

City of Fishers, Indiana
AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement is made and entered into this _____ day of _____, 2020, by and between City of Fishers, One Municipal Drive, Fishers, Indiana 46038 ("Owner") and _____ ("Contractor"), for the project described as "Road Rehabilitation Burberry Contract 20-02"(the "Project") and more particularly detailed in Appendix A (the "Work")

Owner/Engineer:

City of Fishers Engineering Department
One Municipal Drive
Fishers, Indiana 46038

Contractor:

Project:

Road Rehabilitation Burberry Contract 20-02

The Owner and Contractor agree as follows:

RECITALS:

- A. The Owner has caused to be prepared certain plans, specifications and other documents (collectively, the "Contract Documents") for the Project, and the Contractor has filed a bid proposal ("Proposal") to furnish labor, tools, material, equipment and/or services, and to perform the Work called for in the Contract Documents; and
- B. The said Contract Documents accurately and fully describe the terms and conditions upon which the Contractor is willing to furnish the labor, tools, material, equipment, services, and perform the Work called for by the Contract Documents.

THE OWNER AND CONTRACTOR AGREE AS FOLLOWS:

Article 1. Contract Documents. This Agreement consists of the following Contract Documents, all of which are as fully a part of this Agreement as if set out verbatim herein or attached hereto as the Agreement between the parties hereto in all matters and the manner set forth herein and described and consist of this Agreement including any attachments, the Drawings and the Specifications identified herein, and written modifications issued after execution of this Agreement.

A. Conflicts/Order of Precedent. Contractor shall promptly call to the attention of Owner any discrepancy or conflict in the Contract Documents that affect its Work. In the event of conflict or discrepancies between and among the Contract Documents, figure dimensions shall take precedence over scale measurements, large scale details shall take precedence over small scale plans or drawings, and plans or drawings of a later date shall take precedence over those of an earlier date. Any part of the Work shown on the Drawings but not specifically mentioned in the Specifications, or vice versa, shall be considered as part of the Work as though included in both. In the event of an inconsistency or conflict between the Drawings and Specifications, or within either document not clarified by addendum, the provision of a Contract Document expressing the greater quantity, quality or scope of work, or imposing a greater obligation upon the Contractor, or affording a greater right or remedy to the Owner shall govern without regard to the party who drafted such provision. Likewise, the Work to be undertaken by Contractor shall include all incidental work necessary as customarily done for the completion of the Project even though it may not be specifically described in the Contract Documents.

B. Contractor's Review of Contract Documents. Contractor has carefully studied and compared the Contract Documents with each other and with information furnished by Owner and has reported to Owner all errors, inconsistencies or omissions. Contractor shall have no rights against Owner for errors, inconsistencies or omissions in the Contract Documents unless Contractor recognized such error, inconsistency or omission and reported it prior to the date of this Agreement. Contractor shall perform no construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents. Contractor warrants and represents to Owner that the Drawings and Specifications for the Work are suitable and adapted for said Work and guarantees

the sufficiency of said Drawings and Specifications for their intended purpose and agrees that it will perform the Work and complete the same to the satisfaction of Owner.

C. **Enumeration of Contract Documents.** An enumeration of the Contract Documents, other than Modifications, is attached in Appendix B. There are no Contract Documents other than those listed herein. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

Article 2. The Work. The intent of the Agreement is to provide for the construction and completion in every detail of the Work described. Contractor, shall provide all materials, labor, tools, equipment, supplies, safety equipment, transportation and supervision necessary to perform, and shall perform, the Work in a good and workmanlike manner and in accordance with the Contract Documents or reasonably inferable by Contractor as necessary to produce the results intended by the Contract Documents and generally described in Appendix C (all hereinafter called the "Work"). The Contractor shall provide all items, articles, materials and operations or methods to fully and completely construction the Work as detailed on the Contract Documents, including all labor, equipment and incidentals necessary for full completion of the Work. All Work shall be performed in a thorough, first-class and workmanlike manner, conforming to all applicable laws and in accordance with the Contract Documents, including all addenda.

A. **Supervision and Construction Procedures.** Contractor shall supervise and direct the Work using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. Contractor shall be responsible to Owner for the acts and omissions of Contractor's employees, subcontractors, material suppliers, laborers, equipment lessors and all other persons performing portions of the Work. Contractor shall be responsible for the inspection of Work performed under the Contract Documents to determine that the Work is in proper condition to receive subsequent Work.

