his Surety for his failure to complete the work in the time specified.

4.02.06 Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of the Agreement by TOWN are at any time not forthcoming or are insufficient, through failure of any entity to appropriate the funds or otherwise, then TOWN 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.

4.02.07 TOWN 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.

4.03 Successors and Assigns

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

4.03.02 No portion of this Agreement shall be sublet, assigned, transferred or otherwise disposed of by

CONTRACTOR except with the written consent of TOWN 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.

4.04 Extent of Agreement Integration

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

- (A) This Agreement and its Attachments.
- (B) 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.
- (C) All Addenda to the Bid Documents.
- (D) The Invitation to Bidders.
- (E) The Instructions to Bidders.
- (F) The Special Conditions.
- (G) All plans as provided for the work that is to be completed.
- (H) The Supplementary Conditions.
- (I) The General Conditions.
- (J) The Specifications.
- (K) The current Indiana Department of Transportation Standard Specifications and the latest addenda.
- (L) CONTRACTOR'S bid submittal documents.
- (M) The Performance and Payment Bonds.
- (N) W9 Form

4.04.02 In resolving conflicts, errors, discrepancies and disputes concerning the Scope of Work to be performed by CONTRACTOR, and other rights and obligations of TOWN 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 TOWN shall govern; otherwise the documents shall be given precedence in the order as enumerated above.

4.05 Insurance

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

Coverage Limits

- (A) Worker's Compensation & Disability: Statutory Requirements
- (B) Employer's Liability Bodily Injury by Accident: \$100,000 each accident
 - Bodily Injury by Disease: \$500,000 policy limit
 - Bodily Injury by Disease: \$100,000 each employee

(C) Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property damage, contractual liability, products-completed operations, General Aggregate Limit (other than Products/Completed Operations)

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)

Bodily injury and property damage: \$1,000,000 (each)

(E) Umbrella Excess Liability: \$5,000,000 each occurrence and aggregate

The Deductible on the Umbrella Liability shall not be more than \$10,000

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

- (A) Premises and operations;
- (B) Contractual liability insurance as applicable to any hold-harmless agreements;
- (C) 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 TOWN on an annual basis during the aforementioned period;
- (D) Broad form property damage - including completed operations;
- (E) Fellow employee claims under Personal Injury; and
- (F) Independent Contractors

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

4.05.04 Certificates of Insurance showing such coverage then in force (but not less than the amount shown above) shall be on file with TOWN 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 TOWN. The TOWN 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.

4.06 Non Discrimination

4.06.01 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.

4.06.02 CONTRACTOR certifies for itself and all its subcontractors compliance with existing laws of the State of Indiana and the United States regarding: Prohibition of discrimination in employment practices on the basis of race, sex, color, religion, national origin, ancestry, disability, sexual orientation, gender identity, veteran status, housing status, or any other legally protected classification.

4.06.03 Pursuant to IC 36-1-12-15 and 5-16-6-1, CONTRACTOR agrees that (a) that in the hiring of employees for the performance of Work or any subcontract hereunder, no contractor, or subcontractor, no any person acting on behalf of such contractor or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, 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, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work on account of race, religion, color, sex, national origin or ancestry; (c) that there may be deducted from the amount payable to the CONTRACTOR by the Owner, under this Agreement, a 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; and, (d) that this Agreement may be cancelled or terminated by the Owner, and all money due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Agreement.

4.07 Workmanship and Quality of Materials

4.07.01 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 TOWN of the purchase price of that portion which failed or may result in the forfeiture of CONTRACTOR's Performance Bond.

4.07.02 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 Town Manager. The approval by the Town Manager 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 Town of Whiteland such as Municipal Utilities shall only be substituted or changed by their approval which shall be submitted in writing to the Town Manager.

4.07.03 TOWN shall be the sole judge of the sufficiency of workmanship and quality of materials. Disputes shall be resolved by the Town Manager and are not subject to arbitration

4.08 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.

4.09 Amendments and Changes

4.09.01 Except as provided in this Agreement, this Agreement may be amended only by written instrument signed

by both TOWN and CONTRACTOR.

4.09.02 Without invalidating the Agreement and without notice to any surety, TOWN 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.

4.09.03 If CONTRACTOR believes that any direction of TOWN under this Agreement or any other event or condition, will result in an increase in the Contract time or price, he shall file written notice with TOWN 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.

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

4.10 Performance Bond and Payment Bond

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

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

4.10.03 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 TOWN.

4.11 Payment of Subcontractors; CONTRACTOR shall pay all subcontractors, laborers, material suppliers and those performing services to CONTRACTOR on the project under this Agreement. TOWN 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, TOWN shall withhold money due to CONTRACTOR in a sufficient amount to pay the subcontractors, laborers, material suppliers, and those furnishing services to CONTRACTOR.

4.12 Written Notice: All notices required or permitted to be given hereunder shall be in writing and delivered either in person, by a nationally recognized overnight delivery carrier, or by certified mail, return receipt requested, with additional copy delivered simultaneously by email, if such delivery information is known by the sender, to the parties at their respective addresses set forth below, or at such other address as notice of which may have been given to the other party in accordance with this Section.

