

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT**

All Articles To Be Finalized After Bid, Except Article 4

THIS AGREEMENT is by and between _____ Town of Thorntown _____ (“Owner”) and
_____ DC Construction Services, Inc. _____ (“Contractor”).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

2023 STREET RESURFACING PROJECT

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Work for which proposals are to be received is for the construction and replacement of existing curbs and sidewalk, installation of new and replacement accessibility ramps, pavement repairs, hot-mix asphalt wedge and level course, hot-mix asphalt surface course, pavement markings and associated incidental items.

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Butler, Fairman and Seufert, Inc. (Engineer), who is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

A. The Work will be substantially completed by October 13, 2023 and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions by October 27, 2023. Contract Times shall commence to run as provided in Paragraph 2.03 of the General Conditions.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the

Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$1,000 per day for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$1,000 for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A below:

BASE BID PRICES

Project 01 - Market Lane from Bevel Rd. to Corp. Limits (~1230' N of Bevel Rd.)					
Item No.	Description	Estimated Quantity	Unit	Bid Unit Price	Price Extension
100	CONSTRUCTION ENGINEERING	1	LSUM	\$ 1,300.00	\$ 1,300.00
101	MOBILIZATION AND DEMOBILIZATION	1	LSUM	\$ 3,000.00	\$ 3,000.00
102	CLEARING OF RIGHT-OF-WAY	1	LSUM	\$ 800.00	\$ 800.00
103	COMMON EXCAVATION	720	CYD	\$ 44.46	\$ 32,011.20
104	COMPACTED AGGREGATE, No. 53*	785	TON	\$ 26.50	\$ 20,802.50
105	MILLING, ASPHALT, APPROACHES, VARIABLE DEPTH	58	SYS	\$ 3.77	\$ 218.66
106	HMA SURFACE, 9.5mm, TYPE B	145	TON	\$ 126.12	\$ 18,287.40
107	HMA BASE, 25.0mm, TYPE B	584	TON	\$ 114.84	\$ 67,066.56
108	HMA FOR APPROACHES, TYPE B	8	TON	\$ 114.84	\$ 918.72
109	JOINT ADHESIVE, SURFACE	1385	LFT	\$ 0.60	\$ 831.00
110	ASPHALT FOR TACK COAT	0.6	TON	\$ 600.00	\$ 360.00
111	CASTING, ADJUST TO GRADE	1	EACH	\$ 120.00	\$ 120.00
112	SIGN, W/ POST, R1-1, 30x30	1	EACH	\$ 595.00	\$ 595.00
113	MAINTAINING TRAFFIC	1	LSUM	\$ 4,400.00	\$ 4,400.00
TOTAL PROEJCT 01 BID =					\$ 150,711.04

Project 02 - Franklin Street from Morris St. to SR75 (West St.)					
Item No.	Description	Estimated Quantity	Unit	Bid Unit Price	Price Extension
200	CONSTRUCTION ENGINEERING	1	LSUM	\$ 1,300.00	\$ 1,300.00
201	MOBILIZATION AND DEMOBILIZATION	1	LSUM	\$ 3,000.00	\$ 3,000.00
202	CLEARING OF RIGHT-OF-WAY	1	LSUM	\$ 900.00	\$ 900.00
203	COMPACTED AGGREGATE, No. 53*	20	TON	\$ 26.50	\$ 530.00
204	COMPACTED AGGREGATE, No. 73*	28	TON	\$ 95.00	\$ 2,660.00
205	HMA PATCHING, FULL DEPTH, TYPE B*	80	TON	\$ 114.84	\$ 9,187.20
206	MILLING, ASPHALT, MAINLINE, VARIABLE DEPTH	2650	SYS	\$ 3.77	\$ 9,990.50
207	MILLING, ASPHALT, APPROACHES, VARIABLE DEPTH	680	SYS	\$ 3.77	\$ 2,563.60
208	HMA SURFACE, 9.5mm, TYPE B	294	TON	\$ 126.12	\$ 37,079.28
209	HMA WEDGE AND LEVEL, TYPE B	62	TON	\$ 114.84	\$ 7,120.08
210	HMA FOR APPROACHES, TYPE B	85	TON	\$ 114.84	\$ 9,761.40
211	JOINT ADHESIVE, SURFACE	1650	LFT	\$ 0.60	\$ 990.00
212	ASPHALT FOR TACK COAT	0.6	TON	\$ 600.00	\$ 360.00
213	SIDEWALK, CONCRETE	10	SYS	\$ 116.91	\$ 1,169.10
214	CURB RAMP, CONCRETE	8	SYS	\$ 119.44	\$ 955.52
215	DETECTABLE WARNING SURFACES	4	SYS	\$ 112.39	\$ 449.56
216	MAINTAINING TRAFFIC	1	LSUM	\$ 1,200.00	\$ 1,200.00
TOTAL PROEJCT 02 BID =					\$ 89,216.24

