

**BILL NO. S-24-11-60**

SPECIAL ORDINANCE NO. S-\_\_\_\_\_

**AN ORDINANCE** approving CONSTRUCTION CONTRACT – RESOLUTION #111-10-8-24-2 – 2024 Citizens Square Northwest Patio Improvements for \$449,400.00 – between SCHENKEL CONSTRUCTION and the City of Fort Wayne, Indiana, by and through its Board of Public Works.

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

**SECTION 1.** That the CONSTRUCTION CONTRACT - RESOLUTION #111-10-8-24-2 – 2024 Citizens Square Northwest Patio Improvements for \$449,400.00 – between SCHENKEL CONSTRUCTION and the City of Fort Wayne, Indiana, by and through its Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

Removal of the northwest patio area due to its deterioration and safety concerns, and necessary site and parking improvements as needed.

involving a total cost of FOUR HUNDRED FORTY-NINE THOUSAND FOUR HUNDRED AND 00/100 DOLLARS - (\$449,400.00). A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

**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

111-10-8-24-2 - Citizens Square NW Patio Improvements (#9365689)

Owner: Public Works

Solicitor: Fort Wayne IN, City of

11/14/2024 02:00 PM EST

|                                            |           |           |                  | Engineer Estimate |          | Schenkel Construction Inc |              | Strebbig Construction       |              | CME Corporation |              | Michael Kinder & Sons |              | Shawnee Construction |              | FCI Construction |              |
|--------------------------------------------|-----------|-----------|------------------|-------------------|----------|---------------------------|--------------|-----------------------------|--------------|-----------------|--------------|-----------------------|--------------|----------------------|--------------|------------------|--------------|
| Section Title                              | Line Item | Item Code | Item Description | UoM               | Quantity | Unit Price                | Extension    | Unit Price                  | Extension    | Unit Price      | Extension    | Unit Price            | Extension    | Unit Price           | Extension    | Unit Price       | Extension    |
| 2024 Citizens Square NW Patio Improvements |           |           |                  |                   |          |                           | \$455,000.00 |                             | \$379,200.00 |                 | \$408,653.00 |                       | \$418,448.00 |                      | \$427,000.00 |                  | \$444,000.00 |
|                                            | 1         | 1         | Constructi       | LS                | 1        | \$455,000.00              | \$455,000.00 | \$379,200.00                | \$379,200.00 | \$408,653.00    | \$408,653.00 | \$418,448.00          | \$418,448.00 | \$427,000.00         | \$427,000.00 | \$444,000.00     | \$444,000.00 |
| Allowance                                  |           |           |                  |                   |          |                           | \$43,000.00  |                             | \$43,000.00  |                 | \$43,000.00  |                       | \$43,000.00  |                      | \$43,000.00  |                  | \$43,000.00  |
|                                            | 2         | Landscape | Landscape        | LS                | 1        | \$23,000.00               | \$23,000.00  | \$23,000.00                 | \$23,000.00  | \$23,000.00     | \$23,000.00  | \$23,000.00           | \$23,000.00  | \$23,000.00          | \$23,000.00  | \$23,000.00      | \$23,000.00  |
|                                            | 3         | Contingen | Contingen        | LS                | 1        | \$20,000.00               | \$20,000.00  | \$20,000.00                 | \$20,000.00  | \$20,000.00     | \$20,000.00  | \$20,000.00           | \$20,000.00  | \$20,000.00          | \$20,000.00  | \$20,000.00      | \$20,000.00  |
| BID ALTERNATE 1                            |           |           |                  |                   |          |                           | \$37,500.00  |                             | \$27,200.00  |                 | \$13,899.00  |                       | \$36,480.00  |                      | \$27,700.00  |                  | \$35,900.00  |
|                                            | 4         | Alt.      |                  | 1                 | LS       | 1                         | \$37,500.00  | \$37,500.00                 | \$27,200.00  | \$27,200.00     | \$13,899.00  | \$13,899.00           | \$36,480.00  | \$36,480.00          | \$27,700.00  | \$27,700.00      | \$35,900.00  |
| BID ALTERNATE 2                            |           |           |                  |                   |          |                           | \$50,000.00  |                             | \$69,100.00  |                 | \$45,461.00  |                       | \$48,800.00  |                      | \$50,000.00  |                  | \$64,200.00  |
|                                            | 5         | Alt.      |                  | 2                 | LS       | 1                         | \$50,000.00  | \$50,000.00                 | \$69,100.00  | \$69,100.00     | \$45,461.00  | \$45,461.00           | \$48,800.00  | \$48,800.00          | \$50,000.00  | \$50,000.00      | \$64,200.00  |
| Base Bid Total:                            |           |           |                  |                   |          |                           | \$498,000.00 |                             | \$422,200.00 |                 | \$451,653.00 |                       | \$461,448.00 |                      | \$470,000.00 |                  | \$487,000.00 |
|                                            |           |           |                  |                   |          |                           | \$498,000.00 | base bid include allowances | \$422,200.00 |                 | \$451,653.00 |                       | \$461,448.00 |                      | \$470,000.00 |                  | \$487,000.00 |
|                                            |           |           |                  |                   |          |                           | \$37,500.00  | alternate 1                 | \$27,200.00  |                 | \$13,899.00  |                       | \$36,480.00  |                      | \$27,700.00  |                  | \$35,900.00  |
|                                            |           |           |                  |                   |          |                           | \$535,500.00 | contract price              | \$449,400.00 |                 | \$465,552.00 |                       | \$497,928.00 |                      | \$497,700.00 |                  | \$522,900.00 |