B. **Labor and Materials.** Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

C. **Taxes.** If required, Contractor shall pay all sales, consumer, use and similar taxes for the Work provided by Contractor.

D. **Permits, Fees and Notices.** Contractor shall secure and pay for the permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work. Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the Work. If Contractor performs Work contrary to laws, statutes, ordinances, codes or rules and regulations, Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

E. **Survey.** Owner shall furnish all available surveys in its possession describing the physical characteristics, legal limitations and utility locations for the site of

the Project, and a legal description of the site. Such items are for informational purposes only and Owner shall not be liable for inaccuracies or omissions therein, nor shall any inaccuracies or omissions in such items relieve Contractor of its responsibility to perform its Work in accordance with the Contract Documents.

F. **Clean-Up.** Contractor shall keep the premises and surrounding area free from the accumulation of waste materials or rubbish caused by operations under the Contract Documents. At completion of the Work, Contractor shall remove from and about the Project waste materials, rubbish, Contractor's tools, construction equipment, machinery and surplus materials. If Contractor fails to clean up, Owner may do so, and the cost thereof shall be charged to Contractor.

G. **Subcontractors.** Before construction commences, Contractor shall furnish in writing to Owner the names of all persons or entities proposed for each principal portion of the Work and their respective Contract Prices. All subcontractors shall be state certified/qualified. Contractor shall not contract with a proposed person or entity to whom Owner has made a reasonable objection. Contractor shall not change a subcontractor, person or entity previously selected if Owner makes reasonable objection to such change.

1. By appropriate agreement, Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor, by the Contract Documents, assumes toward Owner. Each subcontract shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights. Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound. Each subcontract for a portion of the Work is contingently assigned by Contractor to Owner, however, such assignment is effective only after termination of this Agreement by Owner for cause pursuant to Article 14 of the General Conditions and only for those subcontracts which Owner accepts by notifying the subcontractor in writing.

2. Contractor along with its Subcontractors shall assure harmonious labor relations at and adjacent to the Project so as to prevent any delays, disruptions or interference to the Work. Contractor shall prevent strikes, sympathy strikes, slowdowns, work interruptions, jurisdictional disputes or other labor disputes resulting for any reason whatsoever from the acts or failure to act of the employees of Contractor or any of its subcontractors, material suppliers, or other such persons or entities. Contractor agrees that it will bind and require all of its subcontractors, material suppliers and other such persons or entities to agree to all of the provisions of this paragraph. If Contractor or any of its subcontractors, material suppliers or other such persons or entities fail to fulfill any of the covenants set forth in this paragraph, Contractor will be deemed to be in default and substantial violation of the Contract Documents.

H. **Contractor's Representations.** Contractor represents and warrants the following to Owner as a material inducement to Owner to execute this Agreement, which

representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

1. Contractor is able to furnish the tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

2. Contractor has examined and carefully studied the Contract Documents (including the Addenda enumerated herein) and the other related data identified in the Bidding Documents including "technical data."

3. Contractor has visited the site of the Project and is familiar with the local conditions under which the Work is to be performed and has correlated observations with the requirements of the Contract Documents; and

4. Contractor is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

5. Contractor possesses a high level of experience and expertise in the business administration, construction and superintendence of projects of the size, complexity and nature of the Project involving, among other things, the Work to be performed hereunder, and will perform the Work with the care, skill and diligence of such a contractor.

6. Contractor represents and warrants and the Owner awards this Agreement upon the express warranty of the Contractor that he has not, nor has any other member, representative, agent, or officer of the firm, company, corporation or partnership represented by the Contractor:

- a. employed or retained any company or person, to solicit or secure this Agreement;
- b. entered into or offered to enter into any combination, collusion, or agreement to receive or pay and that the Contractor has not received or paid, any fee, commission, percentage, or any other consideration, contingent upon or resulting from the award of and the execution of this Agreement, excepting such consideration and subject to the terms and conditions expressed upon the face of the within Agreement.

