

1 **BILL NO. S-21-10-04**

2 SPECIAL ORDINANCE NO. S-_____

3
4 AN ORDINANCE approving CONSTRUCTION
5 CONTRACT – 67019 WATER MAIN REPLACEMENT
6 – REED RD., OLD MAYSVILLE RD., LAKE AVE. -
7 WORK ORDER #67019 - \$341,940.00 between
8 ROTHENBERGER COMPANY, INC. and the City of
9 Fort Wayne, Indiana, in connection with the Board of
10 Public Works.

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

13 **SECTION 1.** That the CONSTRUCTION CONTRACT - 67019
14 WATER MAIN REPLACEMENT – REED RD., OLD MAYSVILLE RD., LAKE AVE.
15 - WORK ORDER #67019 - \$341,940.00 between ROTHENBERGER COMPANY,
16 INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public
17 Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

18 All labor, insurance, material, equipment, tools, power,
19 transportation, miscellaneous equipment, etc., necessary for
20 WATER MAIN REPLACEMENT INCLUDING 1,200 LF OF 6"
21 HDPE, 300 LF OF 12" HDPE, AND 300' OF 16" HDPE AND
22 ALL ASSOCIATED WATER APPURETENANCES. WATER
23 MAIN SHALL BE INSTALLED THROUGH HORIZONTAL
24 DIRECTIONAL DRILL METHODS;

25 involving a total cost of THREE HUNDRED FORTY-ONE THOUSAND NINE
26 HUNDRED FORTY AND 00/100 DOLLARS - (\$341,940.00). A copy of said
27 Contract is on file with the Office of the City Clerk and made available for public
28 inspection, according to law.
29
30

