

**STATE BOARD OF ACCOUNTS**  
**302 West Washington Street**  
**Room E418**  
**INDIANAPOLIS, INDIANA 46204-2769**

SPECIAL COMPLIANCE REPORT  
OF

BOARD OF PUBLIC WORKS  
CITY OF SCOTTSBURG  
SCOTT COUNTY, INDIANA

July 13, 2013 to August 11, 2015



**FILED**  
08/11/2016



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#### SCHEDULE OF OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Mayor	William H. Graham	01-01-12 to 12-31-19
President of the Board of Public Works	William H. Graham	01-01-13 to 12-31-16
President Pro-Tempore of the Common Council	Terry Amick Bill Hoagland	01-01-13 to 12-31-15 01-01-16 to 12-31-16



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TO: THE OFFICIALS OF CITY OF SCOTTSBURG, SCOTT COUNTY

This is a special compliance report for the Board of Public Works, City of Scottsburg, for the period July 13, 2013 to August 11, 2015, and is in addition to any other report for the City as required under Indiana Code 5-11-1. Any reports pertaining to the City may be found at [www.in.gov/sboa/](http://www.in.gov/sboa/).

We performed procedures to determine compliance with applicable Indiana laws and uniform compliance guidelines established by the Indiana State Board of Accounts and were limited to records associated with bids, contracts, change orders, and claims for payment. The Special Compliance Results and Comments contained herein describe the identified reportable instances of noncompliance found as a result of these procedures. Our tests were not designed to identify all instances of noncompliance; therefore, noncompliance may exist that is unidentified.

Any Official Response to the Results and Comments, incorporated within this report, was not verified for accuracy.

*Paul D. Joyce*  
Paul D. Joyce, CPA  
State Examiner

April 26, 2016

BOARD OF PUBLIC WORKS  
CITY OF SCOTTSBURG  
SPECIAL COMPLIANCE RESULTS AND COMMENTS

***MOONGLO ROAD TRAIL CONSTRUCTION PROJECT***

On July 13, 2013, the Board of Works approved a contract for the construction of a walking trail next to Moonglo Road. The original contract was \$218,800. Change orders approved by the Board of Works through June 22, 2015, increased the scope of the project by \$64,054, or 29 percent of the original contract.

Indiana Code 36-1-12-18(d) states in part: "The total of all change orders issued that increase the scope of the project may not exceed twenty percent (20%) of the amount of the original contract. . . ."

***2015 ANNUAL STREET PAVING PROJECTS - UNRELATED PROJECT***

On December 9, 2014, the Board of Works accepted bids and awarded a contract for the 2015 annual street paving program. The list of projects advertised by the City included two projects for Moonglo Road that included costs for a pedestrian signal, signage, and traffic control system. In order for an annual contract to be awarded for multiple projects, the costs associated to those projects must be limited to the rental of equipment and materials to be installed or applied.

Indiana Code 36-1-12-3(c) states:

"When the project involves the rental of equipment with an operator furnished by the owner, or the installation or application of materials by the supplier of the materials, the project is considered to be a public work project and subject to this chapter. However, an annual contract may be awarded for equipment rental and materials to be installed or applied during a calendar or fiscal year if the proposed project or projects are described in the bid specifications."

Because the Moonglo Road project included costs unrelated to the rental of equipment and materials to be installed or applied, separate bids or quotes should have been solicited in accordance with Indiana Code 36-1-12-4 or Indiana Code 36-1-12-4.7.

BOARD OF PUBLIC WORKS  
CITY OF SCOTTSBURG  
SPECIAL COMPLIANCE RESULTS AND COMMENTS  
(Continued)

***MOONGLO ROAD AND CONNECTOR TRAIL NOT BID***

The Board of Works awarded a contract in the amount of \$277,882 for their annual street paving program to be performed in 2015. The Board of Works approved Change Order No. 1, dated June 22, 2015, which included the addition of \$167,100 for the paving of Moonglo Road and a connector walking trail from West Moonglo Road to Nichols-Wilson Park. Change Order No. 1 was issued in lieu of soliciting bids for the project. The following is additional information regarding these projects:

1. The projects were not part of the original specifications.
2. The projects were performed during the same time period and project locations were contiguous.
3. The work on the projects was completed prior to Change Order No. 1 being approved by the Board of Works.
4. Change Order No. 1 also deleted \$159,941 of street paving projects and \$3,345 of signal, signage, and traffic controls improvements, making it appear that the increase in the scope of the original project (annual street paving program) was only \$3,814. However, the Board of Works subsequently approved Change Order No. 2 on August 11, 2015, adding back the \$159,941 of street paving projects deleted in Change Order No. 1.

