

CITY OF NOBLESVILLE
NOTICE OF INTENT TO AWARD

TO: Taylor Systems LLC
14701 Cumberland Road Suite 100
Noblesville, IN 46060
(Contractor)

Project Description: City Camera and Door Access Project

The City of Noblesville, Indiana, 16 S. 10th Street, Noblesville, Indiana 46060 ("Owner") has considered the Bid submitted by Contractor for the above described Project in response to its Notice to Bidders dated April, 23, 2024, and Instructions to Bidders. The Owner has accepted the following alternates:

Alternate No. _____ Alternate No. _____ Alternate No. _____
Alternate No. _____ Alternate No. _____ Alternate No. _____

You are hereby notified that your Bid has been accepted for items in the amount of Five Hundred Fifty-Four Thousand Nine Hundred Seventy-Seven Dollars and Eighty-Six Cents (\$554,977.86).

You are required by the Notice to Bidders and Instructions to Bidders to execute the Agreement and furnish the Performance Bond and Payment Bond and Certificates of Insurance required within ten (10) calendar days from the date of this Notice of Award.

If you fail to execute the Agreement and to furnish the Performance Bond and Payment Bond and Certificates of Insurance within seven (7) days from the date of this Notice of Intent to Award, the Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond or certified check. The Owner will be entitled to any other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the Owner.

Dated this 23rd day of April, 2024.

CITY OF NOBLESVILLE

By: 

Title: President, Board of Public Works and Safety

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged by Taylorca Systems, LLC this 23RD day of April, 2024.

**CITY OF NOBLESVILLE
AGREEMENT BETWEEN OWNER AND CONTRACTOR**

This Agreement is made and entered into this 23rd day of April, 2023, by and between City of Noblesville, 16 South 10th Street, Noblesville, Indiana 46060 ("Owner") and Taylorred Systems LLC ("Contractor"), for the project described as "City Camera and Door Access" (the "Project") and more particularly detailed in Appendix A.

Owner:

City of Noblesville
16 South 10th Street
Noblesville, Indiana 46060

Project Engineer :

Contractor:

Project:

City Camera and Door Access as defined in appendix A

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.** Any applicable permits, fees, and notices are referenced in the Special Provisions under item SP 6.

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.

H. **Subcontracts.** 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.

I. **Project Labor Relations.** 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.

J. **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.
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 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; or
 - 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. If the Project Engineer will not act as the Owner's representative, then the Owner's engineer will serve in this role.

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 as specified in the Special Provisions. The Work shall be completed and ready for final payment in accordance the General Conditions and Special Provisions. 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. **Time.** Time is of the essence of the Agreement. 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. The Work will be performed as required by Owner's Schedule, consistent with the Substantial Completion and Final Completion Dates. Owner may modify this Schedule. If the Work is delayed by Owner, the Substantial Completion Date will be extended. Contractor must request an extension of the Substantial Completion Date in writing to Owner no later than forty-eight (48) hours after the beginning of the condition causing the delay or Contractor's claim will be waived. Contractor will provide Owner with an estimate of the duration of delay. An extension of the Completion Date will be Contractor's sole remedy for any delay.

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. **Submittals.** Contractor shall timely prepare, review, approve and submit to Owner all shop drawings, product data and samples required for the Work by the

Contract Documents ("Submittals"). Contractor must verify all materials, field measurements and field construction criteria. Contractor must strictly comply with the requirements of the Contract Documents even if Submittals are approved by Owner.

E. **Safety.** Contractor must take all reasonable safety precautions for the Project and comply with all safety requirements and regulations as may be provided elsewhere in the Contract Documents and by applicable laws, ordinances, rules, regulations and orders of public authorities having jurisdiction over the Project. Contractor warrants that: (a) the duty to provide a safe place for Contractor's Work for Contractor's employees, the employees of any other entity, or any other person on or about the Project site rests solely with the Contractor; (b) the duty to provide general or safety supervision and safety inspections of the Work, equipment, and procedures of the Contractor, its subcontractors, and of others as it might affect the safety of property or persons related to the performance of the Work under this Agreement rests solely with the Contractor; (c) the Contractor shall designate a person in its employ, stationed full time at the jobsite during the progress of the Work, and such person shall be authorized to take prompt action in matters relating to safety on behalf of Contractor. Such person shall be knowledgeable in matters relating to safety through either training or experience or both. Such person shall attend all safety meetings or safety inspections held at the jobsite and take appropriate action to correct unsafe work practices which come to his attention or Contractor's attention; and (d) the duty to take reasonable safety precautions with respect to the handling of hazardous substances, Project site cleanliness, and emergency procedures and to comply with necessary safety measures and with applicable laws, ordinances, rules, regulations, and orders of public authorities for the safety of persons and property, including but not limited to applicable OSHA standards, related to the performance of the Contractor's Work under this Agreement rests solely with the Contractor.

The Contractor shall indemnify, defend and save Owner harmless from any liability, loss, cost penalty, damage or expense, including attorneys' fees, damage, injury, course of action, proceeding, citation, or work stoppage arising out of or in any way connected with any alleged violation by Contractor of any such statute, regulation, order, rule, requirement or standard and such sums shall be deducted from amounts due under this agreement.

F. **Warranty.** In addition to Contractor's obligations to correct defective or non-conforming Work provided by law or as may be provided elsewhere in the Contract Documents, Contractor warrants to the Owner that materials and equipment furnished by Contractor will be of good quality and new unless otherwise permitted by the Contract Documents and the Work will be free from defects and conform to the requirements of the Contract Documents. Contractor will immediately correct, at Contractor's expense, all defects and non-conformance in workmanship or materials which appear within three (3) years from the completion of the Project. This warranty is in addition to all special or extended warranties. Contractor must indemnify Owner against, and reimburse Owner for, all claims, damages and expenses, including attorneys' fees, incurred by Owner as a result of Contractor's failure to abide by its warranty obligations.

Article 6. Contract Price. The Contractor shall, in strict conformity with the Contract Documents, provide and perform all Work at the Unit Prices provided in the Bid Proposal, and Owner agrees to pay Contractor for the timely and proper performance of the Work, subject to additions and deductions in accordance with the Contract Documents, in current funds based on the Unit Prices and the Bid Proposal attached as Appendix E, when multiplied by the estimated unit quantities the total estimated sum of _____ \$_____ (the "Contract Price"), subject to actual final approved quantities, which Contractor agrees to accept as full and final payment for all the Work performed, accepted and described in the Contract Documents. The Contractor understands that all Work shall be compensated on a Unit Price basis and that the Owner and Engineer cannot and do not guarantee the quantity of any Item of Work to be performed under the Agreement. The Contractor agrees that each Unit Price shall be deemed full and complete compensation for all direct and indirect costs for the 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. 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. 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. It recognizes that 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 liquidated damages for each day that expires after the time specified herein for Substantial Completion until the Work is otherwise substantially complete as defined in the Special Provisions. 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 liquidated damages for each day that expires after the time specified herein for completion and readiness for final payment as defined in the Special Provisions.

Article 8. 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 Section

2.3 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-five (95%) 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, 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 direct liability on the part of Owner to any subcontractor, material supplier, equipment lessor or laborer, or any direct contractual relationship with Owner.

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-five percent (95%) 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 ninety-one (91) 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 9. Insurance and Indemnification.

A. In addition to the requirements of Article 5 of the General Conditions, Contractor shall, prior to commencing the Work, purchase and maintain from insurance companies lawfully authorized to do business in Indiana policies of insurance acceptable to the Owner, which afford the coverages set forth below. Insurance shall be written for not less than limits of liability specified or required by law, whichever coverage is greater, and shall include coverage for Contractor's indemnification obligations contained in this Agreement. Certificates of Insurance acceptable to the Owner shall be given to the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. Each policy must be endorsed to provide that the policy will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner; provided however that such policies may be cancelled with only ten (10) days' prior notice for non-payment of premium. The required coverages and limits which Contractor is required to obtain are as follows:

1. Commercial General Liability

Limits of Liability: \$2,000,000 General Aggregate
\$2,000,000 Products & Completed Operations.
\$1,000,000 Bodily Injury / Prop. Damage
\$1,000,000 Personal / Advertising Injury
\$1,000,000 Each Occurrence

The Commercial General Liability Policy must be endorsed to provide that the general aggregate amount applies separately to each of Contractor's separate projects. ISO Endorsement *CG2503 Per Project Endorsement* or its equivalent shall be used to satisfy this requirement.