# AIA® Document A101® – 2017

## ***Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum***

**AGREEMENT** made as of the Twentieth day of November in the year Two Thousand Twenty-Four

**BETWEEN** the Owner:

City of Fort Wayne – Board of Public Works  
200 E. Berry Street, Suite 510  
Fort Wayne, IN 46802  
Telephone Number: (260) 427-1457

and the Contractor:

Schenkel Construction, Inc.  
1120 Saint Mary's Ave  
Fort Wayne, IN 46808  
Telephone Number: (260) 459-2030

for the following Project:

2301510 - CSQ Parking and Plaza Citizens Square Northwest Patio Improvements  
Removal of the northwest patio area due to its deterioration and safety concerns, replacement of the same area with landscaping and an accessible route to and from the city utilities pay kiosk. Necessary site and parking improvements as needed, and confirmation of any building exterior wall concerns should be addressed in the process. Anticipated removal of existing and design of a new canopy system.

The Architect:

S2 Architects, LLC dba Elevatus Architecture  
111 East Wayne Street, Suite 555  
Fort Wayne, IN 46802  
Telephone Number: (260) 424-9080  
Fax Number: (260) 424-1222

The Owner and Contractor agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Int.

## TABLE OF ARTICLES

|   |                                                 |
|---|-------------------------------------------------|
| 1 | THE CONTRACT DOCUMENTS                          |
| 2 | THE WORK OF THIS CONTRACT                       |
| 3 | DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION |
| 4 | CONTRACT SUM                                    |
| 5 | PAYMENTS                                        |
| 6 | DISPUTE RESOLUTION                              |
| 7 | TERMINATION OR SUSPENSION                       |
| 8 | MISCELLANEOUS PROVISIONS                        |
| 9 | ENUMERATION OF CONTRACT DOCUMENTS               |

## EXHIBIT A INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

*(Paragraph deleted)*

☐ The date of this Agreement.

☐ A date set forth in a notice to proceed issued by the Owner.

☒ Established as follows:

*(Paragraph deleted)*

Work shall begin as soon as a Purchase Order has been awarded or as otherwise stated.

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

#### § 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

☒ Not later than One Hundred Eighty (180) calendar days from the date of commencement of the Work.

☐ By the following date:

Init.

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

| Portion of Work | Substantial Completion Date |
|-----------------|-----------------------------|
|-----------------|-----------------------------|

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Four Hundred Forty-Nine Thousand Four Hundred Dollars (\$449,400.00), subject to additions and deductions as provided in the Contract Documents.

#### § 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

| Item        | Price       |
|-------------|-------------|
| Alternate 1 | \$27,200.00 |

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

*(Paragraph deleted)*

| Item        | Price       | Conditions for Acceptance |
|-------------|-------------|---------------------------|
| Alternate 2 | \$69,100.00 | Owner Direction           |

§ 4.3 Allowances, if any, included in the Contract Sum:

*(Paragraph deleted)*

| Item                                                                                                                                        | Price       |
|---------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| Owner Contingency                                                                                                                           | \$20,000.00 |
| Landscaping (to include installation of new plants and planting beds. All demolition of existing landscaping shall be part of the base bid. | \$23,000.00 |

§ 4.4 Unit prices, if any:

*(Paragraph deleted)*

| Item | Units and Limitations | Price per Unit (\$0.00) |
|------|-----------------------|-------------------------|
|------|-----------------------|-------------------------|

§ 4.5 Liquidated damages, if any:

Five Hundred Dollars (\$500.00) per day.