Indiana Code 36-1-12-4 states in part:

"(a) This section applies whenever the cost of a public work project will be: (1) . . . at least one hundred fifty thousand dollars (\$150,000) . . .

(b) The board must comply with the following procedure . . . (3) Upon the filing of the plans and specifications, the board shall publish notice in accordance with IC 5-3-1 calling for sealed proposals for the public work needed . . ."

BOARD OF PUBLIC WORKS  
CITY OF SCOTTSBURG  
EXIT CONFERENCE

The contents of this report were discussed on April 26, 2016, with William H. Graham, President of the Board of Public Works; Bill Hoagland, President Pro-Tempore of the Common Council; and Kerry Thompson, City Attorney.



**HOUSTON, THOMPSON and LEWIS, PC**  
ATTORNEYS AT LAW

May 25, 2016

Indiana State Board of Accounts  
302 West Washington Street, Room E418  
Indianapolis, Indiana 46204-2769

**Re: Official Response – City of Scottsburg Board of Public Works Audit Report**

Dear Sir:

Please accept this letter as the official response of the City of Scottsburg to the Board of Public Works Audit Report for the time period, July 13, 2013 to June 22, 2015. This response is directed to the three (3) examination results and comments discussed at the exit conference on April 26, 2016, and, for sake of clarity, are organized under each heading of projects given to the City on that date.

1. Moonglo Road Trail Construction Project

Although the change orders on the Moonglo Trail Construction Project increased the cost of the project more than twenty percent (20%) of the amount of the original contract, there were unforeseen circumstances that arose as the project was nearing completion which made it advantageous to the City to do additional work on the project. Unforeseen circumstances are not subject to the twenty percent cap on change orders. That unforeseen circumstance was that as the first phase of the Moonglo Road Trail Construction Project was being completed, it became apparent to the City that substantial savings could be made if funds could be allocated for additional construction and if the contractor was available to continue work on the project. When those two circumstances came together, the City requested that the contractor, which was Temple & Temple Excavating, do additional work on the project which resulted in the change order. It is common knowledge that a large part of the costs of a construction contract or paving contract is the cost to the contractor of mobilizing men and equipment to the site of the work. When Temple agreed to stay on the job and only had to move its equipment and men less than one-fourth mile to do additional work that was not earlier anticipated, the City saved thousands of dollars on the total project costs. The opportunity to do additional work on the project only arose when it was determined that additional funds and the contractor were both available. The bottom line is that the City saved several thousands of dollars by adding the work to the original contractor's construction contract and not having to rebid that additional construction.

2. 2015 Annual Street Paving Projects

The work for the pedestrian signal signage, and traffic control system at the I-65 overpass on Moonglo Road were a part of the overall street paving project in 2014 and 2015 because that work was done on Moonglo Road and paving of Moonglo Road did occur on both the east and west sides of the Interstate overpass. As stated in response to the Moonglo Road Trail Construction Project comments, the City saved several thousands of dollars by taking advantage of the ability to keep the contractor on

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site and to complete work along Moonglo Road while men and equipment were available. To my knowledge, there has been no allegation that construction of the pedestrian signal, signage and traffic control system, as constructed and completed, resulted in any additional costs to the City that might have been saved by bidding that project as a separate project. In fact, to the contrary, the City believes that much money was saved by constructing the project in the manner that was done.

3. Moonglo Road and Connector Trail Not Bid

The City comments to this examination finding are the same as in paragraph 1 related to the Moonglo Road Trail Construction Project. Change Orders were done when money became available and the contractor became available, which were unforeseen at the time this project was started. In effect, the City accomplished by change orders what the State Board of Accounts is stating should have been subject to a separate bid project.

No one can argue that the improvements which were done on Moonglo Road were not needed. That street carries a high volume of traffic in a much more efficient manner than existed before the Moonglo Road improvements. Nobody has questioned the quality of the work or the benefit to the City other than to question the manner in which the construction was paid. The manner of payment does not equate to additional expense being incurred by the City or to any lessening of value of the project. Again, the ability to save several thousands of dollars was the driving force behind the manner in which the Moonglo Road and Connector Trail Projects were done. Also, as earlier stated, the twenty percent restriction on change orders does not apply if there are change orders issued as a result of circumstances that could not have been reasonably foreseen at the time of the original contract was awarded (I.C. 36-1-12-18(d)).

Thank you for your consideration of this official response.

Sincerely,

HOUSTON, THOMPSON and LEWIS, PC



Kerry Thompson  
Attorney for the City of Scottsburg

KT/dml

*Sent via e-mail to: [ldavid@sboa.in.gov](mailto:ldavid@sboa.in.gov)*