2. Automobile Liability

Limits of Liability: \$1,000,000 Per Accident
Coverage Details All owned, non-owned, & hired vehicles

3. Workers Compensation and Employer's Liability

Coverage A (Worker's Comp.) Statutory Minimum Requirements
Coverage B
Employer's Liability: \$1,000,000 Each Accident

\$1,000,000 Disease – each employee
\$1,000,000 Disease Policy Limit

4. **Excess Liability (Umbrella Form)**

Limits of Liability: \$5,000,000 Each Occurrence

- B. All coverage provided above shall be endorsed to include the Owner as an additional insured except for the Worker's Compensation / Employer's Liability policy. ISO forms CG 2010 07 04 and CG 2037, or equivalent endorsement forms must be used on the commercial general liability policy to provide additional insured status to the Owner and shall include coverage for completed operations. The policies for which the Owner is named as additional insured shall provide primary and non-contributing coverage and any valid and collectible insurance carried separately by the Owner shall be in excess of the limits provided by such policies and shall be non-contributory. To the extent commercially reasonable, all insurance requirements and limits shall apply to all of Contractor's subcontractors and sub-subcontractors and Contractor is responsible to verify those insurance requirements and limits. The commercial general liability, automobile liability, and workman's compensation policies must be endorsed to provide a waiver of subrogation in favor of Owner.
- C. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by the Contractor with reasonable promptness.
- D. **Property Insurance / Builder's Risk.** Unless otherwise provided, the Contractor shall purchase and maintain, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied or installed by others, comprising total value for the entire Work at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered, whichever is later. This

insurance shall include interests of the Owner, the Contractor, subcontractors and sub-subcontractors in the Project. Property insurance shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Contractor's services and expenses required as a result of such insured loss.

E. Indemnification.

1. The Contractor shall defend, indemnify and hold harmless the Owner and its board, agents and employees of any of them ("Indemnities") from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that 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 loss of use, caused by Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section. The Contractor's indemnification under this Section shall survive both final payment and the termination of this Agreement.
2. In claims against any person or entity indemnified under this section by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.
3. The Contractor shall indemnify and defend, at the Contractor's sole expense, the Indemnitees as set forth herein from and against any actions, lawsuits, proceedings or claims resulting from claim filed or asserted against the Work, the Project and any improvements thereon, the Contract Sum or any applicable retainage by a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. If the Contractor refuses

an Indemnitee's demand for a defense and indemnification, the Contractor shall reimburse the Owner for all its costs incurred as a result of any such lien or claim including but not limited to, any judgment resulting from any actions, lawsuits or proceedings. If the Contractor disputes a claim, the Contractor shall have the right to contest such claim but such right shall not in any way abridge, modify or nullify the Contractor's obligations to the Indemnitees.

Article 10. 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 11. 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 12. Owner's, Contractor's and Engineer's Representations.

The Owner's Representative is:

Adam Hedden

City of Noblesville
16 South 10th Street
Noblesville, Indiana 46060

The Contractor's Representative is:

Greg Monts, Director of Low Voltage Technologies
Tanored Systems LLC
14701 Cumberland Rd, Ste #100
Noblesville, IN 46060

Article 13 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 Owner. 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.

K. Contractor and all Subcontractors are responsible to comply with Indiana Code as it pertains to public works projects. The following are notable requirements set forth in IC §5-16-13, in effect as of July 1, 2015, but are not inclusive of all requirements.