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

PROJECT:		Water Main Replacement - Reed Rd, Old Maysville Rd, Lake Ave									
Resolution#:		57019									
Work Order#:		57019									
Project Designer		Emily Grubill									
Construction Manager		Pat Dooley									
Manager		Mike Klester									
Bid Date: (Quote Date)		September 16, 2021									
Funding:		Water Revenue, Stormwater Revenue									
		BID		Engineer's Estimate		Rothenberger Company Inc		S&S Directional Boring, Ltd.		Underground Contractors Inc	
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	Mobilization & Demobilization (5%) JAS Final	1	LS	\$15,000.00	\$	15,000.00	\$	15,000.00	\$	15,000.00	\$
2	Maintenance and Protection of Traffic	1	LS	\$5,000.00	\$	5,000.00	\$	5,000.00	\$	5,000.00	\$
3	Video Documentation of Conditions	1	LS	\$2,000.00	\$	2,000.00	\$	2,000.00	\$	2,000.00	\$
4	HMA Paving, 1" Surface, Type B	110	SYD	\$15.00	\$	1,650.00	\$	1,650.00	\$	1,650.00	\$
5	HMA Paving, 2" Intermediate, Type B	110	SYD	\$45.00	\$	4,950.00	\$	4,950.00	\$	4,950.00	\$
6	6-inch Reinforced Concrete Driveway, Rumble and Barbed	35	SYD	\$20.00	\$	700.00	\$	700.00	\$	700.00	\$
7	Curbs and Gutter	1	LS	\$2,000.00	\$	2,000.00	\$	2,000.00	\$	2,000.00	\$
8	Owner Furnished 6-inch DR 11 HDPE Pressure Utility Piping	1200	LF	\$50.00	\$	72,000.00	\$	72,000.00	\$	72,000.00	\$
9	Owner Furnished 12-inch DR 11 HDPE Pressure Utility Piping	205	LF	\$120.00	\$	24,600.00	\$	24,600.00	\$	24,600.00	\$
10	Owner Furnished 16-inch DR 11 HDPE Pressure Utility Piping	200	LF	\$120.00	\$	24,000.00	\$	24,000.00	\$	24,000.00	\$
11	6-inch 11.25, 21.5, 45 or 92 Degree Bend HDPE Fittings	9	EA	\$50.00	\$	450.00	\$	450.00	\$	450.00	\$
12	16-inch 11.25, 21.5, 45 or 92 Degree Bend HDPE Fittings	1	EA	\$1,000.00	\$	1,000.00	\$	1,000.00	\$	1,000.00	\$
13	18" x 18" x 4" Top HDPE Fittings	1	EA	\$1,200.00	\$	1,200.00	\$	1,200.00	\$	1,200.00	\$
14	Water Main Connection (Minimum Slope and Valves to 17')	3	EA	\$5,000.00	\$	15,000.00	\$	15,000.00	\$	15,000.00	\$
15	Water Main Connection (Minimum Slope and Valves to 17')	3	EA	\$5,000.00	\$	15,000.00	\$	15,000.00	\$	15,000.00	\$
16	Top Water (Temporary)	6	EA	\$1,500.00	\$	9,000.00	\$	9,000.00	\$	9,000.00	\$
17	Removal of Hydrogen	2	EA	\$500.00	\$	1,000.00	\$	1,000.00	\$	1,000.00	\$
18	Removal of Valve Boxes	2	EA	\$500.00	\$	1,000.00	\$	1,000.00	\$	1,000.00	\$
19	Temporary Erosion Control, Removal of Site	3	EA	\$500.00	\$	1,500.00	\$	1,500.00	\$	1,500.00	\$
20	Cut and Fill (18" Pipe Abandonment)	3	EA	\$500.00	\$	1,500.00	\$	1,500.00	\$	1,500.00	\$
21	Cut and Fill (18" Pipe Abandonment)	2	EA	\$750.00	\$	1,500.00	\$	1,500.00	\$	1,500.00	\$
22	Cut and Fill (18" Pipe Abandonment)	2	EA	\$1,000.00	\$	2,000.00	\$	2,000.00	\$	2,000.00	\$
23	Water Service Replacement Short Side	17	EA	\$2,000.00	\$	34,000.00	\$	34,000.00	\$	34,000.00	\$
24	Water Service Replacement Long Side	1	EA	\$4,000.00	\$	4,000.00	\$	4,000.00	\$	4,000.00	\$
25	Fire Hydrant Assembly - All Parts	2	EA	\$4,000.00	\$	8,000.00	\$	8,000.00	\$	8,000.00	\$
26	Check Paving Set Gate Valve and Box	3	EA	\$1,000.00	\$	3,000.00	\$	3,000.00	\$	3,000.00	\$
27	12-inch Ratchet Set Gate Valve and Box	2	EA	\$2,500.00	\$	5,000.00	\$	5,000.00	\$	5,000.00	\$
28	16-inch Ratchet Set Gate Valve and Box	2	EA	\$3,000.00	\$	6,000.00	\$	6,000.00	\$	6,000.00	\$
29	Owner's Work Allowance	1	LS	\$10,000.00	\$	10,000.00	\$	10,000.00	\$	10,000.00	\$
TOTAL BASE BID					\$	317,050.00	\$	339,765.00	\$	350,935.00	\$
Bid Alternate #1		Engineer's Estimate		Rothenberger Company Inc		S&S Directional Boring, Ltd.		Underground Contractors Inc			
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
30	Contractor Supplied - Special Backfill, 451 Compacted Aggregate	110	CY	\$40.00	\$	4,400.00	\$	4,400.00	\$	4,400.00	\$
Total Base Bid plus Alternate #1					\$	321,450.00	\$	344,165.00	\$	355,335.00	\$
Bid Alternate #2		Engineer's Estimate		Rothenberger Company Inc		S&S Directional Boring, Ltd.		Underground Contractors Inc			
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
31	Owner Supplied - Special Backfill, 451 Compacted Aggregate	110	CY	\$40.00	\$	4,400.00	\$	4,400.00	\$	4,400.00	\$
Total Base Bid plus Alternate #2					\$	316,650.00	\$	341,565.00	\$	352,735.00	\$
Basis of Award is Base Bid plus Alternate #1						\$341,940.00		\$392,365.00		\$578,850.00	
Additional Notes:											
Bidder's Bond											
Form 96											
Non-Collusion Affidavit											
Cert in Lieu Financial Statement											
Employee Drug Testing Program (>\$15K)											
Reviewed By											
<i>Emily Grubill</i>											
<i>9/21/21</i>											

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between Board of Public Works ("Owner") and Rothenberger Company, Inc. ("Contractor").

