

1 **BILL NO. S-22-01-20**

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3 SPECIAL ORDINANCE NO. S-_____

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5 AN ORDINANCE approving CONSTRUCTION
6 CONTRACT – WHEELLOCK ROAD SIDEWALK
7 CONNECTION - RESOLUTION/WORK ORDER
8 #0356S between MALOTT CONTRACTING, INC. and
the City of Fort Wayne, Indiana, in connection with the
Board of Public Works.

9
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 –
13 WHEELLOCK ROAD SIDEWALK CONNECTION - RESOLUTION/WORK ORDER
14 #0356S between MALOTT CONTRACTING, INC. and the City of Fort Wayne,
15 Indiana, in connection with the Board of Public Works, is hereby ratified, and
16 affirmed and approved in all respects, respectfully for:

17 All labor, insurance, material, equipment, tools, power,
18 transportation, miscellaneous equipment, etc., necessary for:
19 IMPROVE WHEELLOCK ROAD BY ADDING A 5' SIDEWALK
20 TO THE EAST SIDE OF THE ROAD TO CONNECT EXISTING
SIDEWALKS ON ROTHMAN ROAD AND TREASURE COVE;

21 involving a total cost of FIVE HUNDRED FOUR THOUSAND EIGHT HUNDRED
22 FORTY AND 96/100 DOLLARS - (\$504,840.96). A copy of said Contract is on file
23 with the Office of the City Clerk and made available for public inspection, according
24 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