1. Contractor shall self-perform Work of at least 15 percent of total Contract Price.
2. Contractor and all Subcontractors, regardless of tier, shall maintain General Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 in aggregate.
3. Contractor and all Subcontractors, regardless of tier, shall not pay cash to its employees for Work performed on this public works Project.
4. Contractor and all Subcontractors, regardless of tier, shall comply with federal Fair Labor Standards Act of 1938.
5. Contractor and all Subcontractors, regardless of tier, shall be in compliance with workers compensation requirements of Indiana Code §22-3-5-1 and Indiana Code §22-3-7-34 and commits worker's compensation fraud if such Contractor or Subcontractor falsely classifies an employee as an independent contractor, sole proprietor, owner, partner, officer, or member of a limited liability company.
6. Contractor and all Subcontractor, regardless of tier, shall be in compliance with unemployment compensation system requirements of Indiana Code §22-4-1 through §22-4-39-5.

7. Contractor and all Subcontractors, regardless of tier, shall be in compliance with requirements for drug testing of its employees set forth in Indiana Code §4-13-18-1 through §4-13-18-7.

L. Following provisions shall be in effect for Contracts awarded after December 31, 2016.

1. Contractor and all Subcontractors, regardless of tier, that are performing the constructing, altering, demolishing, or renovating of a public building or other structure must be qualified by the Indiana Department of Administration, and those contractors and subcontractors that are constructing, altering, or repairing highways, streets, or alleys must be qualified by INDOT.
 - a. Suppliers of material are not required to be qualified by IDOA prior to doing work on public works projects. A "Supplier" is defined as "any person supplying materials, but no on-site labor, to a Contractor or Subcontractor. IC §4-13.6-1-20.
 - b. Contractors and Subcontractors, regardless of tier, performing work for local governmental entities awarded under Indiana Code §36-1-12 and whose contracts are less than \$300,000 are not required to have been qualified by IDOA or INDOT.
2. For public works by local governmental entities under Ind. Code §36-1-12, Contractor and its Subcontractors shall comply with requirements for drug testing of its employees set forth in Ind. Code §4-13-18 if estimated cost of public works Contract is at least \$150,000.
3. Contractor and all Subcontractors, regardless of tier, shall preserve its payroll and related records for three (3) years after completion of the project work and such records shall be open to inspection by the Indiana Department of Workforce Development.
4. If Contractor or Subcontractor, regardless of tier, employs 10 or more employees, then such Contractor/Subcontractor shall provide access to a training program applicable to tasks to be performed in normal course of employee's employment. Contractor or Subcontractor may comply with this training requirement through one of following: (i) an apprenticeship program; (ii) a program offered by Ivy Tech Community College of Indiana or Vincennes University; (iii) a program established by or for Contractor Subcontractor; (iv) a program offered by an entity sponsored by U.

S. Department of Labor, Bureau of Apprenticeship and Training; (v) a program that results in award of an industry recognized portable certification; (vi) a program approved by Federal Highway Administration; or (vii) a program approved by INDOT.

5. If Contractor or first tier Subcontractor employs more than 50 journeymen, such Contractor/first tier Subcontractor shall participate in an apprenticeship or training program that meets standards established by or has been approved by any of following: U.S. Department of Labor, Bureau of Apprenticeship and Training; Indiana Department of Labor; Federal Highway Administration; or INDOT.

M. Contractor shall maintain policies of employment as follows:

1. Pursuant to the requirements of Indiana Code §22-9-1-10 and §5-16-6-1, Contractor and its Subcontractors may not discriminate against any employee or applicant for employment to be employed in the performance of such contract, with respect to his hire, tenure, terms, conditions or privileges of employment of any matter directly or indirectly related to employment because of his race, religion, color, sex, handicap, national origin or ancestry. The Contractor and Subcontractor, if any, agrees to comply with all the provisions contained in the Equal Opportunity Clause quoted in Executive Orders No. 11246 and No. 11375. In addition, the Contractor shall cause this Equal Opportunity Clause to be included in the subcontracts or purchase orders hereunder unless exempted by rules, regulations and orders of the Secretary of Labor issued pursuant to Section 204 of the executive Orders No. 11246 and No. 11375 as amended. Breach of this covenant may be regarded as a material breach of contract.
2. Contractor and Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them on their behalf, state all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, handicap, national origin or ancestry.