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

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: **Water Main Replacement including 1,200 LF of 6" HDPE, 300 LF of 12" HDPE, and 300' of 16" HDPE and all associated water appurtenances. Water main shall be installed through horizontal directional drill methods.**

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **67019 Water Main Replacement - Reed Rd., Old Maysville Rd., Lake Ave.**

ARTICLE 3—ENGINEER

- 3.01 The Owner will assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

ARTICLE 4—CONTRACT TIMES

- 4.01 Time is of the Essence

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

- 4.02 ::NOT USED::

- 4.03 Contract Times: Days

- A. The Work will be substantially complete within **120** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions.
- B. Work shall be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **210** days after the date when the Contract Times commence to run.
- C. Definition of Substantial Completion for this Work shall consist of **All water main and appurtenances installed, tested, disinfected, and in complete operation.**

- 4.04 Milestones

- A. Parts of the Work must be completed on or before the following Milestone(s):
1. N/A

- 4.05 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner **\$1,000.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$1,000.00** for each day that expires after such time until the Work is completed and ready for final payment.
 3. Milestones: Contractor shall pay Owner **\$1,000.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.05.A.1 will apply, rather than the Milestone rate.
 4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

C. ::NOT USED::

4.06 ::NOT USED::

ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

A. :: NOT USED ::

B. :: NOT USED ::

C. :: NOT USED ::

D. For all Work, at the prices stated in Contractor's Bid on the Quest CDN online bid submittal, attached hereto as an exhibit.

TOTAL OF ALL UNIT PRICES Three Hundred Forty-One Thousand,

Nine Hundred Forty Dollars and Zero Cents

\$ 341,940.00

Basis of Award is Base Bid plus Alternate #2

ARTICLE 6—PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

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

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted within 45-days of the portions complete, and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Final Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. 95 percent of the value of the Work completed (with the balance being retainage).
 - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment. However, payments to the Contractor are not to exceed 95% of the total Contract Price until the Owner has verified that the Contractor has made good faith efforts to attain the EBE goal stipulated in Paragraph 9.03.E. Payment of the final 5% of the total Contract Price will be dependent upon acceptance of the Work, in accordance with Paragraph 15.06 of the General Conditions, and good faith efforts to comply with the EBE participation requirements; subject to reduction in the event of non-compliance as provided in Paragraph 9.03.E.
- C. Escrow Agreement.
 - 1. If the Contract is in excess of \$200,000, the contract will be subject to the standard Board of Public Works escrow agreement; unless written notice is received from Contractor prior to execution of the Agreement stating that an Escrow Account is not desired. If an Escrow Account is not desired, then the Board of Public Works, in accordance with IC 36-1-12-14, shall hold the retainage and will not pay interest on the amounts of retainage that it holds.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 Consent of Surety

