

1 **BILL NO. S-19-05-42**

2 SPECIAL ORDINANCE NO. S-_____

3 AN ORDINANCE approving CONSTRUCTION
4 CONTRACT - 2019 RESURFACING PACKAGE
5 SOUTHWEST - RESOLUTION/WORK ORDER
6 #0310A - (\$1,194,372.00) between BROOKS
7 CONSTRUCTION CO. INC. and the City of Fort
8 Wayne, Indiana, in connection with the Board of Public
9 Works.

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

12 **SECTION 1.** That the CONSTRUCTION CONTRACT - 2019
13 RESURFACING PACKAGE SOUTHWEST - RESOLUTION/WORK ORDER
14 #0310A - (\$1,194,372.00) by and between BROOKS CONSTRUCTION CO. INC.

15 ~~and the City of Fort Wayne, Indiana, in connection with the Board of Public Works,~~

16 is hereby ratified, and affirmed and approved in all respects, respectfully for:

17 All labor, insurance, material, equipment, tools, power,
18 transportation, miscellaneous equipment, etc., necessary for
19 resurfacing of streets in Council Districts 4 & 5 by milling and
20 resurfacing 1-3", asphalt patching as necessary, furnishing and
21 adjusting new castings, adjusting existing castings, placement of
22 new pavement markings, and signal loop work;

23 involving a total cost of ONE MILLION ONE HUNDRED NINETY-FOUR
24 THOUSAND THREE HUNDRED SEVENTY-TWO AND 00/100 DOLLARS -
25 (\$1,194,372.00). A copy of said Contract is on file with the Office of the City Clerk
26 and made available for public inspection, according to law.

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

29 _____
30 Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney



Notice of Award

5/14/2019

Project: 2019 Resurfacing Package Southwest

Owner: City of Fort Wayne Board of Works

Resolution/Work Order #0310A

Bidder: Brooks Construction

Bidder's Address: PO Box 9560

Fort Wayne, IN 46899

You are notified that your Bid dated 5/7/2019 for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for 2019 Resurfacing Package Southwest

Resurfacing of streets in Council Districts 4 & 5 by milling and resurfacing 1-3", asphalt patching as necessary, furnishing and adjusting new castings, adjusting existing castings, and placement of new pavement markings.

The Contract Price of your Contract is \$1,194,372.00.