7. Contractor has carefully studied all 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 Special Conditions listed in Appendix B, if any. Contractor accepts the determination set forth in the General Conditions of the extent of the "technical data" contained in such reports and drawings upon which Contractor is entitled to rely. Contractor acknowledges that such reports and

drawings are not Contract Documents and may not be complete for Contractor's purposes. Contractor acknowledges that Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents. For a breach or violation of this representation, the Owner shall have the right to cancel this Agreement without liability and to recover, at the election of the Owner, any and all monies or other consideration paid hereunder.

8. 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.

9. 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, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing of the Work.

Article 3. Contractor's Representations related to Unauthorized Aliens.

1. Contractor represents that it is enrolled in and verified the work eligibility status of all newly hired employees of the Contractor through the E-Verify program as defined herein, however, contractor is not required to verify the work eligibility status of all newly hired employees of the Contractor through the E-Verify program if the E-Verify program no longer exists and Contractor signs an Affidavit affirming that the Contractor does not knowingly employ an unauthorized alien. See Appendix D. E-Verify program means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L.104-208), Division C, Title IV, s.403(a), as amended, operated by the United State Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603) (the "E-Verify Program").

2. Contractor and its subcontractor(s) may not knowingly employ or contract with an unauthorized alien; or retain an employee or contract with a person that the Contractor or its subcontractor subsequently learns is an unauthorized alien. If a Contractor violates this requirement, the Owner shall require in writing that the Contractor remedy the violation not later than thirty (30) days after the date the Owner notifies the Contractor of the violation. There is a rebuttable presumption that a Contractor did not knowingly employ an unauthorized alien if the Contractor verified the work eligibility of the employee through the E-Verify Program. If the Contractor fails to remedy the violation within the thirty (30) day period, the Owner shall terminate the Agreement with Contractor for breach. However, if Owner determines that terminating the Agreement would be detrimental to the public interest or public property, the Owner may allow the Agreement to remain in effect until the Owner procures a replacement contractor. If the Owner terminates the Agreement, the Contractor shall be liable to the Owner for any and all actual damages incurred, including but not limited to attorneys' fees.

3. Contractor's subcontractor(s) shall certify to Contractor in a manner consistent with federal law that the Contractor's subcontractor(s), at the time of certification does not knowingly employ or contract with an unauthorized alien; and has enrolled and is participating in the E-Verify Program.

4. Contractor shall maintain in its files a certification of each of its subcontractor(s) throughout the duration of the term of this Agreement and the term of Contractor's subcontract with its subcontractor(s).

5. Termination of the Agreement for violation of this requirement may not be considered by the Contractor or its subcontractor(s) as a breach of contract by the Owner.

Article 4. Project Engineer. If the Project has been designed by the Project Engineer, the Project Engineer is to act as the Owner's representative, assumes all duties and responsibilities, and has the rights and authority assigned to Project Engineer in the Contract Documents in connection with completion of the Work all in accordance with the Contract Documents.

Article 5. Date of Commencement and Completion. Contractor shall commence its Work no later than the date indicated in the Notice to Proceed with the Work to be provided by the Owner to Contractor, and the Work shall be performed regularly, diligently and without interruption at such a rate of progress to achieve Substantial Completion of the Project within Sixty (60_) days after the Contract Time commences to run as provided herein, subject to adjustments authorized by Owner ("Contract Time"). The Work shall be completed and ready for final payment in accordance the General Conditions within Thirty (30_) days after the date when the Contract Time commences to run. The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. Time limits stated in the Contract Documents are of the essence of this Agreement. By executing this Agreement, Contractor confirms that the Contract Time is a reasonable period for performing the Work. Contractor shall not knowingly, except by agreement or instruction of Owner in

writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 5, of the General Conditions.

A. **Commencement.** It is not incumbent upon Owner to notify Contractor when to begin (other than the Notice to Proceed), cease or resume Work, to give early notice of the rejection of faulty Work, nor in any way to superintend so as to relieve Contractor of responsibility or of any consequence of neglect or carelessness by Contractor or its subordinates. All materials and labor shall be furnished at such time as shall be for the best interest of all trades concerned, to the end that the combined Work of all may be properly and fully completed in accordance with the progress schedule.

