

BILL NO. S-19-04-04

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONSTRUCTION CONTRACT - LAKE AVENUE TRAIL: RANDALLIA DRIVE TO CAREW STREET - RFP #0377N - (\$181,211.00) between BROOKS CONSTRUCTION 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 - LAKE AVENUE TRAIL: RANDALLIA DRIVE TO CAREW STREET - RFP #0377N - (\$181,211.00) by and between BROOKS CONSTRUCTION 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: Project includes a ten foot wide asphalt trail from Randallia Drive to Carew Street. Total length is 0.27 miles. The project also includes two ADA ramps, a retaining wall, a small amount of concrete sidewalk, pavement markings and a park bench and pad;

involving a total cost of ONE HUNDRED EIGHTY-ONE THOUSAND TWO HUNDRED ELEVEN AND 00/100 DOLLARS - (\$181,211.00). A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

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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

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 Lake Avenue Trail: Randallia Drive to Carew Street award.

RFPs & BIDS

Bid/RFP #	0377N
Awarded To	Brooks Construction
Amount	\$181,211.00
Conflict of interest on file?	X Yes ☐ No n/a
Number of Registrants	4
Number of Bidders	4
Attachments	AWARD APPROVAL AND 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)	
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
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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>	CEDIT

COMMON COUNCIL DIGEST SHEET – SUPPLEMENTAL

Lake Avenue Trail: Randallia Drive to Carew Street

Action Requested:

Requesting an ordinance approving the Lake Avenue Trail: Randallia Drive to Carew Street Resolution #0377N between Brooks Construction and the City of Fort Wayne in the amount of \$181,211.00 in connection with Fort Wayne Public Works.

Note: Brooks Construction was the lowest most responsive bidder among 4 bidders.

Description and Scope of Work:

This project includes a ten foot wide asphalt trail from Randallia Drive to Carew Street. Total length is 0.27 miles. The project also includes two ADA ramps, a retaining wall, a small amount of concrete sidewalk, pavement markings and a park bench and pad. The contractor shall furnish all labor, insurance, equipment, materials and power for the complete performance of the project.

best bid column.

TOTAL:	\$201,079.00	TOTAL:	\$181,211.00	TOTAL:	\$158,915.00	TOTAL:	\$192,791.73	TOTAL:	\$194,999.00
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% over	0.00%	% over	0.00%	% over	0.00%	% over	0.00%
% under	0.00%	% under	7.02%	% under	4.10%	% under	3.00%