- A. Owner will not make final payment or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (00 52 00, inclusive);
 - 2. Escrow Account Agreement (00 54 43, inclusive);
 - 3. Drug Policy Acknowledgment Form (00 54 52, inclusive);
 - 4. E-Verify Affidavit (00 54 53, inclusive);
 - 5. Performance Bond Form (00 61 13.13, inclusive);
 - 6. Payment Bond Form (00 61 13.16, inclusive);
 - 7. General Conditions (00 72 00, inclusive);
 - 8. Supplementary Conditions (00 73 00, inclusive);
 - 9. Specifications as listed in the table of contents of the project manual
 - 10. Drawings consisting of Drawing Y-21462, pages 1 through 13, inclusive, with each sheet bearing the following general title: Water Main Replacement - Reed Rd., Old Maysville Rd., Lake Ave.;
 - 11. Addenda (numbers 1 to 1 ,inclusive);
 - 12. Attachments to this Agreement (enumerated as follows);
 - a. Contractor's Bid Worksheet;
 - b. Documentation submitted by Contractor prior to Notice of Award.
 - 13. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed;
 - b. Written Amendments;
 - c. Work Change Directives;
 - d. Change Orders;
- B. ::NOT USED::
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
 7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
 10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
 11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

12. In connection with the performance of Work under this Contract, Contractor agrees to comply with Anti-Discrimination Under Indiana Code Chapter 5-16-6-1 and 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. Contractor shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of the construction or upon request of the Office of Compliance.

8.02 Contractor's Certifications

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

8.03 Standard General Conditions

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

ARTICLE 9—MISCELLANEOUS

9.01 Terms

Terms used in this Agreement will have the meanings stated in the General Conditions

9.02 Severability

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.03 Emerging Business Enterprise (EBE) Participation

EBE Retainage Requirements – If the Contractor is in compliance with the provisions of the construction Contract the Owner will make payments for such work performed and completed. Pursuant to Executive Order 90-01 (amended 5-8-06); the Owner will retain five percent (5%) of the Contract Price to ensure compliance with the EBE participation requirements. Upon final inspection and acceptance of the Work, and determination by the Fort Wayne Board of Public Works that the Contractor has made a good faith effort to subcontract ten percent (10%) of the Contract Price to emerging business enterprises, the Contractor will be paid in full.

In the event there is a determination that good faith compliance with these EBE participation requirements has not occurred, appropriate reduction in the final payment pursuant to paragraph 9.03.E will be made.

If the Contract Price is in excess of \$200,000, 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 Price until the Owner has verified that the Contractor has made good faith efforts to attain the 10% EBE goal stipulated in here within. Payment of the final 5% of the total Contract Price will be dependent upon acceptance of the Work, in accordance with Paragraph 15.06 of the General Conditions, and good faith efforts to comply with these EBE participation requirements; subject to reduction in the event of non-compliance as provided in paragraph 9.03.E.

- A. Request for Waiver – If, at the time final payment application is made, Contractor has not attained the ten percent (10%) EBE 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 ten percent (10%) EBE goal.
- B. Determination of Waiver Requests – The Vendor Compliance Department of the City of Fort Wayne 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 of Public Works of the City of Fort Wayne.
- C. Good Faith Efforts. – In determining whether or not the Contractor used “good faith” efforts, the following shall be considered:
 - 1. Whether the contract can be subdivided as determined by the Engineer and Administrator of Contract Compliance;
 - 2. Availability of certified EBE businesses to participate as subcontractors;
 - 3. Non-competitive price quotes received from EBE firms. The Board of Public Works determination for granting a reduction or waiver of the goal because of higher quotes from EBE firms will be based on factors that include, but are not limited to the following:
 - a. The Engineer’s estimate for the work under a specific contract;
 - b. The Contractor’s own estimate for the work under the subcontract;
 - c. An average of the valid prices quoted for the subcontract;
 - d. Demonstrated increase in other contract costs as a result of sub-contracting to EBE firm(s).
 - 4. Documented measures taken by the Contractor to comply with the EBE participation goal;