			TOTAL: \$499,880.00				TOTAL: \$504,840.96		TOTAL: \$552,055.00	
							% over 0.99%		% over 10.44%	
							% under 0.00%		% under 0.00%	
Bid Tabulation			RES. NO. / W.O 0356S				BIDDER: Malott Contracting		BIDDER: Key Concrete	
Proj:		Wheelock Road Phase I & II Treasure Cove to Rothman Road Sidewalk Connection								
Bid Date:		01/06/21	Estimate							
LINE NO.	ITEM CODE	ITEM	PLAN QTY	UNIT	UNIT COST Est (\$)	AMOUNT Est (\$)	UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)
1	105-06845	CONSTRUCTION ENGINEERING	1	LS	\$25,000.00	\$25,000.00	\$11,600.00	\$11,600.00	\$20,000.00	\$20,000.00
2	110-01001	MOBILIZATION AND DEMOBILIZATION	1	LS	\$40,000.00	\$40,000.00	\$32,955.00	\$32,955.00	\$35,000.00	\$35,000.00
3	201-02260	TREE 30 IN., REMOVE	5	EACH	\$1,500.00	\$7,500.00	\$3,217.50	\$16,087.50	\$1,800.00	\$9,000.00
4	202-02278	CURB AND GUTTER, REMOVE	108	LFT	\$8.00	\$864.00	\$18.72	\$2,021.76	\$20.00	\$2,160.00
5	202-03615	CONCRETE, REMOVE	100	SYS	\$12.00	\$1,200.00	\$9.40	\$940.00	\$20.00	\$2,000.00
6	202-06133	PIPE, REMOVE	26	LFT	\$15.00	\$390.00	\$26.90	\$699.40	\$20.00	\$520.00
7	203-08607	LINEAR GRADING (INCLUDES ALL GRADING ALONG SIDEWALK AND SIDE DITCHES, INCLUDING BACKFILL MATERIAL)	2850	LFT	\$40.00	\$114,000.00	\$24.60	\$70,110.00	\$45.00	\$128,250.00
8	205-06931	TEMPORARY CHECK DAM, REVETMENT RIPRAP (INCLUDES FABRIC)	75	TON	\$35.00	\$2,625.00	\$52.70	\$3,952.50	\$50.00	\$3,750.00
9	205-06933	TEMPORARY INLET PROTECTION	10	EA	\$60.00	\$600.00	\$118.00	\$1,180.00	\$80.00	\$800.00
10	205-06937	TEMPORARY SILT FENCE	3000	LFT	\$2.00	\$6,000.00	\$2.94	\$8,820.00	\$3.00	\$9,000.00
11	301-12234	COMPACTED AGGREGATE NO. 53	335	TON	\$35.00	\$11,725.00	\$35.10	\$11,758.50	\$33.00	\$11,055.00
12	604-05070	SIDEWALK, CONCRETE	1900	SYS	\$48.00	\$91,200.00	\$56.50	\$107,350.00	\$55.00	\$104,500.00
13	604-08086	CURB RAMP, CONCRETE	40	SYS	\$60.00	\$2,400.00	\$105.00	\$4,200.00	\$120.00	\$4,800.00
14	604-12083	DETECTABLE WARNING SURFACES	21	EA	\$250.00	\$5,250.00	\$280.00	\$5,880.00	\$250.00	\$5,250.00
15	FWR05	SIDEWALK, CONCRETE, CURBSFACE	16	SYS	\$75.00	\$1,200.00	\$90.00	\$1,440.00	\$80.00	\$1,280.00
16	610-08446	PCCP FOR APPROACHES, 6 IN.	285	SYS	\$65.00	\$18,525.00	\$70.00	\$19,950.00	\$70.00	\$19,950.00
17	616-06396	RIPRAP	20	TON	\$35.00	\$700.00	\$52.70	\$1,054.00	\$30.00	\$600.00
18	621-06570	TOPSOIL	560	TON	\$30.00	\$16,800.00	\$52.70	\$29,512.00	\$35.00	\$19,600.00
19	622-03672	TREE PROTECTION AND TRIMMING	1	LS	\$1,500.00	\$1,500.00	\$3,600.00	\$3,600.00	\$2,000.00	\$2,000.00
20	FWR25	MULCHED SEEDING (HYDROSEED, INCLUDES WATERING)	3375	SYS	\$6.00	\$20,250.00	\$6.50	\$21,937.50	\$5.00	\$16,875.00
21	FWR27	CLEARING AND GRUBBING	1	LS	\$2,500.00	\$2,500.00	\$5,126.00	\$5,126.00	\$2,000.00	\$2,000.00
22	715-01354	CLEAN EXISTING PIPE	25	LFT	\$15.00	\$375.00	\$24.50	\$612.50	\$20.00	\$500.00
23	FWR13	PIPE - 12" RCP, CLASS III	380	LFT	\$60.00	\$22,800.00	\$56.40	\$21,432.00	\$70.00	\$26,600.00
24	FWR14	PIPE - 15" RCP, CLASS III	21	LFT	\$65.00	\$1,365.00	\$76.10	\$1,598.10	\$100.00	\$2,100.00
25	FWR15	PIPE - 18" RCP, CLASS III	13	LFT	\$65.00	\$845.00	\$94.00	\$1,222.00	\$700.00	\$9,100.00
26	FWR27	PIPE - 12" CMP	62	LFT	\$65.00	\$4,030.00	\$80.00	\$4,960.00	\$80.00	\$4,960.00
27	715-45000	PIPE END SECTION, DIAMETER 12 IN.	11	EA	\$500.00	\$5,500.00	\$340.00	\$3,740.00	\$500.00	\$5,500.00
28	715-94530	ADJUST WATER VALVE TO GRADE, UNDISTRIBUTED	5	EA	\$250.00	\$1,250.00	\$150.00	\$750.00	\$100.00	\$500.00
29	720-01894	CASTING, FURNISH AND ADJUST TO GRADE, 24" BEEHIVE	6	EA	\$650.00	\$3,900.00	\$620.00	\$3,720.00	\$600.00	\$3,600.00
30	720-44000	CASTING, ADJUST TO GRADE, UNDISTRIBUTED	4	EA	\$500.00	\$2,000.00	\$225.00	\$900.00	\$200.00	\$800.00
31	FRW01	MANHOLE - 48" STORM	2	EA	\$4,500.00	\$9,000.00	\$2,424.00	\$4,848.00	\$5,000.00	\$10,000.00
32	FWR15	INLET - PRECAST 30" ROUND INLET	3	EA	\$1,500.00	\$4,500.00	\$1,820.00	\$5,460.00	\$2,000.00	\$6,000.00
33	FWR19	INLET - 2'X2' INLET	2	EA	\$1,500.00	\$3,000.00	\$1,820.00	\$3,640.00	\$2,500.00	\$5,000.00
34	FWR20	INLET - 2'X3' INLET	1	EA	\$1,550.00	\$1,550.00	\$2,042.00	\$2,042.00	\$3,000.00	\$3,000.00
35	FWR30	CASTING - 24" SOLID STORM CASTING & ADJUST TO GRADE	1	EA	\$750.00	\$750.00	\$620.00	\$620.00	\$600.00	\$600.00
36	FWR38	CASTING - 2'X3' CURB & GUTTER CASTING & ADJUST TO GRADE	1	EA	\$750.00	\$750.00	\$974.00	\$974.00	\$700.00	\$700.00
37	FRW01	MAINTENANCE OF TRAFFIC	1	LS	\$20,000.00	\$20,000.00	\$35,520.00	\$35,520.00	\$22,000.00	\$22,000.00
38	802-09838	30"x30", ARROW PLAQUE W/16-7P 24"x12", AHEAD PLAQUE W/16-9P 24"x12"	33	SFT	\$16.00	\$528.00	\$23.00	\$759.00	\$25.00	\$825.00
39	802-11648	SIGN POST	4	EA	\$300.00	\$1,200.00	\$300.00	\$1,200.00	\$500.00	\$2,000.00
40	802-91122	SIGN GROUND MOUNTED RESET	2	EA	\$400.00	\$800.00	\$600.00	\$1,200.00	\$500.00	\$1,000.00
41	FWR33	LIGHT POLE, RELOCATE	3	EA	\$1,500.00	\$4,500.00	\$2,350.00	\$7,050.00	\$2,000.00	\$6,000.00
42	808-10056	TRANSVERSE MARKING, MULTI-COMPONENT, CROSSWALK LINE, WHITE, 6 IN.	288	LFT	\$3.50	\$1,008.00	\$8.40	\$2,419.20	\$10.00	\$2,880.00
43	109-04299	FORCE ACCOUNT WORK/WORK ALLOWANCE	40000	DOL	\$1.00	\$40,000.00	\$1.00	\$40,000.00	\$1.00	\$40,000.00