B. **Overtime.** Owner, if it deems it reasonably necessary, may direct Contractor to work overtime, in addition to any overtime required to meet the progress schedule and, if so directed, Contractor shall Work said overtime. Provided that Contractor is not in default under any of the terms or provisions of the Contract Documents, Contractor will be reimbursed for such actual additional wages paid, if any, at rates which have been approved by Owner plus taxes imposed by law on such additional wages, worker's compensation insurance and levies on such additional wages if required to be paid by Contractor. If, however, the progress of the Work or of the Project be delayed by any fault or neglect or act or failure to act of Contractor or any of its officers, agents, servants, employees or subcontractors, then Contractor shall, in addition to all of the other obligations imposed by this Agreement upon Contractor in such cases, and at its own cost and expense, work such overtime as may be necessary to make up for all time lost and to avoid delay in the completion of the Work and of the Project. If, after written notice is given, Contractor refuses to work overtime required to make up lost time or to avoid delay in the completion of the Work and of the Project, Owner may hire others to perform the Work and deduct the cost from Contractor's Contract Price.

C. **Delay.** Should the progress of the Work or of the Project be delayed by any fault or neglect or act or failure to act of Contractor or any of its officers, agents, servants, employees or subcontractors so as to cause any additional cost, expense, liability or damage to Owner, or any damages or additional costs or expenses for which Owner may or shall become liable, Contractor shall and does hereby agree to compensate Owner for and indemnify it against all such costs, expenses, damages and liability.

D. **Liquidated Damages.** Owner and Contractor 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 herein, plus any extensions allowed in accordance with the Contract Documents. They also recognize the delays, expense and difficulties involved in proving 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 One thousand dollars (\$1,000.00) for each day that expires after the time specified herein for each Intermediate Completion Milestone until the Work is otherwise substantially complete. After Substantial Completion, if Contractor shall neglect, refuse or fail to complete the remaining Work within the time specified herein for completion and readiness for final payment or any proper extension thereof granted by Owner, Contractor shall pay Owner One thousand dollars (\$1,000.00) for each day that expires after the time specified herein for completion and readiness for final payment.

Article 6. Contract Price. The Contractor shall, in strict conformity with the Contract Documents, provide all necessary labor, tools, materials, equipment, services, assume and full all obligations and perform all work required to construction, complete and make ready for use by the Owner at the Unit Prices as provided in the Proposal, and Owner agrees to pay Contractor for the timely and proper performance of the Work, subject to additions and deductions provided therein and in accordance with the Contract Documents in current funds based on the bid prices as set forth in the conformed copy of the Contractor's Bid attached hereto as Appendix E, the sum of _____ dollars and _____ cents, (\$ _____) ("Contract Price"), subject to additions, deletions based on actual approved quantities of the respective unit price items, which Contractor agrees to accept as full payment for all the Work actually performed and as accepted and described in the Contract Documents. The Contractor agrees that each Unit Price shall be deemed full and complete compensation for all direct and indirect costs for the each respective item of Work, including, without limitation, all materials, labor, supervision, equipment, transportation, warranties, repairs, replacement, overhead and profit for the item, complete and in place.

The Contract Price, including authorized adjustments, is the total amount payable by Owner to Contractor for performance of the Work under the Contract Documents. In determining the Contract Price, Contractor has taken into account the level of completeness of the Contract Documents and has exercised its best skill and efforts to make (1) appropriate judgments and inferences in connection with the requirements of the Contract Documents, and (2) all inquiries to clarify the Contract Documents as necessary to calculate and establish the Contract Price. The Contract Price may be changed only by Change Order.

Article 7. Contract Payments. All payments provided herein are subject to funds as provided by Owner and the laws of the State of Indiana. Contractor shall submit Applications for Payment in accordance with Article 13 of the General Conditions. Based on Applications for Payment properly submitted to Owner by Contractor, the Applications for Payment will be processed by Owner as provided in the General Conditions.

A. Progress Payments; Retainage: Owner shall make monthly progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment, no more often than monthly during construction as provided below. Each Application for Payment shall be based on the schedule of values established in paragraph 2.7 of the General Conditions (and in the case of Unit Price Work based on the number of units properly completed) or, in the event there is no schedule of values, as provided in the General Conditions. Such Application for Payment shall be supported by such data substantiating Contractor's right to payment as Owner may require, such as copies of requisitions from subcontractors and material suppliers.