5. EBE subcontractor failed to fulfill their obligation in regard to the time delivery of goods and/or services. Also in regards to the quality of the goods and/or services set forth in the bid specifications.
 6. Such other matters as the Board of Public Works deems relevant.
- D. Consequences of Noncompliance – In the event the Board of Public Works approves a recommendation that Contractor failed to make good faith efforts at compliance, the Contract Price shall be reduced by the amount calculated as the difference between the EBE participation goal of 10% and the actual participation level met by the Contractor, but in no case shall it be reduced by more than 5%. Said amount shall be added to the City of Fort Wayne EBE Bond Guarantee Fund and Contractor agrees to accept the reduced amount as full payment under the terms of his/her Contract.
- E. Waiver Approved – In the event the Board of Public Works determines that a good faith effort to comply with these EBE participation requirements has been made, the Contract Price shall not be reduced, and the balance owing to the Contractor shall be paid in full.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement (Contract/Resolution Number 67019). One counterpart has been delivered to Owner, and one counterpart delivered to Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____, _____ (which is the Effective Date of the Agreement).

CONTRACTOR:
Rothenberger Company, Inc.

OWNER:
CITY OF FORT WAYNE

BY: _____
(Name)

BY: _____
Thomas C. Henry, MAYOR

TITLE: _____

DATE: _____
(Date signed by Contractor)

Address for giving notices:

Board of Public Works

BY: _____
Shan Gunawardena, CHAIR

BY: _____
Kumar Menon, MEMBER

BY: _____
Chris Guerrero, MEMBER

ATTEST: _____
Michelle Fulk-Vondran, CLERK

DATE: _____
(Date signed by Board)

ACKNOWLEDGMENT (CONTRACTOR)

STATE OF _____)
SS:)
COUNTY OF _____)

BEFORE ME, a Notary Public, in and for said County and State, this _____ day of _____, _____, personally appeared the within named _____ who under penalty of perjury 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 (OWNER)

STATE OF INDIANA)
 SS:)
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this _____ day of _____, _____, personally appeared the within named Thomas C. Henry, Shan Gunawardena, Kumar Menon, Chris Guerrero 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

CITY OF FORT WAYNE, INDIANA

ROTHENBERGER COMPANY 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% ☒ (X)

(ii) Distributable income share exceeding 5% ☐

(iii) Not Applicable (If N/A, go to Section 2) ☐

Name: Daniel Rothenberger, President

Name: James Rothenberger, V.P.

Address: 4743 River Bend, Concord, MI 49237

Address: 297 First Street, Conocrd, MI 49237

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

sole proprietorship ☐ stock ☒ (X)
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: Daniel Rothenberger 90 %

Name: James Rothenberger 10 %

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 x _____

- 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 x _____

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

Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have current contracts (including leases) with the City? Yes x _____ 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).

Lime Sludge - #66518

- b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes x _____ 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).

Wells and Wallywood #

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

Rothenberger Company Inc

(Name of Vendor)

PO Box 457, Concord, MI 49237

Address

(517-524-8944

Telephone

rci@rothenbergerco.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) James Rothenberger, V.P.

Title Vice President

Signature

James Rothenberger

Date 5/19/2021

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

Interoffice Memo

Date: October 7, 2021
To: Common Council Members
From: Michael Kiester, Manager, City Utilities Engineering
RE: Water Main Replacement - Reed Rd., Old Maysville Rd., Lake Ave.
67019

Council District # 1

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project: Water Main Replacement including 1,200 LF of 6" HDPE, 300 LF of 12" HDPE, and 300' of 16" HDPE and all associated water appuretenances. Water main shall be installed through horizontal directional drill methods.

Implications of not being approved: Continued water main breaks which temporarily shuts off water service to customers. If the project is not approved, the existing mains will experience many more breaks in the future.

If Prior Approval is being Requested, Justify: N/A

This project was advertised to contractors on 8/26/2021, and 9/2/2021 in the Journal Gazette.

The contract for Resolution # 67019 awarded to Rothenberger Company, Inc. for \$341,940.00 was the lowest, and most responsive bidder of three bidders and 5% above the Engineer's estimate of \$324,250.00. The second lowest bidder was \$50,425.00 above Rothenberger Company, Inc.

The cost of said project funded Water and Stormwater Revenue

Council Introduction Date: 10/12/2021

CC: Matthew Wirtz
Jill Helfrich
File