



MAYOR'S OFFICE

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AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is by and between the City of Auburn, Indiana (hereinafter called OWNER) and *Brooks Construction Company Inc.* (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents for the 2026 Paving project. The Project is generally described as follows:

2026 Paving Project consists of multiple street locations throughout the City of Auburn, all to be milling & resurfacing projects of badly deteriorated surface pavement.

Project consists of milling & resurfacing approximately 21,000 linear feet of asphalt street pavement at various widths for a total area of approximately 128,500 square yards.

Pavement areas milled at a depth of 2-1/2 inches, replaced with 1-1/2 inches of #9 HMA binder and 1-1/4 inches of HMA surface. Pavement areas milled at a depth of 1 inch will be replaced with 1-1/4 inches of HMA surface. The project will be completed with appropriate pavement markings.

ARTICLE 2. ENGINEER

The Project has been designed by the City of Auburn, Indiana Engineering Department, who is hereinafter called ENGINEER and who is to act as OWNER'S representative, assume all duties and responsibilities and shall have all rights and authority assigned to ENGINEER in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

The Work will have an allowable scheduled commencing date of April 6, 2026 and achieve final completion and be ready for final payment on or before **October 2, 2026**, based on a notice to proceed date of May 20, 2025, in accordance with the Contract Documents.

ARTICLE 4. CONTRACT PRICE

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, in current funds, as follows: \$2,029,014.00. The work required for this Contract is on a Unit Price basis. This Contract Price includes work performed in accordance with the Contract Documents. CONTRACTOR agrees to liquidated damages in the amount of \$1,000 per day beyond Contract completion date of October 2, 2026.

ARTICLE 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with the Contract Documents. Applications for Payment will be processed by ENGINEER as provided in the Contract Documents.

- 5.1 Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as set forth in Contract Document. All progress payments will be on the basis of the progress of the Work (percentage of completion at the time of request) measured by the schedule of values established in the Contract Documents (and in the case of Unit Price Work based on the number of units completed).
- 5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with the Contract Documents, OWNER shall pay the remainder of the Contract Price for Lump Sum bid contracts as recommended by ENGINEER as provided in the Contract Documents. For unit price contracts, OWNER shall pay the remainder of the Contract Amount as determined by the final installed quantities, multiplied by the unit prices established in the bid. Quantities are measured and paid for as described in the Contract Documents, as recommended and approved by the ENGINEER.

ARTICLE 6. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 6.2 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Design Plans with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the General Conditions.

- 6.3 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

ARTICLE 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 7.1 This Agreement (pages 1 to 4, inclusive).
- 7.2 Project Manual
 - 7.2.1 Advertisement for Bids
 - 7.2.2 Instructions to Bidders
 - 7.2.3 Basis of Bid (Contractor Bid Form), with Addenda (if applicable)
 - 7.2.4 Work Specifications
 - 7.2.5 Form 96, Contractor's Bid for Public Works completely executed including:
 - a. Non-Collusion Affidavit on Form 96.
 - b. Financial Statement (Section III of Form 96).
 - 7.2.6 Contractor Affidavits
 - 7.2.7 Notice of Award
 - 7.2.8 Notice to Proceed
- 7.3 Bid Bond or Certified Check
- 7.4 Payment and Performance Bonds
- 7.5 Drawings (Plans)
- 7.6 INDOT Certificate of Qualification, pursuant to I.C. 8-23-10.
- 7.7 Maintenance Bond (3 year, 10% of final construction cost)
- 7.8 All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents, which may be delivered or issued after the Effective Date of the Agreement, and are not attached hereto.

There are no Contract Documents other than those listed above in this Article 7. The documents listed in this Paragraph as 7.2 through 7.8 above are not attached to this Agreement but are to be maintained as a matter of record and reference at the offices of the ENGINEER, CONTRACTOR and OWNER.

ARTICLE 8. MISCELLANEOUS

- 8.1 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 written consent of the party sought to be bound; and specifically but without limitation monies that may become due and monies 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.

8.2 OWNER AND CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR.

This Agreement will be effective on May 06, 2025.
(Date to be inserted by OWNER, not CONTRACTOR.)

CONTRACTOR

Brooks Construction Company Inc.

OWNER

City of Auburn, IN
Board of Public Works and Safety

BY Cynthia A. Riebersal
(Name and title) Cynthia A Riebersal, CFO

BY David E. Clark Jr.
David E. Clark Jr., Mayor

Sara R Boardman
ATTEST: Sara R Boardman

Lorrie K Pontius
ATTEST: Lorrie K. Pontius, Clerk-Treasurer

Address for Giving Notices:

PO BOX 9560

Fort Wayne IN 46899

Agent & Address for Service of Process:

