

CITY OF FISHERS

1 Municipal Drive
Fishers, Indiana 46038

PROJECT MANUAL

Fire Station 97 DOAS

**CITY OF FISHERS
BID PROPOSAL SUMMARY PAGE
AND
BIDDER REMINDER LIST**

Complete the following information and place as the cover page to your Bid Package. Insert all documents into an envelope with the project name and your company name cleared marked on the outside. Seal the envelope.

Company:

Project Name: Fire Station 97 DOAS

Date Submitted:

Bid Amount – Exhibit A:

Price= _____

Bidding Requirement

- (1) Bidder Information
- (2) Proposal (Bid)
- (3) Contract Documents
- (4) Form No. 96
- (5) Non-Collusion Affidavit
- (6) E-verify Affidavit
- (7) Additional Declarations
- (8) Post Bid Supplier's List
- (9) Post Bid Subcontractor's List

BIDDER INFORMATION

Bidder Name: _____

Bidder Address: _____

City, State, Zip: _____

Phone Number: _____

Email: _____

Bidder is an/an: _____ Individual _____ Partnership _____ Indiana Corp/LLC
 _____ Foreign (Out of State) Corporation, State of _____
 _____ Joint Venture _____ Other _____

BID PROPOSAL

Exhibit A- Fire Station 97 DOAS

The undersigned Bidder proposes to furnish all necessary labor, machinery, tools, apparatus, materials, equipment, service and other necessary supplies, and to perform and fulfill all obligations incident thereto in strict accordance with and within the time(s) provided by the terms and conditions of the Contract Documents for the Work, including any and all addenda thereto, for a total of

Dollars (\$_____).

The Bidder acknowledges that evaluation of the lowest Bid shall be based on such price.

Public Work Agreement (Short Form)

City of Fishers, Indiana
Department of Public Works
Fishers, IN 46038
Phone (____) ____-____

“CONTRACTOR”:

(telephone) _____
(Email) _____

For Work at the Following “PROJECT”:
Fire Station 97 DOAS

(telephone) _____
(Email) steinere@fishers.in.us

Contractor will provide all labor, materials, tools, equipment, supplies, safety equipment, transportation, supervision, permits and governmental fees, licenses and inspections necessary to perform in a good and workmanlike manner and in accordance with the Agreement, Terms and Conditions and Contractor Documents, or reasonably inferable as necessary to produce the results intended as defined in **Exhibit A**, attached hereto (the “**Work**”).

The “**Contract Documents**” mean this Agreement and those documents listed in **Exhibit A** attached hereto (the “Contract Documents”). There are no Contract Documents other than those listed herein.

Owner will pay Contractor the “**Contract Sum**” of \$ _____ for the Work subject to the “Terms and Conditions” herein. The Work will be commenced on approximately _____, _____, and be Substantially Complete within approximately _____ calendar days or by _____, _____ (Completion Date).

THIS AGREEMENT IS SUBJECT AND BY SIGNING CONTRACTOR AGREES TO ALL SUCH TERMS AND CONDITIONS.

CITY OF FISHERS, INDIANA

CONTRACTOR

Signed: _____

Signed: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

AGREEMENT DATE: _____

Date: _____

TERMS AND CONDITIONS

1. Acceptance. Commencement of the Work shall mean Contractor has agreed to the Terms and Conditions. Documents with terms additional to or different from this Agreement shall not be binding upon Owner.

2. Conflicts/Order of Precedent. Contractor shall promptly notify Owner of any discrepancy or conflict in the Contract Documents. 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 requiring 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. 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. The Work shall include all incidental Work necessary and customary for the completion described in the Contract Documents.

3. Means and Methods. Contractor shall supervise and direct the Work using its best skill and attention and have control over all means, methods, techniques, sequences, procedures and coordination. Contractor shall be responsible to Owner for the acts and omissions of Contractor's employees, subcontractors, suppliers, laborers, equipment lessors and all other persons performing portions of the Work. Contractor shall be responsible for the

inspection of Work to determine when subsequent Work can be performed or installed.