Notice of Award

Project: Wheelock Road Sidewalk Connection

Owner: City of Fort Wayne Board of Works

Resolution/Work Order #0356S

Bidder: Malott Contracting, Inc.

Bidder's Address: PO Box 292

Kendallville, IN 46755

You are notified that your Bid dated 1/6/2022 for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for Wheelock Road Sidewalk Connection

Improve Wheelock Road by adding a 5' sidewalk to the east side of the road to connect existing sidewalks on Rothman Road and Treasure Cove.

The Contract Price of your Contract is \$504,840.96.

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 following documents:
 - a. Performance Bond
 - b. Payment Bond
 - c. Certificate of Insurance
 - d. Executed Vendor Disclosure Statement (Must have one on file annually with the City of Fort Wayne).
 - e. Executed E-Verify Affidavit.
 - f. Executed Drug Policy Acknowledgement Form.
3. Deliver evidence of successful Bidder's Affirmative Action Plan; OR, executed City of Fort Wayne Affirmative Action Program document to City of Fort Wayne Vendor Compliance, Jessica.Bucher@cityoffortwayne.org.



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**

A blue ink signature of Shan Gunawardena, written in a cursive style.

Shan Gunawardena, Chair

A blue ink signature of Kumar Menon, written in a cursive style.

Kumar Menon, Member

A blue ink signature of Chris Guerrero, written in a cursive style.

Chris Guerrero, Member

ATTEST:

A blue ink signature of Michelle Fulk-Vondran, written in a cursive style.

Michelle Fulk-Vondran, Clerk

Date: 1.11.2022

cc: Project Manager

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

RESOLUTION/WORK ORDER # 0356S

This Agreement is by and between the City of Fort Wayne – Board of Public Works (“Owner”) and Malott Contracting, 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: Improve Wheelock Road by adding a 5' sidewalk to the east side of the road to connect existing sidewalks on Rothman Road and Treasure Cove.

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Wheelock Road Sidewalk Connection

ARTICLE 3—ENGINEER

- 3.01 The part of the Project that pertains to the Work has been designed by Public Works Engineering.

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 *Contract Times: Dates*

- A. The Work will be substantially complete on or before 7/29/2022, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before 8/5/2022.

4.03 *Milestones*

- A. Parts of the Work must be substantially completed on or before the following Milestone(s):
1. Milestone 1 [N/A]
 2. Milestone 2 [N/A]
 3. Milestone 3 [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

EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).

Modified by City Engineer, City of Fort Wayne (July 2021)

00 52 00-1

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 up to \$1000 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 up to \$1000 for each day that expires after such time until the Work is completed and ready for final payment.
 3. *Milestones:* Contractor shall pay Owner up to \$1000 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.

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. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.
 - B. Total of all unit prices **\$504,840.96.**

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 on the basis of Contractor's Applications for Payment no more often than every 30 days during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner 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 Substantial 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).

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.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
 1. This Agreement.
 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 3. General Conditions.
 4. Supplementary Conditions.
 5. Specifications as listed in the table of contents of the project manual (copy of list attached).
 6. Drawings (not attached but incorporated by reference) consisting of 29 sheets with each sheet bearing the following general title: **Wheelock Road Phase I & II Treasure Cove to Rothman Road Sidewalk Connection.**
 7. Addenda (numbers 1 to 3, inclusive).
 8. Exhibits to this Agreement (enumerated as follows):
 - a. Drug Policy Acknowledgement Form (Project Bids under \$150,000.00) or Written copy of Contractors Drug Policy (Project Bids over \$150,000.00)
 - b. E-Verify Affidavit
 - c. Escrow account agreement

9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- 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.

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;

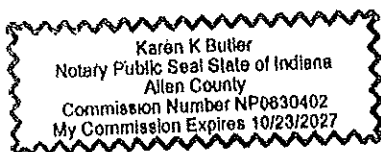
3. Non-competitive price quotes received from EBE firms. The Board of Public Works' determination for granting a reduction or waiver of the goal because of higher quotes from EBE firms will be based on factors that include, but are not limited to the following:
 - a. The Engineer's estimate for the work 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.

ACKNOWLEDGMENT

STATE OF INDIANA)
SS:)
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 12TH day of January, 2022 personally appeared the within named Andrew Schenkel who being by me first duly sworn upon his oath says that he is the of Treasurer and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of Same for the uses and purposes therein set forth.

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



Karen K Butler
Notary Public
Karen K Butler
Printed Name of Notary

My Commission Expires:

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, 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.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement (Contract/Resolution Number **03565**).

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

CONTRACTOR

Malott Contracting, Inc.

BY: 
Print Name Andrew Schenkel

TITLE: Treasurer

DATE: _____
(Date signed by Contractor)

Address for giving notices:

OWNER

CITY OF FORT WAYNE

BY: _____
THOMAS C. HENRY, MAYOR

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)

CITY OF FORT WAYNE, INDIANA

Malott Contracting, 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 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 _____ No X

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).

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

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).

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

Yes _____ No X

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: N/A

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

Malott Contracting, Inc
(Name of Vendor)

P.O. Box 292, Kendallville, IN 46755
Address
(60) 385-1100
Telephone
andy.s@malottcontracting.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 Schenk Title Treasurer
Signature [Signature] Date 1-12-2022

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.

Wheelock Road Sidewalk Connection

RFPs & BIDS

Bid/RFP #	0356S
Awarded To	Malott Contracting, Inc.
Amount	\$504,840.96
Conflict of interest on file?	☒ Yes ☐ No
Number of Registrants	5
Number of Bidders	2
Required Attachments	Common Council Supplemental, Bid Tabulation, Award, Contract, Vendor Disclosure Statement

EXTENSIONS

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

SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback--Authority)	0356S
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
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DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project; attach supporting documents as necessary.</i>	
	Please see Common Council Supplemental

REQUEST FOR SUSPENSION OF RULES

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

FUNDING SOURCE

<i>Account Information.</i>	
	LIT



FW PUBLIC WORKS

**Board of
Public Works**

In Your Neighborhood

COMMON COUNCIL DIGEST SHEET – SUPPLEMENTAL

WHEELOCK ROAD SIDEWALK CONNECTION

Action Requested:

Requesting an Ordinance approving the **WHEELOCK ROAD SIDEWALK CONNECTION** project pursuant to the Board of Public Works Resolution #0356S and an award to **Malott Contracting, Inc.** in the amount of **\$504,840.96**.

Note: Malott Contracting was the lowest, most responsive bidder among 2 bidders. Malott Contracting's bid was 1% over the Engineer's Estimate.

Description and Scope of the Work:

Improve Wheelock Road by adding a 5' sidewalk to the east side of the road to connect existing sidewalks on Rothman Road and Treasure Cove.