

**TOWN OF WHITESTOWN**

**GATEWAY PARK PH. 2**

**AWARD PACKAGE**

**Items**

1. Agreement between Owner and Contractor for Construction Contract
2. Performance Bond
3. Payment Bond
4. Iranian Government Affidavit
5. E-Verify Affidavit
6. Notice of Award
7. Notice to Proceed

## AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT

This Agreement is by and between **TOWN OF WHITESTOWN** (“Owner”) and Morphey Construction, Inc. (“Contractor”).

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

### ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The Town intends to make a second phase of improvements to Gateway Park, located south of New Hope Blvd., west of Gateway East Dr., and north of Schooler Dr. The proposed improvements include installation of a prefabricated shelter and restroom building, dog park facility, site utility connections, earthwork, landscaping, and parallel parking reconfiguration.

### ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **Gateway Park Ph. 2**

### ARTICLE 3—ENGINEER

3.01 The Owner has retained Butler Fairman & Seufert (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

### ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially complete on or before **July 31, 2025**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **August 31, 2025**.

4.05 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, 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):

1. *Substantial Completion*: Contractor shall pay Owner **\$1,000.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
  2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$1,000.00** for each day that expires after such time until the Work is completed and ready for final payment.
  3. *Milestones*: Contractor shall pay Owner **\$1,000.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.05.A.1 will apply, rather than the Milestone rate.
  4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

#### 4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

## ARTICLE 5—CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Amount
1	Construction Engineering	LS	1	\$ 20,000.00	\$ 20,000.00
2	Mobilization and Demobilization	LS	1	\$ 61,850.00	\$ 61,850.00
3	Clearing Right of Way	LS	1	\$ 67,708.50	\$ 67,708.50
4	Excavation, Common	CYS	135	\$ 150.00	\$ 20,250.00
5	Borrow	CYS	73	\$ 50.00	\$ 3,650.00
6	Fertilizer	TON	0.7	\$ 800.00	\$ 560.00
7	Seed Mixture, U	LBS	361	\$ 20.00	\$ 7,220.00
8	Mulching Material, For Permanent Seeding	TON	3.7	\$ 510.00	\$ 1,887.00
9	Topsoil	CYS	17.0	\$ 150.00	\$ 2,550.00
10	Mulch Hardwood Shredded Bark	CYS	8.0	\$ 100.00	\$ 800.00
11	Plant, Perennial	EACH	60	\$ 8.00	\$ 480.00
12	Plant, Shrub	EACH	12	\$ 48.00	\$ 576.00
13	Plant, Tree	EACH	31	\$ 380.00	\$ 11,780.00
14	Stormwater Management Budget	DOL	7,000	\$ 1.00	\$ 7,000.00
15	Stormwater Management Implementation	LS	1	\$ 5,000.00	\$ 5,000.00
16	SWQCP Preparation	LS	1	\$ 1,500.00	\$ 1,500.00
17	Compacted Aggregate No. 53	CYS	42	\$ 170.00	\$ 7,140.00
18	PCCP, 6 in.	SYS	294	\$ 100.00	\$ 29,400.00
19	Sidewalk, Concrete	SYS	919	\$ 80.00	\$ 73,520.00
20	Compacted Aggregate, No. 8	CYS	38	\$ 200.00	\$ 7,600.00
21	Geotextile for Pavement, Type 1A	SYS	226	\$ 4.00	\$ 904.00
22	Curb Ramp, Concrete	SYS	8	\$ 500.00	\$ 4,000.00
23	Curb, Concrete	LFT	78	\$ 80.00	\$ 6,240.00
24	Curb, Concrete, Flush	LFT	172	\$ 100.00	\$ 17,200.00
25	Curb & Gutter, Concrete	LFT	6	\$ 200.00	\$ 1,200.00
26	Line, Remove	LFT	232	\$ 1.00	\$ 232.00
27	Transverse Marking, Thermoplastic, Parking Line, White 4 IN.	LFT	278	\$ 5.00	\$ 1,390.00
28	Transverse Marking, Thermoplastic, Parking Line, Blue 4 IN.	LFT	355	\$ 7.50	\$ 2,662.50
29	Pavement Message Marking, Thermoplastic ADA Accessible Symbol	EACH	2	\$ 500.00	\$ 1,000.00
30	Bench	EACH	11	\$ 3,000.00	\$ 33,000.00
31	Drinking Fountain, With Dog Bowl	EACH	2	\$ 20,000.00	\$ 40,000.00
32	Trash Receptacle	EACH	2	\$ 3,000.00	\$ 6,000.00
33	Boulder	TON	24	\$ 150.00	\$ 3,600.00
34	Dog Park Equipment, Logs	EACH	7	\$ 2,500.00	\$ 17,500.00
35	Dog Park Equipment, Little Stump	EACH	5	\$ 1,000.00	\$ 5,000.00
36	Dog Park Equipment, Big Stump	EACH	5	\$ 2,000.00	\$ 10,000.00
37	Dog Tunnel, 8'	EACH	1	\$ 20,000.00	\$ 20,000.00
38	Dog Tunnel, 5'	EACH	1	\$ 20,000.00	\$ 20,000.00
39	Fence, Chain Link, 6'	LFT	1634	\$ 40.00	\$ 65,360.00
40	Single Gate, 4' Wide	EACH	3	\$ 2,500.00	\$ 7,500.00
41	Double Gate, 12' Wide	EACH	2	\$ 5,000.00	\$ 10,000.00
42	Light Bollard, Solar Powered	EACH	31	\$ 1,000.00	\$ 31,000.00
43	Accessible Parking Sign	EACH	2	\$ 350.00	\$ 700.00
44	LWCF Sign	EACH	1	\$ 750.00	\$ 750.00
45	Concrete, B, Footings	CYS	11	\$ 500.00	\$ 5,500.00
46	Shelter	EACH	1	\$ 400,000.00	\$ 400,000.00
47	Plumbing	LS	1	\$ 20,000.00	\$ 20,000.00

