

BILL NO. S-15-10-30

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONSTRUCTION CONTRACT - N. CLINTON STREET PAVEMENT REHABILITATION - PHASE I CONSTRUCTION - BOARD OF WORKS RESOLUTION #12441 - WORK ORDER: 12441 - \$2,147,733.95 between PRIMCO INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the CONSTRUCTION CONTRACT - N. CLINTON STREET PAVEMENT REHABILITATION - PHASE I CONSTRUCTION - BOARD OF WORKS RESOLUTION #12441 - WORK ORDER: 12441 - \$2,147,733.95 by and between PRIMCO INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for rehabilitation of the four (4) lanes of North Clinton St. from Coliseum to Washington Center. Project includes conversion of the roadway surface from concrete to asphalt, reconstruction of the curbing and turn lanes, adding of green infrastructure in the existing ditch lines, improved lighting at the intersections, and landscaping along the route.

involving a total cost of TWO MILLION ONE HUNDRED FORTY-SEVEN THOUSAND SEVEN HUNDRED THIRTY-THREE AND 95/100 DOLLARS - (\$2,147,733.95). A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

INSTRUCTIONS FOR USE: PLEASE DO NOT SAVE THIS DOCUMENT WITHOUT CHANGING THE NAME

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PROJECT #: 12441

(SHOWS IN 8 PLACES IN CONTRACT)

YEAR: 2015

CONTRACTOR: PRIMCO INC.

(SHOWS IN 2 PLACES IN CONTRACT)

PROJECT DESCRIPTION: NORTH CLINTON STREET PAVEMENT REHABILITATION

(SHOWS IN 2 PLACES IN CONTRACT)

AMOUNT OF CONTRACT: 2,147,733.95

(SHOWS IN 1 PLACE IN CONTRACT)

RETAINAGE FILL INS:

WRITTEN PERCENTAGE: FIVE

(SHOWS IN 2 PLACE IN CONTRACT)

NUMERIC PERCENTAGE: 5%

(SHOWS IN 5 PLACES IN CONTRACT)

NOT TO EXCEED PERCENTAGE: 95%

(SHOWS IN 3 PLACES IN CONTRACT)

CONTRACTOR'S PROPOSAL DATE: 9/9/2015

(SHOWS IN 1 PLACE IN CONTRACT)

COMPLETION DATE: 10/15/2016

(SHOWS IN 1 PLACE IN CONTRACT)

Update Fields

Form 96		best bid column	
Non-Collusion Affidavit		X	X
Cert In Lieu/Financial Statement		X	X
Bidder's Bond		X	X
Street Barricade Maint Info		X	X
EBE Declaration Form		X	X
Indiana Legal Employment Declaration		X	X
Addendum No. 1		X	X
Addendum No. 2		X	X
Addendum No. 3		X	X
TOTAL:	\$2,239,538.81	TOTAL:	\$2,147,733.95
		TOTAL:	\$2,277,281.00
% over	0.00%	% over	1.69%
% under	4.10%	% under	0.00%

Bid Tabulation

proj:	North Clinton Street Pavement Rehabilitation-Phase 1				RES. NO.:	12441				
Bid					W.O. NO.:	12441	BIDDER:	PRIMCO, INC.	BIDDER:	BROOKS CONSTRUCTION
Date:	10/12/15	estimate								
ITEM NO.	ITEM	PLAN QTY	UNIT	UNIT COST Est (\$)	AMOUNT Est (\$)	UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)	
1	Construction Engineering	1	LS	\$42,000.00	\$42,000.00	\$41,800.00	\$41,800.00	\$15,000.00	\$15,000.00	
2	Mobilization and Demobilization	1	LS	\$105,000.00	\$105,000.00	\$102,295.92	\$102,295.92	\$113,000.00	\$113,000.00	
3	Clearing Right of Way	1	LS	\$22,000.00	\$22,000.00	\$35,191.72	\$35,191.72	\$15,000.00	\$15,000.00	
4	Center Curb Concrete Remove	205	SYS	\$32.00	\$6,560.00	\$27.57	\$5,651.85	\$23.00	\$4,715.00	
5	Curb, Concrete Integral, Remove	3328	LFT	\$10.00	\$33,280.00	\$8.30	\$27,622.40	\$9.00	\$29,952.00	
6	Curb, Concrete, Remove	323	LFT	\$9.00	\$2,907.00	\$9.30	\$3,003.90	\$9.00	\$2,907.00	
7	Inlet, Remove	2	EACH	\$400.00	\$800.00	\$500.00	\$1,000.00	\$500.00	\$1,000.00	
8	Concrete, Remove	181	SYS	\$9.50	\$1,719.50	\$11.90	\$2,153.90	\$18.50	\$3,348.50	
9	Curb, Asphalt, Remove	33	LFT	\$22.00	\$726.00	\$8.00	\$264.00	\$15.00	\$495.00	
10	Excavation, Common	1419	CYS	\$20.00	\$28,380.00	\$40.53	\$57,512.07	\$42.00	\$59,598.00	
11	Linear Grading	24726	LFT	\$6.75	\$166,900.50	\$2.12	\$52,419.12	\$1.70	\$42,034.20	
12	Temporary Check Dam, Revetment Riprap	1075	TON	\$51.50	\$55,362.50	\$39.70	\$42,677.50	\$47.00	\$50,525.00	
13	Temporary Inlet Protection	16	EACH	\$125.00	\$2,000.00	\$125.00	\$2,000.00	\$45.00	\$720.00	