To Town:

To Contractor:

Town of Whiteland
Attn: Norm Gabehart, Town Manager
549 E Main St
Whiteland IN 46184

Any notice given in accordance with this section shall be deemed to have been duly given or delivered: a) on the date the same is personally delivered to the recipient as evidenced by a duly acknowledged written receipt, b) on the date the same is received by the recipient as evidenced by a returned postal receipt, c) on the date the recipient delivers a non-automated email message acknowledging receipt of the notice by email or otherwise, or d) on the day the notice is timely deposited with a nationally recognized overnight delivery carrier for delivery on the next business day.

4.13 Severability and Waiver If any provision of this Agreement or its application to any person or circumstance is adjudged invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement or the application of such provision to other persons or circumstances will not be affected by such adjudication, and a suitable and equitable provision shall be substituted for such provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of the provision and 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

4.14 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 TOWN. Contractor shall start active and continuous work on the Agreement within thirty (30) 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 thirty (30) 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.

4.15 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 Town obtains information that the Contractor or any of its subcontractors employs

or retains an employee who is an unauthorized alien, the Town 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 Town shall terminate the Agreement, unless the Town determines that terminating the Agreement would be detrimental to the public interest or public property, in which case the Town may allow the Agreement to remain in effect until the Town procures a new contractor. If the Town terminates the Agreement, the Contractor or its subcontractor is liable to the Town 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 Town.

4.16 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 Town; or provides false information to Town regarding CONTRACTOR's employee drug testing program. CONTRACTOR shall sign an affidavit, attached as Attachment C, affirming that CONTRACTOR has and shall implement CONTRACTOR'S employee drug testing program throughout the term of this project.

4.17 Remedies Cumulative: All rights and remedies of the TOWN specified within the Contract Documents are cumulative and in addition to, and not in limitation of, any rights and remedies that the TOWN may have by law or in equity, or otherwise.

(Signatures appear on next page)

In Witness Whereof, the parties of this Agreement have hereunto set their hands.

Date: _____

Town of Whiteland, Indiana:

CONTRACTOR:

BY: _____

Norm Gabehart, Town Manager

BY: _____

Contractor's Representative

Printed Name

Title of Contractor's Representative

ATTACHMENT A
SCOPE OF WORK

2020 Town of Whiteland Paving Program

This project shall include, but is not limited to; milling, paving, pavement markings, replacing curb and gutters, replacing sidewalks, and replacing driveway approaches of the following roadways within the Town of Whiteland. Scope includes the Contractor being responsible for disposal of millings.

Greensprings Court

Greensprings Drive

Forum Drive

Forum Drive:

- ▣ Milling of existing roadways at a depth of up to 5 inches (as directed by the Town/Owner) with scarification at the center line to promote adhesion.
- ▣ 3.5 inches of 19mm HMA Intermediate and a 1.5-inch overlay consisting of HMA 9.5mm Surface (PG76-22) with Tack Coat
- ▣ Thermoplastic stop bars, where applicable.

Greensprings Court:

- ▣ Milling a depth of up to 5 inches (as directed by the Town/Owner) across the entire width of the segment with scarification.
- ▣ 3.5 inches of 19mm HMA Intermediate and a 1.5-inch overlay consisting of HMA 9.5 mm Surface (PG76-22) with Tack Coat
- ▣ Thermoplastic stop bars, where applicable.

Greensprings Drive:

- ▣ Milling of existing roadways at a depth of up to 5 inches (as directed by the Town/Owner) with scarification.
- ▣ 3.5 inches of 19mm HMA Intermediate and a 1.5-inch overlay consisting of HMA 9.5mm Surface (PG76-22) with Tack Coat.

ATTACHMENT B

E-Verify Affidavit

AFFIDAVIT

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

1. The undersigned is the _____ of _____.
Job Title Company Name

2. The company named herein that employs the undersigned:

- ii. Has contracted or is seeking to contract with the Town of Whiteland to provide services, **OR**
- iii. Is a subcontractor on a contract to provide services to the Town of Whiteland.

3. The undersigned hereby states that, to the best of his / her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).

4. The undersigned hereby states that, to the best of his / her belief, the company named herein is enrolled in and participates in the E-Verify program.

Signature

Printed Name

STATE OF INDIANA)
) SS:
COUNTY OF: _____)

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

My Commission Expires: _____

Notary Public's Signature

County of Residence: _____

Printed Name of Notary Public

My Commission Number: _____

ATTACHMENT C

**Compliance Affidavit
Regarding IC 4-13-18 - Drug Testing of Employees of Public Works Contractors**

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 Affidavit.
3. The company named herein that employs the undersigned:
 - ii. Has contracted or is seeking to contract with the Town of Whiteland to provide services, **OR**
 - iii. Is a subcontractor on a contract to provide services to the Town of Whiteland.
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 IC 4-13-18 as amended.
5. The undersigned acknowledges that this Contract shall be subject to cancellation should Contractor fail to comply with 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: _____

Notary Public's Signature

County of Residence: _____

Printed Name of Notary Public

My Commission Number: _____

ATTACHMENT D

Certification Regarding Investment Activities in Iran

AFFIDAVIT

The undersigned, certifies under penalties of perjury, pursuant to Indiana Code 5-22-16.5 *et seq.* that

Name of Business

Is not engaged in investment activities in Iran (as defined by IC 5-22-16.2-8). The undersigned further acknowledges that false certification may result in the consequences enumerated IN IC 5-22-16.5-14.

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: _____

Notary Public's Signature

County of Residence: _____

Printed Name of Notary Public

My Commission Number: _____