48	HVAC	LS	1	\$ 20,000.00	\$ 20,000.00
49	Electric	LS	1	\$ 45,000.00	\$ 45,000.00
50	1-1/4 in. HDPE DR 11 Force Main	LFT	355	\$ 30.00	\$ 10,650.00
51	1-1/4 in. Force Main Flushing Connection	EACH	1	\$ 2,500.00	\$ 2,500.00
52	Duplex Grinder Pump System	LS	1	\$30,000.00	\$ 30,000.00
53	Structural Backfill, for Sanitary Sewers	CYS	70	\$ 100.00	\$ 7,000.00
54	Inside Drop Manhole Connection	EACH	1	\$ 5,000.00	\$ 5,000.00
55	Existing Manhole Connection	EACH	1	\$5,000.00	\$ 5,000.00
56	HMA Surface, 165#/SYS	SYS	50	\$ 20.00	\$ 1,000.00
57	HMA Base, 1320#/SYS	SYS	50	\$ 80.00	\$ 4,000.00
58	2 in. HDPE DR 11 Water Service Line	LFT	215	\$ 60.00	\$ 12,900.00
59	1 in. HDPE DR 11 Water Service Line	LFT	260	\$ 50.00	\$ 13,000.00
60	¾ in. HDPE DR 11 Water Service Line	LFT	28	\$ 80.00	\$ 2,240.00
61	Water Service Connection	EACH	1	\$ 6,500.00	\$ 6,500.00
62	Single Water Meter Setting, 2 IN.	EACH	1	\$ 9,000.00	\$ 9,000.00
<b>Total of All Unit Price Bid Items</b>					<b>\$ 1,235,000.00</b>

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

#### ARTICLE 6—PAYMENT PROCEDURES

##### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

##### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the **15th** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. 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 may withhold, including but not limited to liquidated damages, in accordance with the Contract.

- a. The Owner shall retain 10 percent of the amount of each payment for the Work completed.

- 1) If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

- b. 50 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
  - B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.
- 6.03 *Final Payment*
- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.
- 6.04 *Consent of Surety*
- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.
- 6.05 *Interest*
- A. All amounts not paid when due will bear interest at the rate of 12 percent per annum.

## **ARTICLE 7—CONTRACT DOCUMENTS**

### 7.01 *Contents*

- A. The Contract Documents consist of all of the following:
  - 1. This Agreement.
  - 2. Bonds:
    - a. Performance bond (together with power of attorney).
    - b. Payment bond (together with power of attorney).
  - 3. General Conditions.
  - 4. Supplementary Conditions.
  - 5. Specifications as listed in the table of contents of the Project Manual
  - 6. Drawings (not attached but incorporated by reference) dated **October 7, 2024**, with each sheet bearing the following general title: **Gateway Park Ph. 2**
  - 8. Addenda.
  - 9. Exhibits to this Agreement (enumerated as follows):
    - a. **NA**
  - 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
    - d. Written Amendments.

- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **8.01 Contractor's Representations**

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
  - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
  - 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
  - 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
  - 7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  - 8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in 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 of

discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

#### 8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.



IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on November 14, 2024 (which is the Effective Date of the Contract).