Proj:	Lab's Ave. Trail from Randolph Drive to Carey Street
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DATE:	09/08/19		ITEM	PLAN QTY	UNIT	W.O. NO.: D77N Estimate		BIDDER:	Brooks Construction		BIDDER:	Wayne Asphar		BIDDER:	T-E Incorporated		BIDDER:	Euna Inc.	
						PLAN QTY	ESTIMATE	UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)
1			MOBILIZATION / DEMOBILIZATION	1	LS	\$17,000.00	\$17,000.00	\$9,000.00	\$9,000.00	\$12,604.00	\$12,604.00	\$8,000.00	\$8,000.00	\$4,732.83	\$4,732.83				
2			MAINTENANCE OF TRAFFIC	1	LS	\$45,000.00	\$45,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$6,362.37	\$6,362.37				
3			CLEARING RIGHT-OF-WAY	1	LS	\$6,600.00	\$6,600.00	\$1,500.00	\$1,500.00	\$8,500.00	\$8,500.00	\$8,500.00	\$8,500.00	\$4,260.35	\$4,260.35				
4			CONSTRUCTION ENGINEERING	1	LS	\$3,500.00	\$3,500.00	\$2,500.00	\$2,500.00	\$3,787.74	\$3,787.74	\$3,787.74	\$3,787.74	\$4,641.73	\$4,641.73				
5			REMOVAL OF CONCRETE (INCLUDES FULL DEPTH SAW CUT)	18	SF	\$10.00	\$170.00	\$25.00	\$450.00	\$49.00	\$720.00	\$44.50	\$801.00	\$168.12	\$2,866.16				
6			REMOVAL OF CONCRETE CURBS	85	LF	\$15.00	\$1,275.00	\$10.00	\$850.00	\$17.00	\$1,445.00	\$18.75	\$1,593.75	\$79.39	\$2,128.19				
7			EXCAVATION, COMMON	309	CYD	\$30.00	\$9,270.00	\$50.00	\$15,450.00	\$48.66	\$16,215.50	\$26.64	\$8,230.90	\$42.37	\$13,129.50				
8			BORROW	175	CYD	\$33.00	\$5,775.00	\$12.00	\$2,100.00	\$22.00	\$3,850.00	\$15.00	\$2,625.00	\$44.61	\$7,806.75				
9			POTHOLING (UNDISTRIBUTED)	5	EA	\$200.00	\$1,000.00	\$350.00	\$1,750.00	\$200.00	\$1,000.00	\$376.00	\$1,880.00	\$456.99	\$2,284.95				
10			GEOTEXTILE BX 1200 (Include 12" Undercut and #3 Stone) (UNDISTRIBUTED)	60	SY	\$50.00	\$3,000.00	\$30.00	\$1,800.00	\$40.50	\$2,430.00	\$27.00	\$1,620.00	\$69.64	\$4,178.40				
11			TYPE "C" COMPACTED AGGREGATE FOR PROPOSED TRAIL WALKWAY (Can include recycled concrete)	700	TON	\$27.00	\$18,900.00	\$17.00	\$11,900.00	\$21.00	\$14,700.00	\$16.30	\$11,410.00	\$22.31	\$15,617.00				
12			CASTINGS ADJUSTED TO GRADE	3	EA	\$250.00	\$750.00	\$250.00	\$750.00	\$300.00	\$900.00	\$312.00	\$936.00	\$235.77	\$707.31				
13			ADJUST WATER VALVE TO GRADE (UNDISTRIBUTED)	1	EA	\$200.00	\$200.00	\$125.00	\$125.00	\$200.00	\$200.00	\$219.00	\$219.00	\$334.69	\$334.69				
14			INLET PROTECTION	3	EA	\$55.00	\$165.00	\$50.00	\$150.00	\$50.00	\$150.00	\$63.00	\$189.00	\$61.47	\$184.41				
15			TEMPORARY EROSION CONTROL, PERIMETER PROTECTION	27.50	LF	\$1.80	\$49.50	\$2.00	\$55.00	\$2.00	\$55.00	\$2.50	\$68.75	\$2.58	\$70.99				
16			CURB RAMP, TYPE "C"	8	SY	\$100.00	\$800.00	\$150.00	\$1,200.00	\$100.00	\$800.00	\$235.00	\$1,880.00	\$120.76	\$966.08				
17			CURB RAMP, TYPE "C" MODIFIED	70	SY	\$100.00	\$7,000.00	\$135.00	\$9,450.00	\$90.00	\$6,300.00	\$89.30	\$6,251.00	\$103.04	\$7,212.80				
18			ADA SOLUTIONS, ARMOR-TILE, OR APPROVED EQUAL (REPLACEABLE) ZXP COMPOSITE, WEISET, TACTILE WARNING SURFACE UNIT- BRICK RED	9	EA	\$110.00	\$990.00	\$120.00	\$1,080.00	\$250.00	\$2,250.00	\$312.00	\$2,808.00	\$193.41	\$1,740.69				
19			CONCRETE CURBS (ALL TYPES)	12	LF	\$40.00	\$480.00	\$60.00	\$720.00	\$45.00	\$540.00	\$97.50	\$570.00	\$56.84	\$682.08				
20			CONCRETE SIDEWALK (#4) (CURB ON BACK OF WALK INCLUDED)	30	BY	\$70.00	\$2,100.00	\$100.00	\$3,000.00	\$55.00	\$1,650.00	\$97.65	\$2,929.50	\$96.00	\$2,880.00				