§ 4.6 Other:

*(Paragraph deleted)*

#### ARTICLE 5 PAYMENTS

##### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

Init.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the tenth day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the thirtieth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

#### § 5.1.7 Retainage

*(Paragraphs deleted)*

§ 5.1.7.1.2 Threshold Requirement; Amounts Retained. In accord with IC § 36-1-12-14, if this Agreement is for an amount greater than two hundred thousand dollars (\$200,000.00), Owner shall retain five percent (5%) of the dollar value of all work satisfactorily completed to ensure complete performance of the contract and to ensure payment of all claims until the public work is substantially completed.

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

*(Paragraph deleted)*

If after the Date of Final Completion there should remain uncompleted minor items, an amount equal to two hundred percent (200%) of the value of each item as determined by the Project Manager shall be withheld until the item is completed.

Init.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Paragraph deleted)*

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.2.3 120-Day Limit. Subject to receipt of the maintenance bond, if any such bond is required under this Agreement, Owner shall make final payment within one hundred twenty (120) days after Final Completion of the Project in accord with IC § 36-1-12-17.

§ 5.2.4 Disputes. Final payment may not be made on any amount that is in dispute among or with subcontractors, etc., but final payment may be made on that part of a contract or those amounts that are not in dispute.

§ 5.2.5 Contractor's Failure to Pay. If Contractor is unable to pay a subcontractor any just claim regarding its Work on this Project, Contractor shall inform such a person that he or she must file a claim with Owner not later than sixty (60) days after that person performed the last labor, furnished the last material, or performed the last service.

## § 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

zero percent 0%

## ARTICLE 6 DISPUTE RESOLUTION

*(Paragraphs deleted)*

§ 6.1 Forum. Any action or proceeding arising from or relating to this Agreement shall be under either the exclusive jurisdiction of the state courts located in Allen County, Indiana, or the United States District Court for the Northern District of Indiana, Fort Wayne Division.

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

Init.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:  
(Paragraph deleted)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

#### ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

Barry C. Marquart  
200 E. Berry Street, Suite 510  
Fort Wayne, IN 46802  
Telephone Number: (260) 427-1457  
Barry.Marquart@cityoffortwayne.org

§ 8.3 The Contractor's representative:

Schenkel Construction, Inc.  
Greg Schenkel  
1120 Saint Mary's Ave  
Fort Wayne, IN 46808  
Telephone Number: (260) 459-2030  
gschenkel@scibuild.com

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

#### § 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:  
(Paragraphs deleted)

§ 8.7 Other provisions:

§ 8.7.1 The parties hereto covenant and agree that no lien shall attach to the real estate by the Contractor, subcontractors, mechanics, journeymen, laborers, or persons performing labor upon or furnishing materials or machinery for the work provided for under the terms of this Contract, and for the purpose of complying with the provisions of Chapter 116 of the Acts of Indiana General Assembly for the year 1909; Chapter 41 of said Acts of 1911; Chapter 50 of said Acts 1915; Chapter 56 of said Acts of 1921; Chapter 187 of said Acts 1943; Chapter 376 of said Acts 1963; P.L. 424 of said Acts 1971; P.L. 310 of said Acts 1977; the parties agree that this Contract may be recorded with the Recorder of Allen County, Indiana.

§ 8.7.2 This Contractor covenants and agrees to pay all damages for injury to real or personal property, or for any injury or death sustained by any person growing out of any act or deed of the Contractor or of his employees or any of his subcontractors or their employees. This Contractor agrees to indemnify and save harmless the Owner and Lessee, their agents and employees, from and against all loss of expenses (including costs and attorneys' fees) by reason of

Init.

liability imposed by law upon the Owner or Lessee, for damages because of bodily injury, including death at any time resulting therefrom sustained by any person or persons or on account of damage to property, including death at any time resulting therefrom sustained by any person or persons or on account of damage to property, including loss of use thereof, arising out of or in consequence of the performance of this work, provided such injury to persons or damage to property is due or claimed to be due to negligence of the Contractor, his subcontractors, employees or agents. The term Owner shall be construed to include any and all successors to the currently named Owner, irrespective of how such succession occurred and/or who or what the successor(s) is or are.