OWNER:

Town of Whitestown

By: \_\_\_\_\_

Title: \_\_\_\_\_

[CORPORATE SEAL]

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

CONTRACTOR

Morphey Construction, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

[CORPORATE SEAL]

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No.: \_\_\_\_\_

(Where applicable)

Agent for service of process:

\_\_\_\_\_

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)

**PERFORMANCE BOND**

<p><b>Contractor</b>                  Name: <b>Morphey Construction, Inc.</b>                  Address (<i>principal place of business</i>):  <b>1499 N. Sherman Drive, Indianapolis, IN 46201</b></p>	<p><b>Surety</b>                  Name:                  Address (<i>principal place of business</i>):</p>
<p><b>Owner</b>                  Name: <b>Town of Whitestown</b>                  Mailing address (<i>principal place of business</i>):  <b>6210 Veterans Drive, Whitestown, IN 46075</b></p>	<p><b>Contract</b>                  Description (<i>name and location</i>):  <b>Gateway Park Ph. 2</b></p> <p>Contract Price:       <b>\$ 1,235,000.00</b>                  Effective Date of Contract:       <b>11/14/2024</b></p>
<p><b>Bond</b>                  Amount:               <b>\$ 1,235,000.00</b>                  Date of Bond:                  (<i>Date of Bond cannot be earlier than Effective Date of Contract</i>)                  Modifications to this Bond form:  <input type="checkbox"/> None   <input type="checkbox"/> See Paragraph 16</p>	
<p>Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.</p>	
<p>Contractor as Principal</p>	<p>Surety</p>
<p align="center"><i>(Full formal name of Contractor)</i></p>	<p align="center"><i>(Full formal name of Surety) (corporate seal)</i></p>
<p>By: _____  <span style="margin-left: 150px;"><i>(Signature)</i></span></p>	<p>By: _____  <span style="margin-left: 150px;"><i>(Signature)(Attach Power of Attorney)</i></span></p>
<p>Name: _____  <span style="margin-left: 150px;"><i>(Printed or typed)</i></span></p>	<p>Name: _____  <span style="margin-left: 150px;"><i>(Printed or typed)</i></span></p>
<p>Title: _____</p>	<p>Title: _____</p>
<p>Attest: _____  <span style="margin-left: 150px;"><i>(Signature)</i></span></p>	<p>Attest: _____  <span style="margin-left: 150px;"><i>(Signature)</i></span></p>
<p>Name: _____  <span style="margin-left: 150px;"><i>(Printed or typed)</i></span></p>	<p>Name: _____  <span style="margin-left: 150px;"><i>(Printed or typed)</i></span></p>
<p>Title: _____</p>	<p>Title: _____</p>
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i></p>	

1. The Contractor and 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 when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
  - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. 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 does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
  - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
  - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. 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:
  - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
  - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
  - 5.3. 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 a contractor selected with the Owners 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 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
  - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

- 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
  - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven 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 Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
  - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 7.2. 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 5; and
  - 7.3. 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.
8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
9. 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 will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
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. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of 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 periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
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 will be deemed deleted therefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

#### 14. Definitions

- 14.1. *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 for the Contractor for 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.
  - 14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
  - 14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
  - 14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
  - 14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
16. Modifications to this Bond are as follows: None.



1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, 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, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
  - 5.1. Claimants who do not have a direct contract with the Contractor
    - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
  - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2. Pay or arrange for payment of any undisputed amounts.
  - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable

attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will 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 satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. 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 the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. 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.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, 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 will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. 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 will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions
  - 16.1. *Claim*—A written statement by the Claimant including at a minimum:
    - 16.1.1. The name of the Claimant;
    - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;



- 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
  - 16.1.4. A brief description of the labor, materials, or equipment furnished;
  - 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
  - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
  - 16.1.7. The total amount of previous payments received by the Claimant; and
  - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2. *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 Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of "labor, materials, or equipment" that part of the 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.
- 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
18. Modifications to this Bond are as follows: **[Describe modification or enter "None"]**

**NOTICE OF AWARD**

Date of Issuance: 11/14/2024  
Owner: Town of Whitestown  
Engineer: Butler, Fairman, & Seufert, Inc. Engineer's Project No.: 7190  
Project: Gateway Park Ph. 2  
Contract Name: Gateway Park Ph. 2  
Bidder: Morphey Construction, Inc.  
Bidder's Address: 1499 N. Sherman Drive, Indianapolis, IN 46201

You are notified that Owner has accepted your Bid dated 10/12/2024 for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

**GATEWAY PARK PH. 2**

The Contract Price of the awarded Contract is \$ 1,235,000.00. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, as applicable.

A digital copy of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

- 1. Deliver to Owner three (3) counterparts of the Agreement, signed by Bidder (as Contractor).
- 2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
- 3. Other conditions precedent (if any):

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: **Town of Whitestown**  
By (signature): \_\_\_\_\_  
Name (printed): Dominic Cornett  
Title: Assistant Town Manager, Director of Parks

Copy: Engineer