1. Owner reserves the right to inspect the Project and approve the progress of Work completed to the date of the Application for Payment. If requested by Owner prior to making said payment, Contractor shall submit to Owner an Affidavit and partial Waiver of Lien, and/or partial waivers from subcontractors and material suppliers, in form and content satisfactory to Owner, stipulating that all costs for labor and materials incurred in the previous month have been paid to subcontractors, material suppliers, laborers and

equipment lessors. An Application for Payment shall not include requests for payment of amounts Contractor does not intend to pay to a subcontractor or material supplier.

- a. 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 Owner shall determine, or Owner may withhold, in accordance with Article 13 of the General Conditions.
- b. Progress payment will be made for ninety percent (90%) of Work completed (with the balance being held as retainage). If Work is fifty percent (50%) complete as determined by Owner, and if the character and progress of the Work has been satisfactory to Owner, Owner, at its sole discretion and without obligation, may determine that as long as the character and progress of the Work remain satisfactory, there will be no additional retainage on account of Work completed in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to one hundred percent (100%) of the Work properly completed.
- c. Progress payment will be made for ninety percent (90%) of invoice price for materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in Article 13 of the General Conditions).

B. Payment of Subcontractors. The Contractor agrees to assume and does assume full and exclusive responsibility for the payment of subcontractors in compliance with Ind. Code § 36-1-12-13. The Agreement is expressly made an obligation covered by the Contractor's Payment Bond and Performance Bond obligation. The obligation of the surety shall not in any way be affected by the bankruptcy, insolvency, or breach of Agreement of the Contractor.

1. The making of an incorrect certification by the Contractor shall be considered a substantial breach of contract on the part of the Contractor. Based on a breach of contract, the Owner may, in addition to all other remedies, withhold all payments not yet made and recover all payments previously made less that amount which has actually been paid to subcontractors by the Contractor. The obligation is hereby created on the part of the Contractor to return all such payments previously made in such case.

2. Upon receipt of a progress payment, Contractor shall pay promptly all valid bills and charges for materials, equipment, labor and other costs in connection with or arising out of the Work and will hold Owner free and harmless from and against all liens and claims of liens for such materials, equipment, labor and other costs, or any of them, filed against the Project or the site, or any part thereof, and from and against all expenses and liability in connection therewith including, but not limited to, court costs and attorneys' fees. Should any lien or claim of lien be filed of record against the Project, or should Owner receive notice of any claim or of any unpaid bill in connection with the Work,

Contractor shall forthwith either pay or discharge the same and cause the same to be released of record or shall furnish Owner with appropriate indemnity in form and amount satisfactory to Owner.

C. Withholding of Payment. If any claim or lien is made or filed with or against Owner, the Project, the real estate, or contract proceeds by any person claiming that Contractor or any subcontractor or any person for whom Contractor is liable has failed to make payment for labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work, or if at any time there shall be evidence of such non-payment or of any claim or lien which is chargeable to Contractor, or if Contractor or any subcontractor or other person for whom Contractor is liable causes damages to the Work, or if Contractor fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, Owner shall have the right to retain from any payment then due or thereafter to become due an amount which it deems sufficient to (1) satisfy, discharge and/or defend against such claim or lien or any action which may be brought or judgment which may be recovered thereon, (2) make good any such non-payment, damage, failure or default, and (3) compensate Owner for and indemnify him against any and all losses, liability, damages, costs, and expenses, including attorneys' fees and disbursements which may be sustained or incurred in connection therewith. Owner shall have the right to apply and charge against Contractor so much of the amount retained as may be required for the foregoing purposes. If the amount retained is insufficient therefor, Contractor shall be liable for the difference.

1. If Owner withholds any payment, partial or final, from Contractor, Owner may, but shall not be obligated or required to, make direct or joint payment on behalf of Contractor for any part or all of such sums due and owing to said subcontractors, material suppliers, equipment lessors and/or laborers for their labor, materials or equipment furnished to the Project, not to exceed the Contract Price remaining due and owing to Contractor, and charge all such direct payments against the Contract Price; provided, however, that nothing contained in this paragraph shall create any personal liability on the part of Owner to any subcontractor, material supplier, equipment lessor or laborer, or any direct contractual relationship between Owner and them.

D. Substantial Completion. Upon Substantial Completion of the Work in accordance with Article 13 of the General Conditions, the Owner shall pay the Contractor an amount sufficient to increase total payments to Contractor to ninety-eight percent (98%) of the Contract Price (with the balance being retainage), less such amounts as Owner shall determine, or Owner may withhold, in accordance with Article 13 of the General Conditions.