14	Temporary Silt Fence	2000	LFT	\$2.60	\$5,200.00	\$1.35	\$2,700.00	\$1.35	\$2,700.00
15	Structural Backfill, Type 1	12	CYS	\$23.95	\$287.40	\$40.00	\$480.00	\$31.00	\$372.00
16	Compacted Aggregate, No. 53, Base	60	TON	\$22.50	\$1,350.00	\$30.05	\$1,803.00	\$30.00	\$1,800.00
17	Compacted Aggregate No. 53	875	TON	\$20.00	\$17,500.00	\$26.50	\$23,187.50	\$24.00	\$21,000.00
18	Compacted Aggregate No. 53, Temp for Driveways	300	TON	\$20.00	\$6,000.00	\$36.35	\$10,905.00	\$30.00	\$9,000.00
19	PCCP Patching, Full Depth	3312	SYS	\$64.00	\$211,968.00	\$110.15	\$364,816.80	\$120.00	\$397,440.00
20	Milling, Asphalt, 1 1/2in	0	SYS	\$1.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
21	Milling, Transition	3239	SYS	\$1.18	\$3,822.02	\$2.00	\$6,478.00	\$5.00	\$16,195.00
22	Milling, Asphalt, 5in	614	SYS	\$2.85	\$1,749.90	\$3.00	\$1,842.00	\$6.00	\$3,684.00
23	HMA Surface, Type C	3829	TON	\$69.50	\$266,115.50	\$60.00	\$229,740.00	\$65.00	\$248,885.00
24	HMA Intermediate, Type C	6298	TON	\$64.50	\$406,221.00	\$42.00	\$264,516.00	\$55.00	\$346,390.00
25	HMA Patching, Type C	389	TON	\$100.00	\$38,900.00	\$90.00	\$35,010.00	\$70.00	\$27,230.00
26	HMA Wedge and Level, Type C	124	TON	\$80.00	\$9,920.00	\$58.00	\$7,192.00	\$95.00	\$11,780.00
27	Joint Adhesive, Surface	21320	LFT	\$0.20	\$4,264.00	\$0.40	\$8,528.00	\$0.11	\$2,345.20
28	Joint Adhesive, Intermediate	21320	LFT	\$0.24	\$5,116.80	\$0.40	\$8,528.00	\$0.17	\$3,624.40
29	Liquid Asphalt Sealant	21320	LFT	\$0.10	\$2,132.00	\$0.15	\$3,198.00	\$0.08	\$1,705.60
30	Asphalt for Tack Coat	22	TON	\$200.00	\$4,400.00	\$50.00	\$1,100.00	\$500.00	\$11,000.00
31	Sawing and Sealing of Bituminous Overlays	14255	LFT	\$2.50	\$35,637.50	\$2.29	\$32,643.95	\$2.00	\$28,510.00
32	Retrofit Load Transfer	66	EACH	\$125.00	\$8,250.00	\$140.00	\$9,240.00	\$140.00	\$9,240.00
33	Curb Ramp, Concrete, C	8	SYS	\$195.00	\$1,560.00	\$150.05	\$1,200.40	\$160.00	\$1,280.00
34	Curb Ramp, Concrete, K	20	SYS	\$195.00	\$3,900.00	\$150.05	\$3,001.00	\$160.00	\$3,200.00
35	Curb Ramp, Concrete, M	4	SYS	\$170.00	\$680.00	\$150.05	\$600.20	\$160.00	\$640.00
36	Curb, Concrete	3735	LFT	\$20.00	\$74,700.00	\$12.75	\$47,621.25	\$19.00	\$70,965.00
37	Center Curb, Concrete C, Modified	459	LFT	\$26.00	\$11,934.00	\$65.50	\$30,064.50	\$52.00	\$23,868.00

38	Center Curb, Concrete C	464	LFT	\$55.00	\$25,520.00	\$54.95	\$25,496.80	\$52.00	\$24,128.00
39	Curb Turnout	9	EACH	\$570.73	\$5,136.57	\$590.00	\$5,310.00	\$650.00	\$5,850.00
40	PCCP for Approaches 8 in	181	SYS	\$131.33	\$23,770.73	\$50.48	\$9,136.88	\$75.00	\$13,575.00
41	Mobilization and Demobilization for Seeding	1	EACH	\$3,000.00	\$3,000.00	\$250.00	\$250.00	\$250.00	\$250.00
42	Mulched Seeding	20000	SYS	\$3.00	\$60,000.00	\$0.80	\$16,000.00	\$0.80	\$16,000.00
43	Soil, Planting Mix	185	CYS	\$125.00	\$23,125.00	\$45.00	\$8,325.00	\$45.00	\$8,325.00
44	Plant, Deciduous Shrub 18 in. or Under (Rhus Aromatica "Grow-Low" Sumac)	777	EACH	\$30.00	\$23,310.00	\$43.50	\$33,799.50	\$43.50	\$33,799.50
45	Plant, Deciduous Shrub, 24 in. to 36 in. (Arrowwood Viburnum)	124	EACH	\$100.00	\$12,400.00	\$54.25	\$6,727.00	\$54.25	\$6,727.00
46	Pipe, Type 4 Circular 6 in (Profile Wall PVC for Median Bioswale)	2200	LFT	\$10.00	\$22,000.00	\$19.23	\$42,306.00	\$9.25	\$20,350.00
47	Pipe, Type 4 Circular 6 in (Profile Wall PVC, Undistributed)	2000	LFT	\$10.00	\$20,000.00	\$22.18	\$44,360.00	\$16.00	\$32,000.00
48	Pipe Type 2 Circular 12 in	18	LFT	\$42.00	\$756.00	\$131.53	\$2,367.54	\$90.00	\$1,620.00
49	Pipe Type 2 Circular 18 in	66	LFT	\$52.00	\$3,432.00	\$104.92	\$6,924.72	\$100.00	\$6,600.00
50	Pipe End Section, dia 18"	1	EACH	\$400.00	\$400.00	\$275.00	\$275.00	\$250.00	\$250.00
51	Adjust Water Valve to Grade	10	EACH	\$200.00	\$2,000.00	\$200.00	\$2,000.00	\$225.00	\$2,250.00
52	Aggregate for Underdrains, Bioswale	81	CYS	\$38.20	\$3,094.20	\$36.00	\$2,916.00	\$31.00	\$2,511.00
53	Geotextiles for Underdrains, Bioswale	6778	SYS	\$1.25	\$8,472.50	\$1.75	\$11,861.50	\$1.00	\$6,778.00
54	Outlet Protector, 1, Undistributed	4	EACH	\$860.00	\$3,440.00	\$750.00	\$3,000.00	\$750.00	\$3,000.00
55	Aggregate for Underdrains, Undistributed	115	CYS	\$38.20	\$4,393.00	\$40.00	\$4,600.00	\$31.00	\$3,565.00
56	Geotextiles for Underdrains, Undistributed	1150	SYS	\$1.25	\$1,437.50	\$2.00	\$2,300.00	\$1.00	\$1,150.00
57	Casting, Furnish and Adjust to Grade (Type C-9-2)	1	EACH	\$474.17	\$474.17	\$950.00	\$950.00	\$800.00	\$800.00
58	STR-30 Inlet w/Type C-7-1 Casting	2	EACH	\$2,742.40	\$5,484.80	\$1,275.00	\$2,550.00	\$1,750.00	\$3,500.00
59	Casting, Adjust to Grade	31	EACH	\$271.96	\$8,430.76	\$325.00	\$10,075.00	\$325.00	\$10,075.00
60	STR-32 Inlet w/Type C-11-5 Casting	2	EACH	\$2,065.96	\$4,131.92	\$1,630.00	\$3,260.00	\$2,000.00	\$4,000.00
61	Temporary Pavement Marking, Removable, Solid, Stop Bar	66	LFT	\$7.00	\$462.00	\$9.15	\$603.90	\$9.15	\$603.90

62	Temporary Pavement Marking, Removable, 4 in.	32475	LFT	\$0.85	\$27,603.75	\$1.00	\$32,475.00	\$1.00	\$32,475.00
63	Construction Sign, Type A	35	EACH	\$155.00	\$5,425.00	\$255.00	\$8,925.00	\$255.00	\$8,925.00
64	Construction Sign, Type B	22	EACH	\$40.00	\$880.00	\$150.00	\$3,300.00	\$150.00	\$3,300.00
65	Construction Sign, Type D	5	EACH	\$60.00	\$300.00	\$100.00	\$500.00	\$100.00	\$500.00
66	Maintaining Traffic	1	LS	\$50,000.00	\$50,000.00	\$76,955.43	\$76,955.43	\$128,315.80	\$128,315.80
67	Flashing Arrow Sign	240	DAY	\$24.00	\$5,760.00	\$14.00	\$3,360.00	\$14.00	\$3,360.00
68	Barricade, III-B	228	LFT	\$11.00	\$2,508.00	\$24.45	\$5,574.60	\$24.45	\$5,574.60
69	Sign, Sheet, with Legend 0.080 in	45	SFT	\$18.40	\$828.00	\$16.50	\$742.50	\$9.00	\$405.00
70	Sign, Sheet, with Legend 0.100 in	63	SFT	\$20.00	\$1,260.00	\$17.50	\$1,102.50	\$10.00	\$630.00
71	Delineator Post	4	EACH	\$37.51	\$150.04	\$55.00	\$220.00	\$55.00	\$220.00
72	Traffic Signal Equipment, Remove	3	EACH	\$1,500.00	\$4,500.00	\$8,525.00	\$25,575.00	\$2,000.00	\$6,000.00
73	Handhole, Signal, Adjust to Grade	8	EACH	\$350.00	\$2,800.00	\$155.00	\$1,240.00	\$475.00	\$3,800.00
74	Conduit, Steel, Galvanized 2 in	400	LFT	\$14.00	\$5,600.00	\$18.85	\$7,540.00	\$25.00	\$10,000.00
75	Transportation of Salvageable Items	1	LS	\$1,500.00	\$1,500.00	\$100.00	\$100.00	\$2,275.00	\$2,275.00
76	Signal Detector Housing, Double	4	EACH	\$900.00	\$3,600.00	\$1,300.00	\$5,200.00	\$1,000.00	\$4,000.00
77	Signal Cable, Loop Detector Lead-in, copper 2c/16 ga.	5144	LFT	\$2.00	\$10,288.00	\$1.30	\$6,687.20	\$1.10	\$5,658.40
78	Controller and Cabinet, Secondary, Menu Driven, 8 phase	3	EACH	\$12,335.00	\$37,005.00	\$14,500.00	\$43,500.00	\$12,500.00	\$37,500.00
79	Traffic Signal Head, 3 section, 12 in	25	EACH	\$730.00	\$18,250.00	\$725.00	\$18,125.00	\$625.00	\$15,625.00
80	Traffic Signal Head, 4 section, 12 in	6	EACH	\$1,000.00	\$6,000.00	\$985.00	\$5,910.00	\$875.00	\$5,250.00
81	Span, Catenary and Tether	12	EACH	\$1,870.00	\$22,440.00	\$1,875.00	\$22,500.00	\$2,500.00	\$30,000.00
82	Disconnect Hanger	12	EACH	\$290.00	\$3,480.00	\$255.00	\$3,060.00	\$250.00	\$3,000.00
83	Signal Cable, Roadway Loop, Copper 1c/14ga	9950	LFT	\$1.00	\$9,950.00	\$0.15	\$1,492.50	\$0.55	\$5,472.50
84	Signal Cable, Control, Copper 5c/14ga	1556	LFT	\$2.15	\$3,345.40	\$1.65	\$2,567.40	\$1.65	\$2,567.40
85	Signal Cable, Control, Copper 7c/14ga	1251	LFT	\$2.40	\$3,002.40	\$1.85	\$2,314.35	\$1.85	\$2,314.35

86	Signal Cable, Control, Copper 9c/14ga	820	LFT	\$2.65	\$2,173.00	\$2.05	\$1,681.00	\$1.95	\$1,599.00
87	Signal Detector Housing	16	EACH	\$750.00	\$12,000.00	\$650.00	\$10,400.00	\$875.00	\$14,000.00
88	Saw Cut for Roadway Loop and Sealant	2934	LFT	\$8.50	\$24,939.00	\$9.00	\$26,406.00	\$15.00	\$44,010.00
89	Loop Detector Delay Amplifier, 2 channel	12	EACH	\$330.00	\$3,960.00	\$250.00	\$3,000.00	\$225.00	\$2,700.00
90	Light Structure, Remove	3	EACH	\$500.00	\$1,500.00	\$360.00	\$1,080.00	\$1,200.00	\$3,600.00
91	Luminaire, Mast Arm, 12 ft	8	EACH	\$800.00	\$6,400.00	\$1,515.00	\$12,120.00	\$1,500.00	\$12,000.00
92	Luminaire	12	EACH	\$1,500.00	\$18,000.00	\$1,500.00	\$18,000.00	\$900.00	\$10,800.00
93	Handhole, Lighting	3	EACH	\$800.00	\$2,400.00	\$1,050.00	\$3,150.00	\$1,000.00	\$3,000.00
94	Line, Epoxy, Broken, White, 4 in	2445	LFT	\$0.63	\$1,540.35	\$0.39	\$953.55	\$0.39	\$953.55
95	Line, Epoxy, Solid, White, 4 in	16802	LFT	\$0.85	\$14,281.70	\$0.39	\$6,552.78	\$0.39	\$6,552.78
96	Line, Epoxy, Solid, Yellow, 4 in	10648	LFT	\$1.05	\$11,180.40	\$0.39	\$4,152.72	\$0.39	\$4,152.72
97	Line, Epoxy, Solid, White, 12 in	536	LFT	\$3.00	\$1,608.00	\$6.45	\$3,457.20	\$6.45	\$3,457.20
98	Transverse Markings, Epoxy, Stop Line, 24 in	452	LFT	\$10.50	\$4,746.00	\$15.15	\$6,847.80	\$15.15	\$6,847.80
99	Pavement Message Markings, Epoxy, Land Indication Arrow	29	EACH	\$140.00	\$4,060.00	\$190.00	\$5,510.00	\$190.00	\$5,510.00
100	Transverse Markings, Epoxy, Solid, White, Crosswalk Line, 24 in	144	LFT	\$2.50	\$360.00	\$14.40	\$2,073.60	\$14.40	\$2,073.60
101	Work Allowance	1	LS	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00

CONSTRUCTION CONTRACT

Contract : 12441

Work Order: 12441

THIS CONTRACT made and entered into in triplicate this _____ day of _____, 2015, by and between **PRIMCO INC.** herein called **CONTRACTOR**, and the **CITY OF FORT WAYNE, INDIANA**, an Indiana Municipal Corporation, acting by and through the **MAYOR** and the **Board of Public Works**, herein called **OWNER**;

WITNESSETH, that the **CONTRACTOR** and the **OWNER**, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following improvement:

NORTH CLINTON STREET PAVEMENT REHABILITATION

According to **all provisions of RESOLUTION NO. 12441**, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The **OWNER** shall pay **CONTRACTOR** for the performance of the contract the amount of \$2,147,733.95. In the event the amount of work is increased or decreased by **OWNER**, the contract sum shall be increased or decreased according to the unit price schedule set forth in the **CONTRACTOR'S** Proposal.

ARTICLE 3: PROGRESS PAYMENTS AND RETAINAGE

The **CONTRACTOR** may submit requests for payments no more often than every thirty (30) days for work performed and accepted under the contract. If the **CONTRACTOR** is in compliance with the provisions of the contract, the Board will make payments for such work performed and completed. However, in any such case, the Board will retain **FIVE** percent (5%) of the total amount owing to insure **CONTRACTOR's** compliance with the E.B.E. provisions in Article 17 attached to this contract. Payments to the **CONTRACTOR** are not to exceed 95% of the total contract amount until the **OWNER** has verified that the **CONTRACTOR** has made good faith efforts to attain the E.B.E. goal stipulated in Article 17.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 5% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. goals stipulated in Article 17 attached hereto, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the aforementioned Article 17.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract, including the E.B.E. provisions in Article 17 attached hereto, is fully performed. Payments to the **CONTRACTOR** are not to exceed 95% of the total contract amount until the **OWNER** has verified that the **CONTRACTOR** has made good faith efforts to attain the E.B.E. goal stipulated in Article 17.

Upon filing of a **Completion Affidavit** by the **CONTRACTOR** that the work is ready for final inspection and acceptance, the **Board of Public Works** will direct the **Engineering Department** of the **OWNER** to promptly make such inspection, and will direct the **CONTRACT COMPLIANCE DEPARTMENT** of the **OWNER** to make a final recommendation on whether the **CONTRACTOR** made good faith efforts to attain the E.B.E. goal stipulated in Article 17.

When the **Engineering Department** finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the **Board of Public Works**. Likewise, when the **Contract Compliance Department** determines that the **CONTRACTOR's** efforts constitute good faith efforts to attain the E.B.E. goal as agreed in the Article 17 and that all required contract compliance reports have been submitted, it shall so inform the **Board of Public Works** through an E.B.E. Compliance Final Report.

Upon receiving both the **Engineering Department's** and the **Contract Compliance Department's** recommendations, the **Board of Public Works** shall issue a **final certificate** stating that the work provided for in this Contract has been completed and is accepted, and further stating that the aforementioned E.B.E. goal in Article 17 has been met. Thereupon, **the entire balance** of the Contract sum shall be due and payable to the **CONTRACTOR**; provided only that **CONTRACTOR** shall first furnish **OWNER**, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required contract compliance reports for this project have been submitted.

In the event that the **Board of Public Works** determines that good faith compliance with the E.B.E. goals and provisions in Article 17 has not occurred, appropriate reduction in the final payment will be made, pursuant to paragraph 6 of the aforementioned Article 17 attached hereto. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and the **CONTRACTOR** agrees to accept the reduced amount as full payment under the terms of his/her contract.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 5% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. goals in Article 17, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the aforementioned Article 17 attached hereto.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The **CONTRACTOR** will furnish immediately a certificate from the **Industrial Board of the State of Indiana**, that he has complied with the **Workmen's Compensation Act** in accordance with **Statutes of the State of Indiana** and **Ordinances of the City of Fort Wayne**.

Any judgment rendered against the **City of Fort Wayne** in any suits for Damages for injury to real or personal property, or for injury sustained by any person growing out of any act or doing of **CONTRACTOR**, or its agents, employees or workmen or any judgment of any court or award of any **Board of Arbitrators** or of the **Industrial Board of the State of Indiana** rendered against the **City of Fort Wayne** in any suit or claim arising under said **Workmen's Compensation** for accidental injuries or death suffered by his employees or the employees of any Subcontractor(s) in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said **CONTRACTOR**, shall be conclusive against **CONTRACTOR** as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that **CONTRACTOR** indemnify and hold harmless **OWNER** in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The **CONTRACTOR** further agrees to be bound by **Chapter 93.036**, of the **Code of the City of Fort Wayne, Indiana** of 1974, passed by the **Common Council** of the **City of Fort Wayne, Indiana** as **General Ordinance No. G-34-78 (as amended)** on December 12th, 1978. The successful bidder shall file a **Manpower Utilization Report** for this project with the **Compliance Office** within ten (10) days after completion of construction or upon request of the **Office of Compliance**.

ARTICLE 7: [RESERVE]

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. **Notice to contractors for Resolution: 12441**
- b. **Instructions to Bidders for Resolution: 12441**
- c. **Contractor's Proposal dated 9/9/2015**
- d. **Fort Wayne Engineering Department Drawing Number ST-12441**
- e. **Supplemental Specifications for Resolution: 12441**
- f. **Workmen's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne**
- g. **Non-Discrimination of Labor, Chapter 93.036, Code of City.**
- h. **[Reserve]**
- i. **Performance and Guaranty Bond.**
- j. **Labor and Material Payment Bond**
- k. **Right-of-Way Cut Permit**
- l. **Comprehensive Liability Insurance Coverage**
- m. **Form 96**
- n. **Article 17: Emerging Business Enterprise**
- o. **Contract Compliance Reports**
- p. **Vendor Disclosure Statement**
- q. **E-Verify Affidavit**
- r. **Drug Policy Acknowledgement Form (Contracts less than \$150,000) Written Drug Testing Plan (Contract \$150,000 or more)**
- s. **Completion Affidavit**

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the **CONTRACTOR** shall furnish a **Performance and Guaranty Bond** in favor of the **City of Fort Wayne** in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of **TWO (2) YEARS** following written acceptance of the work by the **OWNER**. "The requirement of a Performance/Payment and Guaranty Bond shall be waived for **EMERGENCY** projects under **TEN THOUSAND DOLLARS (\$10,000)**."

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to **OWNER**, within ten (10) days of the date hereof, a certificate from an insurer acceptable to **OWNER** showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to

OWNER and in accordance with the **Statutes of the State of Indiana**.

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the **CONTRACTOR** and the **OWNER** under the provisions of this Contract shall be subject to the decision of the **Chair of Board of Public Works** of the **OWNER**, and his/her decision shall be final and conclusive upon the parties. Provided, however, no changes in the plans, specifications, or other phases of work covered by this Contract will be permitted except on prior written authorization by the **Board of Public Works**.

ARTICLE 12: COMPLETION DATE

The **CONTRACTOR** agrees to complete the work specified in the contract by **10/15/2016** after having been ordered by the **OWNER** to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the **OWNER** by the **Mayor and Board of Public Works** of the **City of Fort Wayne, Indiana**, shall not be binding upon the **OWNER** unless and until the same shall have been ratified and approved by the **Common Council** of the **City of Fort Wayne, Indiana**, and should said **Common Council** fail to approve the contract within ninety (90) days after the date of the bid opening, then the **CONTRACTOR** shall not be bound to the contract unless he/she/it elects to be so bound.

ARTICLE 14: CITY OF FORT WAYNE ALCOHOL AND DRUG POLICY

The City of Fort Wayne has in place an Alcohol and Drug Policy that also applies to any **CONTRACTORS** doing business with the City when the Contract is less than \$150,000. A copy of this policy is available for inspection in the Office of Risk Management, 200 E. Berry Street, Suite 470. The successful bidder will be furnished a copy of said policy and, as a condition of being awarded any contract, the successful bidder shall execute an acknowledgement of receipt of said policy and agree to be bound by those provisions of the policy that may be applicable. A copy of this form will be retained by the Risk Management of the City of Fort Wayne.

Pursuant to IC 36-1-12-24, when the contract is at least \$150,000, the Contractor shall implement the employee drug testing program submitted as part of its Bid. Owner may cancel this Contract if it determines that the Contractor:

- A. Has failed to implement its employee drug testing program during the term of this Contract;
- B. Has failed to provide information regarding implementation of the Contractor's employee drug testing program at the request of Owner; or
- C. Has provided to the Owner false information regarding the Contractor's employee drug testing program.

ARTICLE 15: EMPLOYMENT ELIGIBILITY VERIFICATION

Pursuant to IC 22-5-1.7, **CONTRACTOR** shall enroll in and verify the work eligibility status of all hired employees of **CONTRACTOR** through the E-Verify Program ("Program"). **CONTRACTOR** is not required to verify work eligibility status of all hired employees through the Program if the Program no longer exists.

CONTRACTOR and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that **CONTRACTOR** or its subcontractor subsequently learns is an unauthorized alien. If **CONTRACTOR** violates this Section 16.23, **OWNER** shall require **CONTRACTOR** to remedy the violation not later than thirty (30) days after **OWNER** notifies **CONTRACTOR**. If **CONTRACTOR** fails to remedy the violation within the thirty (30) day period, **OWNER** shall terminate the contract for breach of contract. If **OWNER** terminates the contract, **CONTRACTOR** shall, in addition to any other contractual remedies, be liable to **OWNER** for actual damages.

There is a rebuttable presumption that **CONTRACTOR** did not knowingly employ an unauthorized alien if **CONTRACTOR** verified the work eligibility status of the employee through the Program.

If **CONTRACTOR** employs or contracts with an unauthorized alien but **OWNER** determines that terminating the contract would be detrimental to the public interest or public property, **OWNER** may allow the contract to remain in effect until **OWNER** procures a new contractor.

CONTRACTOR shall, prior to performing any work, require each subcontractor to certify to **CONTRACTOR** that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. **CONTRACTOR** shall maintain on file a certification from each subcontractor throughout the duration of the Project. If **CONTRACTOR** determines that a subcontractor is in violation of this section, **CONTRACTOR** may terminate its contract with the subcontractor for such violation. Such termination may not be considered a breach of contract by **CONTRACTOR** or the subcontractor.

In addition, prior to commencing performance of the Contract, each Contractor and Subcontractor(s) shall submit to Owner the E-Verify case verification number for each individual required to be verified under IC 22-5-1.7. An individual may not commence performance of the Contract if the individual's final case result is "Final Nonconfirmation." If Owner suspects a violation of this requirement, Owner is required to refer the matter to the Indiana Department of Labor.

ARTICLE 16:

This contract is governed by Laws of the State of Indiana.

ARTICLE 17: EMERGING BUSINESS ENTERPRISE

THIS AGREEMENT made and entered into by and between the **CITY OF FORT WAYNE**, hereinafter referred to as **OWNER** and **PRIMCO INC.**, hereinafter referred to as **CONTRACTOR**,

WITNESSETH:

WHEREAS, the **CONTRACTOR** is the apparent low bidder on construction project commonly referred to as the **NORTH CLINTON STREET PAVEMENT REHABILITATION**, which project was bid under Resolution Number 12441; and

WHEREAS, **CONTRACTOR** agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as **E.B.E.'s** as subcontractors on this project is **10%** of the contract amount; and

WHEREAS, **OWNER** has, pursuant to Executive Order 90-01 (as amended 05-08-06), adopted a goal of at least 10% of the contract amount to Emerging Business Enterprises as defined under said Executive Order (as amended 05-08-06); and

WHEREAS, said Executive Order (as amended 05-08-06) states:

"Section 2, Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded.

In the event a contractor is unable to subcontract 10% of the contract amount or secure services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts taken to comply with the participation goals."

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

- 1. Conditional Award - Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Article is attached, OWNER awards the construction contract to the CONTRACTOR.**
- 2. E.B.E. Retainage requirements - If the contractor is in compliance with the provisions of the construction contract to which this Article is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain FIVE percent (5%) of the total amount owing to insure compliance with this Article. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Public Works that the contractor has made a good faith effort to subcontract 10% of the contract amount to emerging business enterprises, the contractor will be paid in full.**

In the event there is a determination that good faith compliance with this Article has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this Article will be made.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the CONTRACTOR are not to exceed 95% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in this Article. Payment of the final 5% of the total contract amount will be dependent upon good faith efforts to comply with this Article, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this Article

- 3. Request for Waiver - If, at the time final payment application is made, contractor has not attained the ten 10% E.B.E. goal, contractor shall file with the final payment application a "Request for Waiver." Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the 10% E.B.E. goal.**
- 4. Determination of Waiver Requests - The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.**

5. **Good Faith Per Se** - In any case, a Contractor shall be deemed to have made good faith efforts at compliance where E.B.E.'s have subcontracted for every sub-contract for which there are qualified E.B.E.'s available.
6. **Consequence of noncompliance** - In the event the Board of Public Works approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between 10% and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.
7. **Waiver approved** - In the event the Board of Public Works determines that a good faith effort to comply with this Article has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

ARTICLE 18: PREMATURE WORK COMMENCEMENT

Contractor shall not commence any work or operation as described in these Project Specifications and/or Project Bid items, in part or whole, prior to the Notice-to-Proceed. Work performed prior to the date of the Notice to Proceed shall be considered work outside of the scope of the contract for purposes of payment. Contractor agrees that any work or operation, as described in the Project Specifications and/or Project Bid Items, in part or whole, prior to the Notice to Proceed shall be deducted from the project Bid Quantities and Project Cost. Contractor agrees that such action is at the Contractor's risk and without liability on the part of the City.

ARTICLE 19: FINDING DETERMINATION OF RESPONSIBILITY FOLLOWING COMMENCEMENT OF WORK

A determination of responsibility may be made after work has commenced if the contractor fails to remedy certain violations under IC 5-16-13 within thirty (30) days. For purposes of this determination, the term "contractor" refers generally to a contractor in any contractor tier. For example, a contractor may be found not responsible for a period up to forty-eight (48) months if one of the following occur:

- (1) The contractor does not maintain general liability insurance in the amount of \$1,000,000 for each occurrence and \$2,000,000 for the general aggregate;
- (2) The Tier 1 contractor does not contribute 15% of the contract in work, materials, or services;
- (3) The contractor does not fit within the "contractor tier" structure, as that term is defined under IC 5-16-13-4;
- (4) The contractor pays cash to any individual for work performed in connection with the contract; or
- (5) The contractor fails to provide the City with the E-verify case verification number for those individuals required to be verified prior to beginning work on the contract.

When making a determination of responsibility after work has commenced, the severity of the violation will be taken into consideration when determining the length of time the contractor will be found not responsible. The period during which the contractor is considered not responsible begins on the date of substantial completion of the public works project.

ACKNOWLEDGEMENT

STATE OF INDIANA)

SS:

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this ____ day of _____, _____, personally appeared the within named _____ who being by me first duly sworn upon his oath says that he is the _____ of _____ and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Notary Public

Printed Name of Notary

My Commission Expires:

Resident of _____ **County.**

ACKNOWLEDGMENT

STATE OF INDIANA)

SS:)

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this ____ day of _____, 2014, personally appeared the within named **Thomas C. Henry, Robert Kennedy, Mike Avila, Kumar Menon and Lyndsey L. Richards**, by me personally known, who being by me duly sworn said that they are respectively the **Mayor of the City of Fort Wayne, and Chairman, Members, and Clerk of the Board of Public Works of the City of Fort Wayne, Indiana**, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said **City** for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Notary Public

Printed Name of Notary

My Commission Expires:

Resident of _____ **County.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CONTRACTOR

CITY OF FORT WAYNE

BY: _____

BY: _____
THOMAS C. HENRY, MAYOR

BOARD OF PUBLIC WORKS

BY: _____
ROBERT KENNEDY, CHAIRMAN

BY: _____
KUMAR MENON, MEMBER

BY: _____
MIKE AVILA, MEMBER

ATTEST: _____
LYNDSEY L. RICHARDS, CLERK

COMMON COUNCIL DIGEST SHEET - SUPPLEMENTAL
N. Clinton Street Pavement Rehabilitation - Phase I Construction

Action Requested:

Requesting approval of an award to Primco Inc. in the amount of \$2,147,733.95 pursuant to Board of Works resolution 12441.

Note: Brooks Construction, Inc. was the lowest most responsive bidder among 2 bidders at 4.1% below the engineer's estimate.

Description and Scope of Work:

The project includes rehabilitation of the four lanes of North Clinton St. from Coliseum to Washington Center. This will include conversion of the roadway surface from concrete to asphalt, reconstruction of the curbing and turn lanes, adding of green infrastructure in the existing ditch lines, improved lighting at the intersections, and landscaping along the route.

Hard surface work (roadways, sidewalks and ramps) is to be substantially complete (ready for use) by August 13, 2016 with final completion for all other work (landscaping and final striping) done by October 15, 2016.