Notice of Award

3/26/2019

Project: Lake Avenue Trail: Randallia Dr to Carew St

Owner: City of Fort Wayne Board of Works

Resolution/Work Order #0377N

Bidder: Brooks Construction

Bidder's Address: 6525 Ardmore Ave / PO Box 9560

Fort Wayne, IN 46899

You are notified that your Bid dated 3/19/2019 for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for Lake Avenue Trail: Randallia Dr to Carew St

This project includes a ten foot wide asphalt trail from Randallia Drive to Carew Street. Total length is 0.27 miles. The project also includes two ADA ramps, a retaining wall, a small amount of concrete sidewalk, pavement markings and a park bench and pad. The contractor shall furnish all labor, insurance, equipment, materials and power for the complete performance of the project.

The Contract Price of your Contract is \$181,211.00.

1 copy of the proposed Construction Contract (except Drawings) accompany this Notice of Award.

You must comply with the following conditions precedent within [10] days of the date you receive this Notice of Award.

1. Deliver to the Owner [1] fully executed counterparts of the Construction Contract.
2. Deliver with the executed Agreement the Contract security [Bonds] as specified in the Instructions to Bidders.
 - a. Performance Bond
 - b. Payment Bond
 - c. Certificates of Insurance
3. Deliver evidence of successful Bidder's Affirmative Action Plan; OR, executed City of Fort Wayne Affirmative Action Program document, pursuant to Article 19 of the Instructions to Bidders.
4. Deliver executed Drug Policy Acknowledgement Form. (For projects over \$150,000.00 a copy of your drug testing program is required.)
5. Deliver executed E-Verify Affidavit.

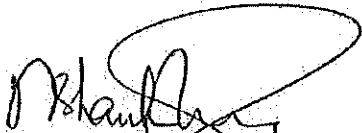


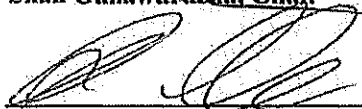
Notice of Award

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. Contractor will be allowed an additional 11 calendar days to submit Bonds.

Within thirty days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement.

**CITY OF FORT WAYNE
BOARD OF PUBLIC WORKS**



Shan Gunawardena, Chair

Kumar Menon, Member

Mike Avila, Member

ATTEST:



Michelle Fulk, Clerk

Date: 3.26.19

cc: Project Manager

CONSTRUCTION CONTRACT

Resolution No. / Work Order 0377N

THIS CONTRACT made and entered into this ____ day of _____, 20__ by and between **BROOKS CONSTRUCTION** 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 ("Board"), 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: **LAKE AVENUE TRAIL; RANDALLIA DR TO CAREW ST**

All according to all provisions of **RESOLUTION NO. 0377N**, 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 **\$181,211.00**. 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 5% 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 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 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 will direct the Engineering Department of the OWNER to promptly make such inspection, and will direct the City's Office of Vendor 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. Likewise, when the Vendor Compliance Department determines that the CONTRACTOR'S efforts constitute good faith efforts to attain the E.B.E. goal as agreed in Article 17 and that all required Vendor 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 Vendor Compliance Department's recommendations, the Board 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 Vendor Compliance reports for this project have been submitted.

In the event that the Board 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 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 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 upon request a certificate from the Worker's Compensation Board 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. No work contemplated by this Contract shall commence prior to Owner receiving a certificate of insurance verifying the coverage provided herein.

Any judgment rendered against the City 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 Worker's Compensation Board of Indiana rendered against the City 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 Office of Compliance within ten (10) days after completion of construction or upon request of the Office of Compliance.

ARTICLE 7: [Reserved]

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 0377N.
- b. Instructions to Bidders for Resolution 0377N.
- c. Contractor's Proposal dated 3/19/2019.
- d. Fort Wayne Engineering Department Drawing Number ST-0377N.
- e. Supplemental Specifications for Resolution 0377N.
- 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. [Reserved]
- i. Performance and Guaranty Bond, if required.
- j. Labor and Material Payment Bond, if required.
- k. Right-of-Way Cut Permit.
- l. Comprehensive Liability Insurance Coverage.
- m. Form 96.
- n. Article 17: Emerging Business Enterprise
- o. Vendor Compliance Reports.
- p. Vendor Disclosure Form.
- q. E-Verify Affidavit.
- r. Drug Policy Acknowledgement Form (Contract less than \$150,000) or Written Drug Testing Plan (Contract \$150,000 or more)
- s. Completion Affidavit

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, if required by the terms of the Notice to Contractors, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City 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 Indiana law.