E. Final Payment. Upon final completion and acceptance of the Work in accordance with Article 13 of the General Conditions, Owner shall pay the remainder of the Contract Price as provided in said Article 13.

1. When the Contractor completes the Work in accordance with the Contract Documents and in an acceptable matter as determined by the Owner, the Contractor will prepare a final estimate for the work performed and will furnish the Owner with a copy of

the final estimate. Final payment shall not become due until Contractor submits (a) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents will remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner, (3) a written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, and (5) if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances.

2. The Owner will then certify to the Owner's duly appointed representative the balance due the Contractor and the certificate will be deemed evidence of final acceptance of the completed Agreement by the Owner. Owner shall make final payment to the Contractor within one hundred twenty (120) days after final acceptance and completion of the Agreement. However, final payment may not be made on any amount that is in dispute, but final payment may be made on the part of the Contract Price or those amounts not in dispute.

Acceptance of final payment by Contractor shall constitute a waiver of claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of final payment.

Article 8. Insurance. In addition to the requirements of Article 5 of the General Conditions, Contractor shall name the Owner, and its employees and agents as additional insureds on a primary non-contributory basis in Contractor's Commercial General Liability Policy.

Article 9. Termination and Suspension. The Agreement and the Work may be suspended and/or terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

Article 10. Interest. Unless otherwise expressly provided in the Contract Documents, payments due to Contractor under the terms of the Contract Documents and unpaid shall bear no interest and Contractor shall be entitled to no interest, statutory or otherwise. If the right to interest is expressly provided in the Contract Documents, then such interest shall apply only with respect to liquidated and non-disputed payments, and shall accrue from and after the thirtieth (30th) day following Owner's receipt of a statement of account by Contractor demanding such payment and containing an express statement by Contractor of its intention to assess such interest. In the event Owner is entitled to withhold payment under the Contract Documents, or in the event of a good faith dispute between Owner and Contractor, no interest shall accrue.

Article 11. Owner’s, Contractor’s and Engineer’s Representations.

10.1 The Owner’s Representative is:

Jason Taylor, P.E.
City of Fishers
One Municipal Drive
Fishers, Indiana 46038

10.2 The Contractor’s Representative is:

Article 12. Miscellaneous.

A. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, except for its conflict of laws provisions, as well as with all municipal ordinances and code of the City of Fishers. The parties further agree that, in the event a lawsuit is filed hereunder, the parties waive any rights to a jury trial they may have, agree to file any such lawsuit in an appropriate court in Hamilton County, Indiana only, and agree that such court is the appropriate venue for and has sole jurisdiction over the same.

B. **Terms.** Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

C. **No Assignments.** Owner and Contractor respectively bind themselves, their successors, assigns, and legal representatives to the other party hereto in respect to covenants, agreements, and obligations contained in the Contract Documents. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the prior 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. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under this Agreement.

D. **Severability.** 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.

E. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to the individual or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

F. **Rights and Remedies.** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. No act or failure to act by Owner or Contractor shall constitute a waiver of a right or duty afforded them under this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a thereunder.

G. **No Third Party Beneficiaries.** The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between Owner and Subcontractor or (2) between any persons or entities, other than Owner and Contractor.

H. **Prior Agreements.** This Agreement contains all of the agreements of the parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, and/or contracts, either oral or written, respective thereto. This Agreement, together with any attachments hereto or referenced herein, constitutes the entire agreement between Contractor and Owner with respect to the subject matter hereof, and supersedes all prior oral or written representations and agreements regarding same. Notwithstanding any other term or condition set forth herein, to the extent any term or condition contained in any exhibit attached to this Agreement conflicts with any term or condition contained in this Agreement, the term or condition contained in this Agreement shall govern and prevail, unless the parties hereto, or their successors in interest, expressly and in writing agree otherwise. This Agreement may only be modified by written amendment executed by both parties hereto, or their successors in interest.

I. **Owner's Property.** Any and all documentation (other than original tracings and original calculations) generated by Contractor pursuant to this Agreement shall be considered Owner's exclusive property and shall be disclosed only to the Owner and to not other person without Owner's prior express written consent. Contractor shall keep confidential all working and deliberative material pursuant to Ind. Code §5-14-3-4.

