

BILL NO. S-15-04-01

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONSTRUCTION
CONTRACT - JEFFERSON, BLVD. ROAD DIET
IMPROVEMENTS/CONSTRUCTION - RESOLUTION
#0069A/WORK ORDER #0069A between BROOKS
CONSTRUCTION, INC. and the City of Fort Wayne,
Indiana, in connection with the Board of Public Works.

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

SECTION 1. That the CONSTRUCTION CONTRACT -
JEFFERSON BLVD. ROAD DIET IMPROVEMENTS/CONSTRUCTION -
RESOLUTION #0069A/WORK ORDER #0069A by and between BROOKS
CONSTRUCTION, INC. and the City of Fort Wayne, Indiana, in connection
with the Board of Public Works, is hereby ratified, and affirmed and approved
in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power,
transportation, miscellaneous equipment, etc., necessary for
diet of Jefferson Blvd. from 4 to 3 lanes from Broadway to
Calhoun along with resurfacing, improvements along
Fairfield and Ewing Streets from Jefferson South to railroad
underpass and on Baker St.:

involving a total cost of TWO MILLION NINETY-EIGHT THOUSAND FOUR
HUNDRED SIXTEEN AND 00/100 DOLLARS -(\$2,098,416.00). A copy of
said Contract is on file with the Office of the City Clerk and made available for
public inspection, according to law.

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

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

CONSTRUCTION CONTRACT

Contract : 0069A

Work Order: 0069A

THIS CONTRACT made and entered into in triplicate this 1 day of April, 2015, by and between **BROOKS CONSTRUCTION CO. INC.** herein called **CONTRACTOR**, and the **CITY OF FORT WAYNE, INDIANA**, an Indiana Municipal Corporation, acting by and through the **MAYOR** and the **Board of Public Works**, herein called **OWNER**;

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

ARTICLE 1: SCOPE OF WORK

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

JEFFERSON BOULEVARD ROAD DIET / IMPROVEMENT

According to all provisions of **RESOLUTION NO. 0069A**, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The **OWNER** shall pay **CONTRACTOR** for the performance of the contract the amount of **\$2,098, 416.00**. In the event the amount of work is increased or decreased by **OWNER**, the contract sum shall be increased or decreased according to the unit price schedule set forth in the **CONTRACTOR'S Proposal**.

ARTICLE 3: PROGRESS PAYMENTS AND RETAINAGE

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

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

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

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

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

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

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

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

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

ARTICLE 5: WORKMEN'S COMPENSATION ACT

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

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

ARTICLE 6: NONDISCRIMINATION OF LABOR

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

ARTICLE 7: WAGE SCALE

The **CONTRACTOR** agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the **Statutes of the State of Indiana**, and the **Ordinances of the City of Fort Wayne** according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

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

- a. Notice to contractors for Resolution: 0069A
- b. Instructions to Bidders for Resolution: 0069A
- c. Contractor's Proposal dated 3/18/15
- d. American Structurepoint, Inc. Drawing Number: 00069W
- e. Supplemental Specifications for Resolution: 0069A
- f. Workmen's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne
- g. Non-Discrimination of Labor, Chapter 93.036, Code of City.
- h. Prevailing Wage Scale
- i. Performance and Guaranty Bond.
- j. Labor and Material Payment Bond
- k. Right-of-Way Cut Permit
- l. Comprehensive Liability Insurance Coverage
- m. Form 96
- n. Article 17: Emerging Business Enterprise
- o. Contract Compliance Reports
- p. Vendor Disclosure Statement
- q. Indiana Legal Employment Declaration
- r. Drug Policy Acknowledgement Form
- s. Completion Affidavit

ARTICLE 9: GUARANTEE OF WORKMANSHIP

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

ARTICLE 10: INDEMNITY

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

ARTICLE 11: ADJUSTMENTS OF DISPUTES

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

ARTICLE 12: COMPLETION DATE

The **CONTRACTOR** agrees to complete the work specified in the contract by 11/15/15 after having been ordered by the **OWNER** to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

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

ARTICLE 14: CITY OF FORT WAYNE ALCOHOL AND DRUG POLICY

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

ARTICLE 15: EMPLOYMENT ELIGIBILITY VERIFICATION

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

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

ARTICLE 18: PREMATURE WORK COMMENCEMENT

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

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

CONTRACTOR
Brooks Construction Co., Inc.