Project 03 - Pearl Street from Corp. Limits (~970'S of Mill St.) to Mill St.)					
Item No.	Description	Estimated Quantity	Unit	Bid Unit Price	Price Extension
301	CONSTRUCTION ENGINEERING	1	LSUM	\$ 1,300.00	\$ 1,300.00
302	MOBILIZATION AND DEMOBILIZATION	1	LSUM	\$ 3,000.00	\$ 3,000.00
303	CLEARING OF RIGHT-OF-WAY	1	LSUM	\$ 1,500.00	\$ 1,500.00
304	COMPACTED AGGREGATE, No. 53*	20	TON	\$ 26.50	\$ 530.00
305	COMPACTED AGGREGATE, No. 73*	20	TON	\$ 95.00	\$ 1,900.00
306	MILLING, ASPHALT, MAINLINE, VARIABLE DEPTH	2680	SYS	\$ 3.77	\$ 10,103.60
307	MILLING, ASPHALT, APPROACHES, VARIABLE DEPTH	372	SYS	\$ 3.77	\$ 1,402.44
308	HMA SURFACE, 9.5mm, TYPE B	180	TON	\$ 126.13	\$ 22,703.40
309	HMA WEDGE AND LEVEL, TYPE B	46	TON	\$ 114.84	\$ 5,282.64
310	HMA FOR APPROACHES, TYPE B	48	TON	\$ 114.84	\$ 5,512.32
311	JOINT ADHESIVE, SURFACE	1290	LFT	\$ 0.60	\$ 774.00
312	ASPHALT FOR TACK COAT	0.7	TON	\$ 600.00	\$ 420.00
313	PCCP, 6 IN. FOR DRIVES	280	SYS	\$ 110.96	\$ 31,068.80
314	SIDEWALK, CONCRETE	28	SYS	\$ 116.91	\$ 3,273.48
315	CURB RAMP, CONCRETE	12	SYS	\$ 119.44	\$ 1,433.28
316	DETECTABLE WARNING SURFACES	4	SYS	\$ 112.39	\$ 449.56
317	MAINTAINING TRAFFIC	1	LSUM	\$ 1,900.00	\$ 1,900.00
TOTAL PROEJCT 03 BID =					\$ 92,553.52
TOTAL PROEJCT BASE BID (PROJECT 01 + PROJECT 02 + PROJECT 03) =					\$ 332,480.80

* - Denotes undistributed quantity.

Unit Prices have been computed in accordance with Paragraph 11.03.B of the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:
 - a. The Owner shall retain 10 percent of the amount of each payment for the Work completed. If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and
 - b. 50 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 - 2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

- 7.01 *All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 12 percent per annum.*

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.
- E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – EMPLOYEE ELIGIBILITY VERIFICATION

- A. The Contractor affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien.
- B. The Contractor shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.
- C. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.
- D. The Contractor shall require its subconsultants, who perform work under this Contract, to certify to the Contractor that the subconsultant does not knowingly employ or contract with an unauthorized alien and that the subconsultant has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a sub-consultant.
- E. The Owner may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the Owner.

ARTICLE 10 – CONTRACT DOCUMENTS

10.01 *Contents*

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to 7, inclusive).
 2. Performance Bond (pages 1 to 3, inclusive).
 3. Payment Bond (pages 1 to 3, inclusive).
 4. Iran Government Affidavit (pages 1 to 1, inclusive).
 5. E-Verify Affidavit (pages 1 to 1, inclusive).
 6. General Conditions (pages 1 to 62, inclusive).
 7. Supplementary Conditions (pages 1 to 9, inclusive).
 8. Specifications as listed in the table of contents of the Project Manual.
 9. Drawings consisting of 10 sheets with each sheet bearing the following general title: 2023 Street Resurfacing Project
 10. Addenda (numbers 1 to 1, inclusive).
 11. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor’s Bid (pages 1 to 8, inclusive).
 12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (pages 1 to 1, inclusive).
 - b. Work Change Directives.
 - c. Change Order(s).
 - d. Written Amendments.
- B. The documents listed in Paragraph 10.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 10.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 11 – MISCELLANEOUS

11.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

11.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

11.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

11.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

11.05 *Other Provisions*

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on April 17, 2023 (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR

Town of Thorntown

DC Construction Services, Inc.

By: _____

By: Christopher Knox 

Title: _____

Title: CFO

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest: 

Title: _____

Title: Operations

Address for giving notices:

Address for giving notices:

DC Construction Services
9598 Brooks Way
Penleton, IN 46064

License No.: GC1400003
(Where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

Agent for service of process:

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)

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