J. **Relationship.** The relationship of the parties hereto shall be as provided for in this Agreement, and Contractor, as well as its agents, employees, contractors, subcontractors, outside sources and other persons shall in no fashion be deemed to be an employee of Owner. Furthermore, Contractor shall be solely responsible for payment to or for its agents, employees, contractors, subcontractors, outside sources and other persons all statutory, contractual and other compensation, benefits and obligations due thereto, and Owner shall not be responsible for same. Rather, the Contract Price to be paid hereunder by Owner to Contractor shall, subject to the terms and conditions hereof, be the full and maximum compensation and monies required of OWNER to be paid to CONTRACTOR pursuant to this Agreement.

Article 13. Dispute Resolution.

A. **Mediation.** The parties shall endeavor to resolve their claims by mediation which, if the parties mutually agree, shall be administered by the Indiana Rules for Alternative Dispute Resolution in effect on the date of the Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Fishers, Indiana, unless another location is mutually agreed upon. Agreements reached

in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

B. Litigation. In the event of any litigation between the Owner and Contractor that arises out of or relates to this Agreement or the Project, the “prevailing party” in such litigation shall be entitled to recover its attorneys’ fees incurred in the litigation. For the purposes of this paragraph, the term “prevailing party” shall mean the party that recovers all or substantially of the relief requested in its pleadings, and includes attorneys’ fees incurred in the collection or enforcement of any judgment. The parties agree that the exclusive and sole venue for any claim arising out of or relating to the Contract shall be any court of competent jurisdiction located in Boone County, Indiana.

IN WITNESS WHEREOF, Owner and Contractor have signed five (5) copies of this Agreement. One counterpart each has been delivered to Owner, Contractor and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or identified by Engineer on their behalf.

IN WITNESS WHEREOF, the parties hereto set their hand on the dates below written:

OWNER:
CITY OF FISHERS

CONTRACTOR:

BY: _____

BY: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTEST:

Date: _____

CITY OF FISHERS, INDIANA

APPENDIX A

Project Description

PROJECT: Road Rehabilitation Burberry Contract 20-02

WORK: Concrete Road Rubblization, Grading, Asphalt Road Paving Work,
and Various ADA curb ramp and curb work in Burberry Place
Subdivision

DESIGN BY: City of Fishers
One Municipal Drive
Fishers, IN 46038

CITY OF FISHERS, INDIANA

Appendix B

Enumeration of Contract Documents

1. This Agreement (pages A-1 to A-15, inclusive).
2. Addenda issued prior to receipt of bid proposals, whether or not receipt thereof has been acknowledged by Contractor in its Proposal numbers ___ to ___ inclusive.
3. Drawings, consisting of a cover sheet and sheets numbered ____ through _____, inclusive with each sheet bearing the general title:
4. Specifications, consisting of all sections listed in Table of Contents thereof with the general title:
 - a. _____

 - b. _____

 - c. _____

5. The Additional Requirements;
6. Contractor's Itemized Proposal and Declarations (pages B-1 to B-___, inclusive);
7. General Conditions (pages G-1 to G-60, inclusive); and
8. All other documents defined as Contract Documents in any of the above listed documents.

CITY OF FISHERS, INDIANA
APPENDIX C
Scope of Work and Locations (the “Work”)

CITY OF FISHERS, INDIANA

APPENDIX D

E-VERIFY AFFIDAVIT

Pursuant to Ind. Code 22-5-1.7-11, the Contractor entering into the Agreement with the City of Fishers is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify Program. The Contractor is not required to verify the work eligibility status of all its newly hired employees through the E-Verify Program if the E-Verify Program no longer exists.

The undersigned, on behalf of the Contractor, being first duly sworn, deposes and states that the Contractor does not knowingly employ and unauthorized alien. The undersigned further affirms that, prior to entering into its Agreement with the City of Fishers, the undersigned Contractor will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify Program.

(Contractor): _____

By (Written Signature) _____

(Printed Name): _____

(Title): _____

Important – Notary Signature and Seal Required in the Space Below

STATE OF _____

SS: _____

COUNTY OF _____

Subscribed and sworn to before me this _____ day of _____, 20__

My commission expires: _____ (Signed): _____

Residing in _____ County, State _____

1986133/15982-10

CITY OF FISHERS, INDIANA
APPENDIX E
Contractor's Itemized Bid Proposal