BY: Cynthia G. Rubensal, CEO

CITY OF FORT WAYNE

BY: Thomas C. Henry

THOMAS C. HENRY, MAYOR

BOARD OF PUBLIC WORKS

BY: Absent

ROBERT KENNEDY, CHAIRMAN

BY: Kumar Menon

KUMAR MENON, MEMBER

BY: Mike Avila

MIKE AVILA, MEMBER

ATTEST: Lyndsey L. Richards

LYNDSEY L. RICHARDS, CLERK

ACKNOWLEDGEMENT

STATE OF INDIANA)

SS:

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 30 day of March, 2015, personally appeared the within named Cynthia A Riebers who being by me first duly sworn upon his oath says that he is the CFO/Secretary of Brooks Const Co Inc and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of for the uses and purposes therein set forth.

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

Sara R Boardman
Notary Public

Sara R Boardman

Printed Name of Notary

My Commission Expires: March 22, 2023

Resident of Allen County.

ACKNOWLEDGMENT

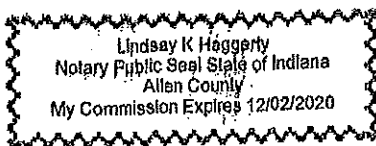
STATE OF INDIANA)

SS:)

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 1st day of April, 2015, personally appeared the within named Thomas C. Henry, Robert Kennedy, Mike Avila, Kumar Menon and Lindsey L. Richards, by me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, and Chairman, Members, and Clerk of the Board of Public Works of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said City for the uses and purposes therein set forth.

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



Lindsay K Haggerty
Notary Public

LINDSAY K HAGGERTY
Printed Name of Notary

My Commission Expires: 12/02/2020

Resident of Allen County.

COMMON COUNCIL DIGEST SHEET - SUPPLEMENTAL
Jefferson Blvd Road Diet Improvements Construction

Action Requested:

Requesting approval of an award to Brooks Construction, Inc. in the amount of \$2,098,416.00 pursuant to Board of Works resolution 0069A.

Note: Brooks Construction, Inc. was the lowest most responsive bidder among 2 bidders at 9.7% above the engineer's estimate.

Description and Scope of Work:

The project includes a diet of Jefferson Blvd from 4 to 3 lanes from Broadway to Calhoun along with resurfacing, improvements along Fairfield and Ewing Streets from Jefferson South to railroad underpass and on Baker St.

Hard surface work (roadways, sidewalks and ramps) is to be substantially complete (ready for use) by October 15, 2015 with final completion for all other work (landscaping and final striping) done by November 15, 2015.

COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Transportation Engineering Services is providing this information to Council as an overview of the **Jefferson Blvd Road Diet Improvements Construction** award.

RFPs & BIDS

Bid/RFP #	0069A
Awarded To	Brooks Construction Inc.
Amount	\$2,098,416.00
Conflict of interest on file?	X Yes ☐ No n/a
Number of Registrants	7
Number of Bidders	2
Attachments	BID TAB ANALYSIS SHEET

EXTENSIONS

Date Last Bid Out	N/A
# Extensions Granted To Date	N/A

SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback--Authority)	0069A416
Sole Source/ Compatibility Justification	N/A

BID CRITERIA *(Take Buy Indiana requirements into consideration.)*

Most Responsible, Responsive Lowest	X Yes ☐ No <i>If no, explain below</i>
If not lowest, explain	N/A

COUNCIL DIGEST SHEET

COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	N/A
--	-----

DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project; attach supporting documents as necessary.</i>	SEE ATTACHED COMMON COUNCIL SUPPLEMENTAL

REQUEST FOR PRIOR APPROVAL

<i>Provide justification if prior approval is being requested.</i>	N/A

FUNDING SOURCE

<i>Account Information.</i>	LEGACY, TIF, & CEDIT