N. **Contractor Not Suspended or Debarred.** By signing this Agreement, Contractor certifies that Contractor, its principals or sub-recipients are not suspended or debarred by Federal Government, nor is known suspension or debarment procedure pending. Contractor agrees to notify the Owner in writing of suspension or debarment, or potential suspension or debarment proceeding. Failure to report suspension or debarment, or potential suspension or debarment will be sufficient cause to terminate this Agreement and report such termination to Federal authorities.

O. **Drug Testing Program.** The laws of the State of Indiana (IC §36-1-12-24 as amended) contain certain special provisions regarding drug testing of employees of public works Contractors and Subcontractors. As determined by the Owner, projects estimated to be in excess of \$150,000.00 will be governed by these provisions. These provisions require, among other things, that the Contractor submit with the bid a written plan for a program to test the Contractor's employees for drugs. In addition, each successful Bidder will be required to comply with all applicable provisions of the statute referred to above with respect to each Bidder's Subcontractors, as the term "Subcontractor" is defined in the statute referred to above.

P. **Fire Arms.** There shall be no firearms allowed on the Project Site or anywhere within the Project property. Exceptions would be made for law enforcement officials, security forces required elsewhere by these Specifications, or per other requirements or allowances specifically made by the Owner.

Q. **Nondiscrimination.** The Contractor shall perform, observe and comply with all applicable State, Municipal and Federal laws, rules, regulations and Executive Orders pertaining to nondiscrimination against employees or applicants for employment because of race, color, religion, sex, handicap, disability, national origin or ancestry. During the performance of this Contract, the Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 and the regulations promulgated thereunder. When required by such laws, rules, regulations and Executive Orders, the Contractor shall include nondiscrimination provisions in all contracts and purchase orders.

The Contractor agrees that:

1. In the hiring of employees for the performance of work under this Contract or any subcontract hereunder, neither the Contractor, any Subcontractor, nor any person acting on behalf of the Contractor or Subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry or handicap, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates;
2. Neither the Contractor, Subcontractor, nor any person on their behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, religion, color, sex, national origin or ancestry, or handicap;
3. There may be deducted from the amount payable to the Contractor by the Owner, under this Contract, 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 these nondiscrimination provisions; and

4. This Contract may be canceled 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 these nondiscrimination provisions.

R. **American Steel.** To the extent that the Contractor's performance of the Work entails the use of purchase of steel products (as defined in I.C. §5-16-8-1, as amended from time to time), then Contractor warrants that only steel products made in the United States shall be used or supplied in the performance of the Contract and in the performance of any subcontracts.

S. **Open Competition.** Where in these Specifications one or more certain materials, trade names, or articles of certain manufacture are mentioned, it is done for the express purpose of establishing a basis of durability and efficiency and not for the purpose of limiting competition. Other names or materials can be used, if in the opinion of the Architect they are equal in durability and efficiency to those mentioned and of a design in harmony within the work as outlined and the Architect gives written approval of a substitution before the articles and material are ordered by the Contractor

Article 14 Dispute Resolution.

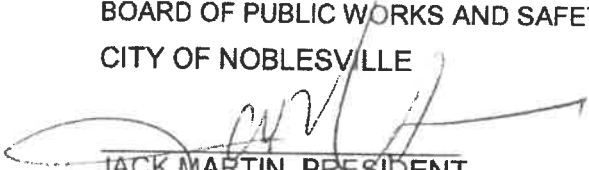
A. **Mediation.** The parties shall endeavor to resolve their claims by mediation which, if the parties mutually agree, shall be administered by the Indiana Rules for Alternative Dispute Resolution in effect on the date of the Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Noblesville, 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 Owner in such litigation shall be entitled to recover its attorneys' fees incurred in the litigation 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 Hamilton 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:
BOARD OF PUBLIC WORKS AND SAFETY
CITY OF NOBLESVILLE