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-Vondran, Clerk

Date: _____

cc: Project Manager

Bid Tabulation

Proj: 2019 Resurfacing Package Southwest

Bid: 0310A

Date: 05/07/19

ITEM NO.	ITEM	PLAN CITY	UNIT	Estimate		UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)
				UNIT COST Est (\$)	AMOUNT Est (\$)						
1	SURFACE MILLING, BITUMINOUS (ALL DEPTHS)	115400	SY	\$1.40	\$161,560.00	\$1.65	\$190,410.00	\$1.35	\$165,790.00	\$1.50	\$173,100.00
2	HMA INTERMEDIATE, TYPE B, 12.5 mm	2825	TON	\$58.00	\$163,860.00	\$60.00	\$169,500.00	\$55.00	\$153,525.00	\$58.00	\$163,850.00
3	HMA INTERMEDIATE, TYPE B, 9.5 mm	480	TON	\$66.50	\$30,590.00	\$64.00	\$29,440.00	\$70.00	\$32,200.00	\$60.00	\$27,600.00
4	HMA SURFACE, TYPE B, 9.5 mm	7300	TON	\$66.50	\$485,450.00	\$67.00	\$489,100.00	\$70.00	\$511,000.00	\$70.00	\$511,000.00
5	BITUMINOUS MIXTURE FOR APPROACHES (UNDISTRIBUTED QUANTITY)	30	TON	\$120.00	\$3,600.00	\$170.00	\$5,100.00	\$175.00	\$5,250.00	\$150.00	\$4,500.00
6	BITUMINOUS MATERIAL FOR PATCHING (UNDISTRIBUTED QUANTITY) (EXCAVATION OF MATERIAL INCLUDED IN COST OF	230	TON	\$145.00	\$33,350.00	\$160.00	\$36,800.00	\$145.00	\$33,350.00	\$120.00	\$27,600.00
7	BITUMINOUS MATERIAL FOR WEDGE AND LEVEL (UNDISTRIBUTED QUANTITY) (HMA INTERMEDIATE, TYPE B, 12.5mm)	60	TON	\$85.00	\$5,100.00	\$90.00	\$5,400.00	\$90.00	\$5,400.00	\$100.00	\$6,000.00
8	BITUMINOUS MATERIAL FOR TACK COAT	70	TON	\$800.00	\$42,000.00	\$100.00	\$7,000.00	\$100.00	\$7,000.00	\$300.00	\$21,000.00
9	WATER VALVE ADJUST (UNDISTRIBUTED QUANTITY)	12	EA	\$85.00	\$1,020.00	\$135.00	\$1,620.00	\$120.00	\$1,440.00	\$100.00	\$1,200.00
10	CASTINGS (ADJUST TO GRADE) (UNDISTRIBUTED QUANTITY)	9	EA	\$300.00	\$2,700.00	\$650.00	\$5,850.00	\$775.00	\$6,975.00	\$600.00	\$5,400.00
11	GRADE	1	EA	\$650.00	\$650.00	\$900.00	\$900.00	\$1,025.00	\$1,025.00	\$900.00	\$900.00
12	TRANSVERSE MARKING, EPOXY PAINT, WHITE, STOP BAR (24")	70	LF	\$12.00	\$840.00	\$10.00	\$700.00	\$12.00	\$840.00	\$12.00	\$840.00
13	TRANSVERSE MARKING, CROSSWALK LINE, WHITE, EPOXY PAINT, 8"	516	LF	\$3.00	\$1,548.00	\$2.10	\$1,083.60	\$6.00	\$3,096.00	\$6.00	\$3,096.00
14	TRANSVERSE MARKING, EPOXY PAINT, WHITE, CROSS WALK (PIANO KEYS), 24"	219	LF	\$12.00	\$2,628.00	\$6.90	\$1,511.10	\$12.00	\$2,628.00	\$12.00	\$2,628.00
15	PAVEMENT MARKINGS, SOLID YELLOW, EPOXY PAINT, 4"	12445	LF	\$0.90	\$11,200.50	\$0.31	\$3,957.95	\$0.75	\$9,333.75	\$0.75	\$9,333.75
16	PAVEMENT MARKINGS, BROKEN YELLOW, EPOXY PAINT, 4"	810	LF	\$0.90	\$729.00	\$0.54	\$437.40	\$0.75	\$607.50	\$0.75	\$607.50
17	PAVEMENT MARKINGS, SOLID WHITE, EPOXY PAINT, 4"	5060	LF	\$0.90	\$4,554.00	\$0.42	\$2,125.20	\$0.75	\$3,795.00	\$0.75	\$3,795.00
18	PAVEMENT MARKINGS, BROKEN WHITE, EPOXY PAINT, 4"	40	LF	\$0.90	\$36.00	\$4.98	\$199.20	\$0.75	\$30.00	\$0.75	\$30.00
19	PAVEMENT MESSAGE MARKINGS, WHITE, EPOXY PAINT, (RIGHT ARROW OR LEFT ARROW)	10	EA	\$175.00	\$1,750.00	\$150.00	\$1,500.00	\$200.00	\$2,000.00	\$200.00	\$2,000.00
20	TEMPORARY PAVEMENT MARKINGS, REMOVEABLE, SOLID YELLOW, 4"	1948	LF	\$2.00	\$3,896.00	\$1.00	\$1,948.00	\$1.00	\$1,948.00	\$2.00	\$3,896.00
21	TEMPORARY PAVEMENT MARKINGS, REMOVEABLE, SOLID WHITE, 4"	120	LF	\$2.00	\$240.00	\$1.00	\$120.00	\$1.00	\$120.00	\$2.00	\$240.00
22	TEMPORARY PAVEMENT MARKINGS, SOLID YELLOW, PAINT, 4"	956	LF	\$1.00	\$956.00	\$0.50	\$478.00	\$0.55	\$525.80	\$2.00	\$1,912.00
23	TEMPORARY PAVEMENT MARKINGS, SOLID WHITE, PAINT, 4"	52	LF	\$1.00	\$52.00	\$0.50	\$26.00	\$0.55	\$28.60	\$2.00	\$104.00
24	DETECTOR HOUSINGS	1	EA	\$825.00	\$825.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
25	DOUBLE DETECTOR HOUSINGS	1	EA	\$1,250.00	\$1,250.00	\$1,250.00	\$1,250.00	\$1,250.00	\$1,250.00	\$1,250.00	\$1,250.00
26	TRAFFIC LOOPS	13	EA	\$675.00	\$8,775.00	\$950.00	\$4,550.00	\$950.00	\$4,550.00	\$950.00	\$4,550.00

EBE Paving, Inc.

Brooks Constructed

Wayne Asphalt & C

27	MAINTENANCE OF TRAFFIC	1	LS	\$60,000.00	\$147,465.55	\$147,465.55	\$168,990.00	\$168,990.00	\$99,920.00
28	MOBILIZATION AND DEMOBILIZATION	1	LS	\$55,000.00	\$60,000.00	\$60,000.00	\$62,000.00	\$62,000.00	\$180,100.00
29	WORK ALLOWANCE	1	LS	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00

CONSTRUCTION CONTRACT

Resolution No. / Work Order 0310A

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: **2019 RESURFACING PACKAGE SOUTHWEST**

All according to all provisions of RESOLUTION NO. 0310A, 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~~
\$1,194,372.00. 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 0310A.
- b. Instructions to Bidders for Resolution 0310A.
- c. Contractor's Proposal dated 5/7/2019.
- d. Fort Wayne Engineering Department Drawing Number ST-0310A.
- e. Supplemental Specifications for Resolution 0310A.
- 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 9/27/2019 and the final completion date of 10/25/2019 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 2019 RESURFACING PACKAGE SOUTHWEST, which project was bid under Resolution Number 0310A; 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 ____ day of _____, 20__, personally appeared the within named _____ who being by me first duly sworn upon his oath says that he is the _____ of _____ 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.