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 Chairman 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.

ARTICLE 12: COMPLETION DATE

The CONTRACTOR agrees to complete the work specified in the contract within/by the substantial completion date of 9/29/2019 and completion date of 10/15/2019 after having been ordered by the OWNER to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Contract, although executed on behalf of the OWNER by the MAYOR and Board of Public Works of the City 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 when the Contract is less than \$150,000. A copy of this policy is available for inspection in the office of Risk Management, 200 East Berry Street, Suite 470 or on the City of Fort Wayne website at: <http://www.cityoffortwayne.org/finance/purchasing/drugpolicy.htm>. 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 acknowledgment 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 Department of the City of Fort Wayne.

Pursuant to IC 36-1-12-24, when the contract is at least \$150,000, the CONTRACTOR shall implement the employee drug testing program submitted as part of its Bid. Owner may cancel this Contract if it determines that the CONTRACTOR:

- A: Has failed to implement its employee drug testing program during the term of this Contract;
- B: Has failed to provide information regarding implementation of the Contractor's employee drug testing program at the request of Owner; or
- C. Has provided to the OWNER false information regarding the CONTRACTOR'S employee drug testing program.

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. There is a rebuttable presumption that CONTRACTOR did not knowingly employ an unauthorized alien if CONTRACTOR verified the work eligibility status of the employee through the Program.

If CONTRACTOR employs or contracts with an unauthorized alien but OWNER determines that terminating the contract would be detrimental to the public interest or public property, OWNER may allow the contract to remain in effect until OWNER procures a new contractor.

CONTRACTOR shall, prior to performing any work, require each subcontractor to certify to CONTRACTOR that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Contractor shall maintain on file a certification from each subcontractor throughout the duration of the Project. If CONTRACTOR determines that a subcontractor is in violation of this section, CONTRACTOR may terminate its contract with the subcontractor for such violation. Such termination may not be considered a breach of contract by CONTRACTOR or the subcontractor.

In addition, prior to commencing performance of the Contract, each Contractor and Subcontractor(s) shall submit to Owner the E-Verify case verification number for each individual required to be verified under IC 22-5-1.7. An individual may not commence performance of the Contract if the individual's final case result is "Final Nonconfirmation." If OWNER suspects violations of this requirement, OWNER is required to refer the matter to the Indiana Department of Labor.

ARTICLE 16:

This contract shall be governed in accordance with the laws of the state of Indiana. The venue for disputes hereunder shall be exclusive to local and federal courts of Allen County, Indiana.

ARTICLE 17: EMERGING BUSINESS ENTERPRISE

THIS CONTRACT made and entered into by and between the CITY OF FORT WAYNE, hereinafter referred to as OWNER and BROOKS CONSTRUCTION, hereinafter referred to as CONTRACTOR,

WITNESSETH:

WHEREAS, the CONTRACTOR is the apparent low bidder on construction project commonly referred to as the LAKE AVENUE TRAIL: RANDALLIA DR TO CAREW ST, which project was bid under Resolution Number 0377N; and

WHEREAS, CONTRACTOR agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as E.B.E.'s as subcontractors on this project is 10% of the contract amount; and

WHEREAS, OWNER has, pursuant to Executive Order 90-01 (as amended 05-08-06), adopted a goal of at least 10% of the contract amount to Emerging Business Enterprises as defined under said Executive Order (as amended 05-08-06); and

WHEREAS, said Executive Order (as amended 05-08-06) states:

"Section 2, Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded.

In the event a contractor is unable to subcontract 10% of the contract amount or secure services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts taken to comply with the participation goals."