JACK MARTIN, PRESIDENT


JOHN DITSLEAR, MEMBER


LAURIE DYER, MEMBER


ROBERT J. ELMER, MEMBER


RICK L. TAYLOR, MEMBER

CONTRACTOR:
CONTRACTOR NAME

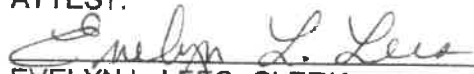
BY: 

Printed Name: Amy Hart-Ramey

Title: President & GM

Date: 4-23-24

ATTEST:


EVELYN L. LEES, CLERK
CITY OF NOBLESVILLE, INDIANA

Date: 4-23-24

CITY OF NOBLESVILLE, INDIANA

APPENDIX A
Project Description

PROJECT: City Camera and Door Access _____

WORK: See attached Noblesville City Camera and Door Access General
Scope of Work _____

CITY OF NOBLESVILLE, INDIANA

Appendix B

Enumeration of Contract Documents

1. This Agreement (pages A-1 to A-25, 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.
4. Specifications, consisting of all sections listed in Table of Contents thereof with the general title:
 - a. City Camera and Door Access. attached hereto.
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-67, inclusive);
8. Special Conditions (w/ Underground Facilities); and
9. All other documents defined as Contract Documents in any of the above listed documents.

CITY OF NOBLESVILLE, INDIANA
APPENDIX C
Scope of Work and Locations (the "Work")

Description of Work: City Camera and Door Access

See attached "City Camera and Door Access Project General Scope of Work" document.

CITY OF NOBLESVILLE
E-VERIFY AFFIDAVIT

Pursuant to Ind. Code 22-5-1.7-11, the Contractor entering into the Agreement with the City of Noblesville 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 Noblesville, 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): Taylor Systems LLC

By (Written Signature) Amy Hart-Ramey

(Printed Name): Amy Hart-Ramey

(Title): President and General manager

Important – Notary Signature and Seal Required in the Space Below

STATE OF INDIANA

SS: _____

COUNTY OF HAMILTON

Subscribed and sworn to before me this 5th day of April, 2024.

My commission expires: 2/25/2032 (Signed): Loann King Verbeke

Residing in Hamilton County, State Indiana

CITY OF NOBLESVILLE, INDIANA

APPENDIX E

Contractor's Itemized Bid Proposal



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/24/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Cooper Risk Advisors, LLC 904 N Main St Lapel IN 46051	CONTACT NAME: Debbie Buckner PHONE (A/C, No, Ext): 765-534-3152 E-MAIL ADDRESS:	FAX (A/C, No): 765-534-2067
	INSURER(S) AFFORDING COVERAGE	
INSURED Taylored Systems, LLC 14701 Cumberland Road, Ste 100 Noblesville IN 46060	INSURER A: Indiana Farmers Mutual Insurance Company	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES **CERTIFICATE NUMBER:** 1365113290 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		CPP1019894	9/1/2023	9/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			CAP1012538	9/1/2023	9/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP1004206	9/1/2023	9/1/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WCP1009066	9/1/2023	9/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Leased/Rented Equip			CPP1019894	9/1/2023	9/1/2024	Limit 125,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 City of Noblesville is named as additional insured regarding general liability and auto liability. Coverage is primary and non-contributory. A waiver of subrogation applies in favor of the additional insured on general liability, auto liability, and workers compensation. Umbrella policy is following form.

CERTIFICATE HOLDER

City of Noblesville
 16 South 10th Street
 Noblesville IN 46060
 USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. 100420768

AIA Document A312

Payment Bond

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

CONTRACTOR (Name and Address):

Taylor Systems, LLC.
14701 Cumberland Rd Ste 100
NOBLESVILLE, IN 46060

OWNER (Name and Address):

City of Noblesville
16 S. 10th Street
Noblesville, IN 46060

CONSTRUCTION CONTRACT

Date: April 23, 2024

Amount: \$554,977.86

Description (Name and Location): Removal of existing analog cameras and cabling and installing new cameras, replacing video recording systems, and door access