Notary Public

Printed Name of Notary

My Commission Expires:

Resident of _____ 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, Kumar Menon, Mike Avila, and Michelle Fulk-Vondran**, 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: _____
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-VONDRAN, CLERK

030A
5-7-19

CITY OF FORT WAYNE, INDIANA

Brooks Construction Co Inc.
(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

1. **FINANCIAL INTERESTS;**
2. **POTENTIAL CONFLICTS OF INTEREST;**
3. **CURRENT AND PENDING CONTRACTS OR PROCUREMENTS**

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$50,000 or more. Vendors shall disclose their financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the Vendor's contract, bid, proposal or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

Section 1: Disclosure of Financial Interest in Vendor

- a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

- (i) Equity ownership exceeding 5% ☐
- (ii) Distributable income share exceeding 5% ☐
- (iii) Not Applicable (If N/A, go to Section 2) ☐

Name: _____ Name: _____

Address: _____ Address: _____

- b. For each individual listed in Section 1a, show his/her type of equity ownership:

sole proprietorship ☐ stock ☐
partnership interest ☐ units (LLC) ☐
other (explain) _____

- c. For each individual listed in Section 1a, show the percentage of ownership interest in Vendor (or its parent): ownership interest:

Name: _____ %

Name: _____ %

Section 2: Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)

For each individual listed in Section 1a, check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

- a. City employment, currently or in the previous 3 years, including contractual employment for services:
Yes _____ No ☒

- b. City employment of "Member of Immediate Family" (defined herein as: *Spouse, Child, Step Child, Parent or Step Parent, Father-in-law or Mother-in-law, Brother or Sister, Step Brother or Step Sister, Half Brother or Half Sister, Brother-in-law or Sister-in-law, Son-in-law or Daughter-in-law, Grandparent or Step Grandparent, Grandparent or Step Grandparent of Spouse, Grandchild*)
Including contractual employment for services in the previous 3 years:

Yes _____ No ☒

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years: Yes
_____ No ☒

Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have current contracts (including leases) with the City? Yes ☒ No _____

If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact below (attach additional pages as necessary).

CFW Maysville Road

- b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes ☒ No _____

If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

CFW Lake Avenue Trail

c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

Yes _____ No /

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms: _____

Name / Position / Payment Terms: _____

Name / Position / Payment Terms: _____

d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.).

Company / Name / Payment Terms: _____

Company / Name / Payment Terms: _____

Section 4: CERTIFICATION OF DISCLOSURES

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:

- a. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- c. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;
- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same elements as the offense of bid-rigging or bid-rotating
- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

Brooks Construction Co Inc.

PO BOX 9560 Fort Wayne IN 46899

(Name of Vendor)

Address

() 260-478-1990

Telephone

brbushee@brooks1st.com

E-Mail Address

The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed) Andrew E. Brooks

Title President

Signature

Date May 7, 2019

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.

COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Purchasing Department is providing this information to Council as an overview of this award.

RFPs & BIDS

Bid/RFP #	0310A
Awarded To	Brooks Construction
Amount	1,194,372.00
Conflict of interest on file?	☒ Yes ☐ No
Number of Registrants	4
Number of Bidders	3
Required Attachments	Bid tabulation sheet, Notice of Award, Proposed contract, Vendor Disclosure Form

EXTENSIONS

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

SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback--Authority)	0310A
Sole Source/ Compatibility Justification	N/A

BID CRITERIA (Take Buy Indiana requirements into consideration.)

Most Responsible, Responsive Lowest	☒ 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>	
	Municipal Surtax



FW PUBLIC WORKS

Board of Public Works

In Your Neighborhood

COMMON COUNCIL DIGEST SHEET – SUPPLEMENTAL

2019 RESURFACING PACKAGE SOUTHWEST

Action Requested:

Requesting an Ordinance approving the **2019 RESURFACING PACKAGE SOUTHWEST** project pursuant to Board of Works resolution **0310A** and an award to **Brooks Construction** in the amount of **\$1,194,372.00**.

Note: Brooks Construction was the lowest, most responsive bidder among 3 bidders.

Description and Scope of the Work:

Resurfacing of streets in Council Districts 4 & 5 by milling and resurfacing 1-3", asphalt patching as necessary, furnishing and adjusting new castings, adjusting existing castings, placement of new pavement markings, and signal loop work.