4. Permits, Fees and Notices. Contractor shall secure and pay for the permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work. Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the Work.

5. Survey. If necessary for completion of the Work, Owner shall furnish available surveys in its possession describing the physical characteristics, legal limitations, utility locations and a legal description of the Project. 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.

6. Clean-Up. Contractor shall keep the Project site and surrounding area free from the accumulation of waste materials or rubbish caused by performance of the Work. At completion of the Work, Contractor shall remove from the Project waste materials, rubbish, Contractor's tools, construction equipment, machinery and surplus materials.

7. Subcontractors. Before the Work 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 subcontract sum. All subcontractors, if required, shall be state certified/qualified. Contractor shall not contract with a proposed person or entity to whom Owner has made a reasonable objection.

8. Subcontracts. By written agreement, Contractor shall require each subcontractor be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor 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. 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 default and Owner's written acceptance or the Subcontract provided to subcontractor.

9. Project Labor Relations. Contractor shall assure harmonious labor relations at the Project so as to prevent any delays, disruptions or interference to the Work. Contractor agrees that it will bind and require all of its subcontractors, suppliers and other such persons or entities to agree to all of the provisions of this paragraph.

10. Contractor's Representations. Contractor represents and warrants to Owner as a material inducement to Owner to execute this Agreement, which representations and warranties shall survive any termination of this Agreement, and the final completion of the Work, that the Contractor has:

i. 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 to Owner prior to the date of this Agreement. Contractor shall perform no Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents. Contractor warrants and represents to Owner that the Contract Documents are suitable for the Work and it will perform and complete the Work to the satisfaction of Owner;

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

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

iv. 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;

v. possesses a high level of experience and expertise in the business administration, construction and superintendence of projects of the size, complexity and nature of this Project, and will perform the Work with the care, skill and diligence of such a contractor;

vi. has not, nor has any other member, representative, agent, or officer of the Contractor:

a. employed or retained any company or person, to solicit or secure this Agreement;

b. entered into or offered to enter into any combination, collusion, or agreement to receive or pay and that the Contractor has not received or paid, any fee, commission, percentage, or any other consideration, contingent upon or resulting from the award of and the execution of this Agreement, excepting such consideration and

subject to the terms and conditions expressed upon the face of the within Agreement.

11. Time. Time is of the essence of the Agreement. The Work will be performed as required by Owner's Schedule, consistent with the Completion Date. Owner may modify this Schedule. If the Work is delayed by Owner, the Completion Date will be extended. Contractor must request an extension of the 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.

12. Overtime. Owner, if it deems necessary, may direct Contractor to work overtime, to meet the 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 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 Project. If, after written notice is given, Contractor refuses to work overtime, Owner may hire others to perform the Work and deduct the cost from the Contract Sum.

13. Delay. Should the Work be delayed by any fault or neglect or act or failure to act of Contractor or any of its 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 compensate Owner for and indemnify it against all such costs, expenses, damages and liability.

14. 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.

15. 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 it 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.

16. 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 one (1) year 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.

17. Minimum Insurance Requirements. Prior to commencing Work, the Contractor shall 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:

A. Commercial General Liability

Limits of Liability:	\$2,000,000 General Aggregate
	\$2,000,000 Products & Completed Ops.
	\$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.

B. Auto Liability

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

C. Workers Compensation and Employer's Liability

Coverage A (Worker's Comp.)	Statutory Minimum Requirements
Coverage B	
Employer's Liability:	\$500,000 Each Accident
	\$500,000 Disease – each employee
	\$500,000 Disease Policy Limit

D. Excess Liability (Umbrella Form)

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

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.

E. Property Insurance. Unless otherwise provided, the Owner 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.

18. Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and its board, agents and employees of any of them ("Indemnitees") 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.

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.

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.

19. Claims. If Contractor claims it should receive additional sums or time, Contractor must notify Owner and request a Change Order in writing within forty-eight (48) hours after Contractor learned (or should have learned) of the basis for the request. No additional sums will be paid and no additional time will be recognized unless Owner has issued a Change Order.

20. Claims for Consequential Damages. Contractor waives claims against Owner for consequential damages arising out of or relating to this Agreement. This waiver includes, but is not limited to, damages incurred by Contractor for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons.

21. Payments. All payments provided herein are subject to funds as appropriated and the laws of the State of Indiana.

A. Progress Payments; Retainage: Owner shall make monthly progress payments on the basis of Contractor's Applications for Payment. Each Application for Payment shall be based on the schedule of values. Applications 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.

2. Progress payment will be made for ninety percent (90%) of Work completed (with the balance being held as retainage). If Work is fifty percent (50%) complete as determined by Owner, and if the character and progress of the Work has been satisfactory to Owner, Owner, at its sole discretion and without obligation, may determine that as long as the character and progress of the Work remain satisfactory, there will be no additional retainage on account of Work completed in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to one hundred percent (100%) of the Work properly completed.

B. Payment of Subcontractors. The Contractor agrees to assume full 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 and 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.

a. 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 Owner receive notice of any claim or of any unpaid bill in connection

with the Work, Contractor shall 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 is made or filed with 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 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.

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 Sum remaining due and owing to Contractor, and charge all such direct payments against the Contract Sum; provided, however, that nothing contained in this paragraph shall create any personal liability on the part of Owner to any subcontractor, material supplier, equipment lessor or laborer, or any direct contractual relationship between Owner and them.

D. Substantial Completion. Upon Substantial Completion of the Work, the Owner shall pay the Contractor an amount sufficient to increase total payments to Contractor to one hundred percent (100%) of the Contract Sum, less such amounts as Owner shall determine, or Owner may withhold.

E. Final Payment. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Sum.

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) 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. Owner shall make final payment to the Contractor within ninety-one (91) days after final acceptance and completion of the Work. However, final payment may not be made on any amount that is 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. No payment, including final payment, will be considered to be an acceptance of defective or non-conforming Work.

22. Termination for Default. In the event of default, the non-defaulting entity shall give to the defaulting entity forty-eight (48) hours to cure. Contractor shall be in default if it fails to perform or comply with its obligations under the Contract Documents, does not perform Work for more than forty-eight (48) hours when Work is available, or becomes insolvent, files for bankruptcy, or is dissolved or otherwise ceases to exist. In addition to any other legal remedies available to Owner, under this Agreement, law or equity, Owner shall have the absolute right, after forty-eight (48) hours written notice to Contractor to cure such default, correct or overcome the default and charge all expenses, losses, costs and damages, including attorneys' fees, to Contractor, or terminate this Agreement and complete the Work but whatever means Owner deems necessary.

23. Termination for Convenience. Owner may terminate this Agreement for Owner's sole convenience, in which event Contractor will only receive payment for the Work completed as of the date of termination, without compensation for profit on work not performed.

24. No Assignment. This Agreement may not be assigned by Contractor to a third party without the prior written consent of Owner. Moneys that may become due and moneys that are due may not be assigned by Contractor without such consent (except to the extent that the effect of this restriction may be limited by law). If Contractor attempts to make an assignment without such prior written consent of the Owner, Contractor shall nevertheless remain legally responsible for all obligations under this Agreement.

25. Notice. Notice shall be in writing and delivered via e-mail, telefax, overnight delivery, hand delivery, or certified mail. Notice shall be considered provided as of the date of delivery. Where notice cannot be immediately provided in writing, telephonic notice may be made followed by written notice.

26. No Third-Party Beneficiaries. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between Owner and any subcontractor or (2) between any persons or entities other than Owner and Contractor. Contractor and the Owner agree that this Agreement is not intended to benefit any other third-party.

27. Dispute Resolution.

Mediation. The parties shall endeavor to resolve their claims by mediation which shall be administered by the Indiana Rule for Alternate Dispute Resolutions in effect on the date of the Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Fishers, Hamilton County, Indiana, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

Litigation. In the event of any litigation between the Owner and Contractor that arises out of or relates to this Agreement, if the Owner is the "prevailing party" in such litigation, Owner 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 Agreement shall be any court of competent jurisdiction located in Hamilton County, Indiana. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, except for its conflict of laws provisions, as well as with all municipal ordinances and code of the City of Fishers. The parties further agree that, in the event a lawsuit is filed hereunder, the parties waive any rights to a jury trial they may have.

28. Interest. Payments due to Contractor under the terms of the Contract Documents and unpaid shall bear no 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.

29. E-Verify. Contractor shall enroll in and verify the eligibility status of all newly hired employees of Contractor through the E-Verify program as outlined in I.C. § 22-5-1.7; however, Contractor shall not be required to verify the work eligibility status of all newly hired employees of Contractor through the E-Verify program if the E-Verify program no longer exists. CONTRACTOR AFFIRMS, UNDER THE PENALTIES OF PERJURY, THAT

CONTRACTOR DOES NOT KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. Miscellaneous. This Agreement represents the entire and integrated agreement between Owner and Contractor, supersedes all prior negotiations, representations and agreements, written or oral, and shall not be modified, supplemented or interpreted by evidence of course of dealing, course of performance or usage of trade. If any provision of the Agreement is found by a court to be illegal, invalid, void or otherwise unenforceable, the remaining terms and conditions shall remain in full force. Any modification to the Agreement must be in writing and signed by both Owner and Contractor.

(3768221(v1)/27950)

CITY OF FISHERS
E-VERIFY AFFIDAVIT

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

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

(Contractor): _____

By (Written Signature) _____

(Printed Name): _____

(Title): _____

Important – Notary Signature and Seal Required in the Space Below

STATE OF _____

SS: _____

COUNTY OF _____

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

My commission expires: _____ (Signed): _____

Residing in _____ County, State _____

CONTRACTOR'S AFFIDAVIT OF MAJOR SUPPLIERS

The following Major Suppliers will provide material or equipment on Fire Station 97 DOAS Project in fulfilling the Agreement with the City of Fishers
List only one Major Supplier per category.

	<u>NAME</u>	<u>TRADE</u>	<u>AMOUNT</u> (nearest \$1,000)	<u>PRE-QUALIFIED</u> (Yes or No)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

_____ being duly sworn upon oath, deposes and says that he is _____ of the firm _____ and is familiar with the affidavit herewith and that the statements are complete and true.

Firm Name: _____

By: _____

Title: _____

Date: _____

[Must be signed by principal of organization or person executing Signature Affidavit (Form LPW 0.22)].

STATE OF _____)
) SS:
COUNTY OF _____)

_____ personally appeared before me, a Notary Public, in and for said County and State, this _____ day of _____, 20____, after being duly sworn upon his oath, says that the facts alleged in the foregoing affidavit are true.

My Commission Expires:

Notary Public – Signature

My County of Residence:

Notary Public – Printed Name

(S E A L)

CONTRACTOR'S AFFIDAVIT OF SUBCONTRACTORS EMPLOYED

The following sub-contractors will perform work on Fire Station 97 DOAS Project in fulfilling the Agreement with the City of Fishers. List only one subcontractor per category. Listing of more than one subcontractor per category may be cause for rejection of the Bid Proposal.

	<u>NAME</u>	<u>TRADE</u>	<u>AMOUNT</u> (nearest \$1,000)	<u>PRE-QUALIFIED</u> (Yes or No)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

_____ being duly sworn upon oath, deposes and says that he is _____ of the firm _____ and is familiar with the affidavit herewith and that the statements are complete and true.

Firm Name: _____

By: _____

Title: _____

Date: _____

[Must be signed by principal of organization or person executing Signature Affidavit (Form LPW 0.22)].

STATE OF _____)
) SS:
COUNTY OF _____)

_____ personally appeared before me, a Notary Public, in and for said County and State, this _____ day of _____, 20____, after being duly sworn upon his oath, says that the facts alleged in the foregoing affidavit are true.

My Commission Expires:

Notary Public – Signature

My County of Residence:

Notary Public – Printed Name

(S E A L)