BOND

Date (Not earlier than Construction Contract Date): April 24, 2024

Amount: \$554,977.86

Modifications to this Bond:

None

See Page 6

CONTRACTOR AS PRINCIPAL

Company: Taylor Systems, LLC. (Corporate Seal)

Signature: *Amy Hart-Ramey*
Name and Title: Amy Hart-Ramey
President

(Any additional signatures appear on page 6)

SURETY

Company: Merchants Bonding Company (Mutual) (Corporate Seal)

Signature: *Debbie S Buckner*
Name and Title: Debbie S Buckner
Attorney-In-Fact

(FOR INFORMATION ONLY — Name, Address and Telephone)

AGENT or BROKER:

Cooper Risk Advisors LLC
PO Box 638
Lapel, IN 46051
765-534-3152

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

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

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, indemnities, and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment 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 written notice to the Contractor and sent a copy, or notice thereof, 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 either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above 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, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to 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 the 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 any 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 4.2.3, 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.

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 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. 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.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

Section 6 is modified by adding section 6.3.

6.3 The Surety's failure to discharge its obligations under this Section 6 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a claim. However, if the Surety fails to discharge its obligations under this Section 6, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs to recover any sums found to be due and owing to the Claimant.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company:

(Corporate Seal)

SURETY
Company:

(Corporate Seal)

Signature: _____
Name and Title:
Address:

Signature: _____
Name and Title:
Address:

MERCHANTS BONDING COMPANY™

POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa, d/b/a Merchants National Indemnity Company (in California only) (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Debbie S Buckner

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 24th day of April, 2024.



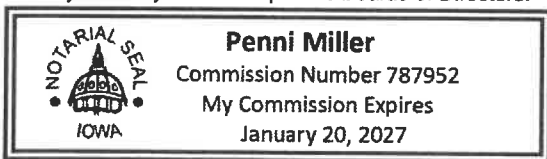
MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.
d/b/a MERCHANTS NATIONAL INDEMNITY COMPANY

By

Larry Taylor
President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 24th day of April, 2024, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



(Expiration of notary's commission does not invalidate this instrument)

[Signature]
Notary Public

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 24th day of April, 2024.



William Warner Jr.
Secretary

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. 100420768

AIA Document A312

Performance Bond

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

CONTRACTOR (Name and Address):

Taylorred Systems, LLC.
14701 Cumberland Rd Ste 100
NOBLESVILLE, IN 46060

OWNER (Name and Address):

City of Noblesville
16 S. 10th Street
Noblesville, IN 46060

CONSTRUCTION CONTRACT

Date: April 23, 2024

Amount: \$554,977.86

Description (Name and Location): Removal of existing analog cameras and cabling and installing new cameras, replacing video recording systems, and door access

BOND

Date (Not earlier than Construction Contract Date): April 24, 2024

Amount: \$554,977.86

Modifications to this Bond:

None

See Page 3

CONTRACTOR AS PRINCIPAL

Company: Taylorred Systems, LLC. (Corporate Seal)

Signature: *Amy Hart-Ramey*
Name and Title: Amy Hart-Ramey
President

(Any additional signatures appear on page 3)

SURETY

Company: Merchants Bonding Company (Mutual) (Corporate Seal)

Signature: *Debbie S Buckner*
Name and Title: Debbie S Buckner
Attorney-In-Fact

(FOR INFORMATION ONLY — Name, Address and Telephone)

AGENT or BROKER:

Cooper Risk Advisors LLC
PO Box 638
Lapel, IN 46051
765-534-3152

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 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.

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 If there is no Owner Default, 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; and

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

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

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

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

4.3 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 incurred by the Owner resulting from the Contractor's default; or

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

- .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 therefore to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner citing reasons therefore.

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 4.4, and the Owner refuses the payment tendered or the Surety had 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 elects to act under Subparagraph 4.1, 4.2, or 4.3 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 and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

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.

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

8 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.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 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. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 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.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 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.

12.4 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.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name and Title:

Address:

Signature: _____

Name and Title:

Address: