

1 **BILL NO. S-22-12-12**

2 SPECIAL ORDINANCE NO. S-_____

3
4 AN ORDINANCE approving CONSTRUCTION
5 CONTRACT – ALLEY R01805 N-S SENATE AVE,
6 CAPITOL AVE, OLIVER ST, SMITH ST -
7 RESOLUTION #0566D - \$308,151.40 between
8 MALOTT CONTRACTING, INC. and the City of Fort
Wayne, Indiana, by and through its 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 - ALLEY
13 R01805 N-S SENATE AVE, CAPITOL AVE, OLIVER ST, SMITH ST -
14 RESOLUTION #0566D - \$308,151.40 between MALOTT CONTRACTING, INC.
15 and the City of Fort Wayne, Indiana, by and through its Board of Public Works, is
16 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 to
19 improve THE CONCRETE ALLEY BOUNDED BY SENATE
20 AVE, CAPITOL AVE, OLIVER ST, AND SMITH ST BY
21 RECONSTRUCTING THE DETERIORATED CONCRETE
22 ALLEY, APPROACHES, SIDEWALK AND CONCRETE STEPS,
AND MAKING UPGRADES TO THE SEWER AND FINAL
RESTORATION WORK;

23 involving a total cost of THREE HUNDRED EIGHT THOUSAND ONE HUNDRED
24 FIFTY-ONE AND 40/100 DOLLARS - (\$308,151.40). A copy of said Contract is on
25 file with the Office of the City Clerk and made available for public inspection,
26 according to law.
27
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29
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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

Malak Heiny, City Attorney

Bid Tabulation

Proj: Bid Date:	LINE NO.	ITEM CODE	ITEM	RES. NO. / W.G 0566D		BIDDER:			BIDDER:		
				PLAN QTY	UNIT	Estimate		Malott Contracting		Key Concrete	
						AMOUNT Est (\$)	UNIT COST Est (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)
	105-										
	1	06845	CONSTRUCTION ENGINEERING	1	LS	\$2,000.00		\$4,125.00	\$2,500.00	\$2,500.00	
	2	01001	MOBILIZATION AND DEMOBILIZATION	1	LS	\$6,500.00		\$7,200.00	\$7,000.00	\$7,000.00	
	3	02240	PAVEMENT REMOVAL (INCLUDES APPROACHES, ASPHALT PATCHES & FULL DEPTH SAW CUT).	1125	SYS	\$20,250.00		\$14,850.00	\$13.00	\$13.00	
	4	202-93615	CONCRETE REMOVE (INCLUDES EXISTING STEPS AND FULL DEPTH SAW CUT)	80	SYS	\$1,440.00		\$1,284.80	\$16.06	\$16.00	
	5	205-									
	5	06933	TEMPORARY INLET PROTECTION	4	EA	\$200.00		\$109.40	\$100.00	\$400.00	
	6	214-11796	GEGRID, TYPE 1B (TX-160 OR APPROVED EQUAL) (INCLUDES EXCAVATION) (UNDISTRIBUTED)	600	SYS	\$17.00		\$13.20	\$10.00	\$6,000.00	
	7	FWR0									
	7	3	COMPACTED AGGREGATE NO. 53	300	TON	\$31.90		\$9,570.00	\$30.00	\$9,000.00	
	8	5	COMPACTED AGGREGATE NO. 73 (ADJACENT TO ALLEY - EXISTING STONE DRIVES)	80	TON	\$32.75		\$2,620.00	\$30.00	\$2,400.00	
	9	304-07490	HMA PATCHING, TYPE B (INCLUDES TACK)	20	TON	\$200.00		\$4,136.00	\$10.00	\$200.00	
	10	FWR0									
	10	2	PCCP, 7 IN. (INVERTED ALLEY)	1125	SYS	\$73,125.00		\$55,125.00	\$60.00	\$67,500.00	
	11	604-06070	SIDEWALK, CONCRETE (4")	1	SYS	\$110.00		\$47.00	\$80.00	\$60.00	
	12	02278	CURB REMOVE (ALL TYPES)	120	LFT	\$20.00		\$10.56	\$16.00	\$1,920.00	
	13	605-06120	CURB, CONCRETE (ALL TYPES) (UNDISTRIBUTED)	120	LFT	\$40.00		\$3,600.00	\$40.00	\$4,800.00	
	14	610-07713	PCCP FOR APPROACHES, 8 IN. (COMMERCIAL / ALLEY) (UNDISTRIBUTED)	40	SYS	\$80.00		\$2,800.00	\$75.00	\$3,000.00	
	15	610-08446	PCCP FOR APPROACHES, 6 IN. (RESIDENTIAL) (UNDISTRIBUTED)	80	SYS	\$90.00		\$4,800.00	\$65.00	\$5,200.00	
	16	FWR0	HYDROSEED, WITH HYDROSTICK TACKIFIER OR EQUIVALENT								
	16	1	POLYMER FOR EROSION CONTROL AND STRAW MULCH	180	SYS	\$1,260.00		\$2,475.00	\$6.00	\$1,080.00	
	17	FWR1									
	17	9	TOPSOIL	30	TON	\$1,500.00		\$2,475.00	\$40.00	\$1,200.00	
	18	720-									
	18	01894	CASTING, ADJUST TO GRADE	1	EA	\$700.00		\$236.50	\$150.00	\$150.00	
	19	FWR0									
	19	1	MAINTENANCE OF TRAFFIC (Includes RCA)	1	LS	\$5,500.00		\$6,500.00	\$5,000.00	\$5,000.00	
	20	04300	FORCE ACCOUNT / WORK ALLOWANCE	1	DOL	\$15,000.00		\$15,000.00	\$15,000.00	\$15,000.00	
	21	FWR0	PIPE - 12" PVC (SDR-35 Non-Pressure Utility Piping Includes removal of existing pipe)	536	LFT	\$58,960.00		\$75,040.00	\$180.00	\$96,480.00	
	22	FWR3									
	22	30130-	SEWER LATERAL REPAIR & RECONNECTION	22	EA	\$990.00		\$36,300.00	\$2,700.00	\$59,400.00	
	23	FWR3									
	23	2	CASTING, 24" SOLID SANITARY, FURNISH AND ADJUST TO GRADE	2	EA	\$764.50		\$1,529.00	\$1,600.00	\$3,200.00	
	24	FWR3									
	24	7	CASTING, 2' x 2' ALLET CASTING, FURNISH AND ADJUST TO GRADE	1	EA	\$950.00		\$1,320.00	\$1,400.00	\$1,400.00	
	25	FWR0	MANHOLE - 48" SANITARY (Includes removal of existing structure and reconnection)	2	EA	\$4,400.00		\$13,400.00	\$8,200.00	\$16,400.00	
	26	FWR5	CATCH BASIN - 33" PVC/DI TO PVC CONNECTION (Includes removal of existing structure and reconnection)	1	EA	\$3,300.00		\$5,791.50	\$8,700.00	\$8,700.00	
	27	FWR3									
	27	10005	COMPACTED AGGREGATE NO. 53 (Used for Special Backfill)	546	CYS	\$45.00		\$25,825.80	\$76.00	\$41,496.00	
	28	FWR0									
	28	1	UTILITY POLE BRACING ALLOWANCE	1	LS	\$5,500.00		\$2,500.00	\$7,000.00	\$7,000.00	



Notice of Award

Project: ALLEY R01805 N-S SENATE AVE, CAPITOL AVE, OLIVER ST, SMITH ST

Owner: City of Fort Wayne Board of Works

Resolution/Work Order #0566D

Bidder: Malott Contracting, Inc

Bidder's Address: PO Box 292

Kendallville, IN 46755

You are notified that your Bid dated 11/17/2022 for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for ALLEY R01805 N-S SENATE AVE, CAPITOL AVE, OLIVER ST, SMITH ST

The concrete alley bounded by Senate Ave, Capitol Ave, Oliver St, and Smith St by reconstructing the deteriorated concrete alley, approaches, sidewalk and concrete steps, and making upgrades to the sewer and final restoration work.

The Contract Price of your Contract is \$308,151.40.

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, positioned above a horizontal line.

Shan Gunawardena, Chair

A blue ink signature of Kumar Menon, written in a cursive style, positioned above a horizontal line.

Kumar Menon, Member

A blue ink signature of Chris Guerrero, written in a cursive style, positioned above a horizontal line.

Chris Guerrero, Member

ATTEST:

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

Michelle Fulk-Vondran, Clerk

Date: 12.6.22

cc: Project Manager

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

RESOLUTION/WORK ORDER # 0566D

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: **The concrete alley bounded by Senate Ave, Capitol Ave, Oliver St, and Smith St by reconstructing the deteriorated concrete alley, approaches, sidewalk and concrete steps, and making upgrades to the sewer and final restoration work.**

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **Alley R01805 N-S Senate Ave, Capitol Ave, Oliver St, Smith St**

ARTICLE 3—ENGINEER

- 3.01 The part of the Project that pertains to the Work has been designed by **Transportation 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 **8/25/2023**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **9/15/2023.**

4.03 *Milestones*

- A. Parts of the Work must be substantially completed on or before the following Milestone(s):
1. Milestone 1 **Contractor shall not replace alley pavement, sidewalk, drive approaches until sewer upgrades are complete. If the sewer upgrades are removed from the contract, the prime contractor shall coordinate flat work with the entity responsible for the sewer work.**
 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 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 **\$308,151.40.**

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 **6** sheets with each sheet bearing the following general title: **Alley R01805 N-S Senate-Capitol-Oliver-Smith CONCRETE ALLEY REPLACEMENT**
 7. Addenda (numbers **[N/A]** to **[N/A]**, 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 ____ 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, 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 **0566D**).

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

CONTRACTOR

OWNER

MALOTT CONTRACTING, INC.

CITY OF FORT WAYNE

BY: _____
Print Name _____

BY: _____
THOMAS C. HENRY, MAYOR

TITLE: _____

BOARD OF PUBLIC WORKS

DATE: _____
(Date signed by Contractor)

BY: _____
SHAN GUNAWARDENA, CHAIR

Address for giving notices:

BY: _____
KUMAR MENON, MEMBER

BY: _____
CHRIS GUERRERO, MEMBER

ATTEST: _____
MICHELLE FULK-VONDRAN, CLERK

DATE: _____
(Date signed by Board)

Drug Policy Acknowledgement Form

Contractor acknowledges the City of Fort Wayne has in place a Drug and Alcohol Policy that applies to any Contractor doing business with the City. A copy of this policy is available for inspection on the City of Fort Wayne website at: <http://www.cityoffortwayne.org/purchasing-home.html>. As a condition of being awarded any contract, the successful bidder shall sign this Drug Policy Acknowledgement 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 City of Fort Wayne.

The undersigned, on behalf of the Contractor deposes and states that the Contractor acknowledges the City of Fort Wayne's Alcohol and Drug Policy.

Name of Company

By: _____
Name and Title

E-Verify Affidavit

Pursuant to Indiana Code 22-5-1.7, Contractor agrees and shall enroll in and verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program. E-Verify means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208). Division C, Title IV, s.403(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603). Contractor is not required to verify the work eligibility status of all newly hired employees of Contractor through the E-verify program if the E-Verify program no longer exists.

The undersigned, on behalf of the Contractor, being first duly sworn, deposes and states that the Contractor does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with the City, the undersigned Contractor will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

Name of Company

By: _____

Title

ACKNOWLEDGEMENT

STATE OF INDIANA)
) SS
COUNTY OF ALLEN)

Before me, a Notary Public, in and for said State and County, personally appeared the within named Company by Name, Title, who being first duly sworn upon his/her oath states that he/she is a duly authorized agent of the Contractor, and as such duly authorized to execute the foregoing Declaration, and acknowledged the same as his/her voluntary act and deed.

WITNESS my hand and seal this _____ day of _____, 20_____.

My Commission Expires: _____

Signature of Notary Public

Resident of _____ County

Printed Name

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):

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

(260) 385-1100
Telephone

andys@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.

ALLEY R01805 N-S SENATE AVE, CAPITOL AVE, OLIVER ST, SMITH ST

RFPs & BIDS

Bid/RFP #	0566D
Awarded To	Malott Contracting, Inc
Amount	\$ 308,151.40
Conflict of interest on file?	☒ Yes ☐ No
Number of Registrants	4
Number of Bidders	2
Required Attachments	Common Council Supplemental, Bid Tabulation, Award, Contract, Vendor Disclosure

EXTENSIONS

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

SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback--Authority)	0566D
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-NR



FW PUBLIC WORKS

Board of Public Works

In Your Neighborhood

COMMON COUNCIL DIGEST SHEET – SUPPLEMENTAL

ALLEY R01805 N-S SENATE AVE, CAPITOL AVE, OLIVER ST, SMITH ST

Action Requested:

Requesting an Ordinance approving the **ALLEY R01805 N-S SENATE AVE, CAPITOL AVE, OLIVER ST, SMITH ST** project pursuant to the Board of Public Works Resolution #0566D and an award to **Malott Contracting, Inc.** in the amount of **\$308,151.40**.

Note: Malott Contracting was the lowest, most responsive bidder among 2 bidders.

Description and Scope of the Work:

That it has been deemed necessary to improve the concrete alley bounded by Senate Ave, Capitol Ave, Oliver St, and Smith St by reconstructing the deteriorated concrete alley, approaches, sidewalk and concrete steps, and making upgrades to the sewer and final restoration work.