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. **Conditional Award** - Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Article is attached, OWNER awards the construction contract to the CONTRACTOR.
2. **E.B.E. Retainage requirements** - If the CONTRACTOR is in compliance with the provisions of the construction contract to which this Article is attached, the OWNER will make payments for such work performed and completed. However, in any such case, the OWNER will retain five percent (5%) of the total amount owing to insure compliance with this Article. Upon final inspection and acceptance of the work, and determination by the Board that the CONTRACTOR has made a good faith effort to subcontract 10% of the contract amount to emerging business enterprises, the contractor will be paid in full.

In the event there is a determination that good faith compliance with this Article has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this Article will be made.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, 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 this Article.

Payment of the final 5% of the total contract amount will be dependent upon good faith efforts to comply with this Article, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this Article

3. **Request for Waiver** - If, at the time final payment application is made, contractor has

not attained the ten 10% E.B.E. goal, contractor shall file with the final payment application a "Request for Waiver." Said Request for Waiver shall contain a written description of the efforts taken by CONTRACTOR to attain the 10% E.B.E. goal.

4. **Determination of Waiver Requests** – The City's Office of Vendor Compliance Department shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said requests for Waiver for the final determination of the Board.
5. **Good Faith Per Se** - In any case, a CONTRACTOR shall be deemed to have made good faith efforts at compliance where E.B.E.'s have subcontracted for every sub-contract for which there are qualified E.B.E.'s available.
6. **Consequence of noncompliance** - In the event the Board approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between 10% and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and CONTRACTOR agrees to accept the reduced amount as full payment under the terms of his/her contract.
7. **Waiver approved** - In the event the Board determines that a good faith effort to comply with this Article has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

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.

ARTICLE 19: FINDING DETERMINATION OF RESPONSIBILITY FOLLOWING COMMENCEMENT OF WORK

A determination of responsibility may be made after work has commenced if the CONTRACTOR fails to remedy certain violations under IC 5-16-13 within thirty (30) days. For purposes of this determination, the term "contractor" refers generally to a contractor in any contractor tier. For example, a contractor may be found not responsible for a period up to forty-eight (48) months if one of the following occur:

- (1) The contractor does not maintain general liability insurance in the amount of \$1,000,000 for each occurrence and \$2,000,000 for the general aggregate;
- (2) The Tier 1 contractor does not contribute 15% of the contract in work, materials, or services;
- (3) The contractor does not fit within the "contractor tier" structure, as that term is defined under IC 5-16-13-4;
- (4) The contractor pays cash to any individual for work performed in connection with the contract; or
- (5) The contractor fails to provide the City with the E-verify case verification number for those

individuals required to be verified prior to beginning work on the contract.

When making a determination of responsibility after work has commenced, the severity of the violation will be taken into consideration when determining the length of time the contractor will be found not responsible. The period during which the contractor is considered not responsible begins on the date of substantial completion of the public works project.

ACKNOWLEDGMENT

STATE OF INDIANA)

SS:)

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 2 day of April, 2011, personally appeared the within named Cynthia A. Riebersal who being by me first duly sworn upon his oath says that he is the CFO 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.

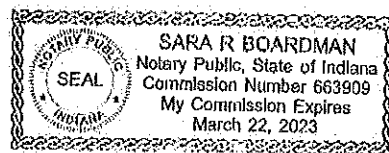
IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Sara R Boardman
Notary Public

Sara R Boardman
Printed Name of Notary

My Commission Expires: 32223

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 ____ day of _____, 20__, personally appeared the within named **Thomas C. Henry, Shan Gunawardena, Mike Avila, Kumar Menon and Michelle Fulk**, 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.

Notary Public

Printed Name of Notary

My Commission Expires:

Resident of _____ County.

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

CONTRACTOR

CITY OF FORT WAYNE

BY: Cynthia A. Riburnal, CEO
BROOKS CONSTRUCTION

BY: _____
THOMAS C. HENRY, MAYOR

BOARD OF PUBLIC WORKS

BY: _____
SHAN GUNAWARDENA, CHAIR

BY: _____
KUMAR MENON, MEMBER

BY: _____
MIKE AVILA, MEMBER

ATTEST: _____
MICHELLE FULK, CLERK