§ 8.7.3 To each of the conditions and obligations of this Contract, the undersigned each for himself, binds itself, its successors, and assigns.

§ 8.7.4 E-Verify

§ 8.7.4.1 This Agreement shall have no effect unless each contractor performing Work on the Project has enrolled in and verified the work eligibility status of all its newly hired employees through the E-Verify program and provided a notarized E-Verify affidavit of such in accord with applicable law.

§ 8.7.4.2 Contractor is not required to verify the work eligibility status of all its newly hired employees through the E-Verify program if the E-Verify program no longer exists.

§ 8.7.4.3 Each Contractor must E-Verify each person who performs Work under this Agreement if the person is required to be verified by Indiana law.

§ 8.7.4.4 Upon request, Contractor shall submit to Owner any worker's E-Verify case verification number, as applicable.

§ 8.7.5 General Contractor Contributions. The Tier 1 (General or Prime) Contractor must contribute at least 15% of the Contract Price in Work, Supplies, or any combination thereof.

§ 8.7.6 Qualifications. Each contracting party performing Work under any such contract must be qualified by either the state certification board or the Indiana Department of Transportation.

§ 8.7.7 No-Cash Provision. No contractor may pay any person who performs Work under this Agreement in cash.

§ 8.7.8 Drug-Testing Program. Each Contractor must implement the employee drug-testing program described in Contractor's plan, as submitted in the bid documents. Owner may terminate this Agreement should Contractor fail to implement its employee drug-testing program during the term of this Agreement; fail to provide information regarding implementation of the Contractor's employee drug-testing program at the request of Owner; or, provide to Owner false information regarding the Contractor's employee drug-testing program.

§ 8.7.9 Recordkeeping. Contractor shall, and ensure that its Subcontractors shall, preserve and keep open for inspection all payroll and related records relating to this Agreement for a period of three (3) years after completion of the Project for inspection by the Department of Workforce Development. (IC § 5-16-13-13)

§ 8.7.10 Misclassification. Contractor shall cooperate with Owner over the suspected misclassification by the Contractor of any person doing work under this Agreement with regard to his or her status as an employee or independent contractor. (IC § 5-16-13-14)

§ 8.7.11 Compliance Violations. If Owner reasonably suspects that a contractor has violated a contract provision related to E-Verify, FLSA, state minimum wage law, worker's compensation, or unemployment insurance, Owner shall refer the matter to the appropriate state agency, as required by law. If Owner reasonably suspects a contractor has violated other sections of IC § 5-16-13, then Owner shall notify Contractor to remedy the violation within thirty (30) days, as per IC § 5-16-13-15. If the violation is not corrected, Owner shall prohibit Contractor from submitting bids or proposals on future projects for up to two (2) years based on the severity of the violation.

§ 8.7.12 Anti-Nepotism. Contractor affirms that it is aware of the provisions under IC § 36-1-21-1 *et seq.* regarding concerns of nepotism in contractual relationships with governmental entities. Contractor certifies that none of the owners of Contractor is a relative of any elected official of Owner.

§ 8.7.12 Survival. Provisions in this Agreement relating to warranties, bonds, indemnification, intellectual property, confidential information, and all miscellaneous provisions in this section shall survive the termination of this Agreement to the maximum extent permitted by law.

§ 8.7.13 Draftsperson. No presumption shall lie against any Party on the grounds that such Party or its attorney was responsible for preparing this Agreement or any part hereof.

§ 8.7.14 Severability. Should any court, arbiter, or government agency determine any provision of this Agreement to be invalid, illegal, unenforceable, or against public policy, such holding shall not diminish the validity or enforceability of any other provision unless the remainder is so essentially and inseparably connected with, and so dependent upon, the invalid, illegal, or unenforceable provision or application that it cannot be presumed that the remainder would have been agreed to without such provision or application.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .3 Drawings:

See Exhibit A – Drawings Table of Contents

- .4 Specifications

See Exhibit B – Specifications Table of Contents

- .5 Addenda, if any:

| Number | Date             | Pages |
|--------|------------------|-------|
| 001    | October 29, 2024 | 35    |
| 002    | November 6, 2024 | 10    |

*(Paragraphs deleted)*

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .6 Other Exhibits:

[X] Supplementary and other Conditions of the Contract:

See Project Manual.

Init.

[illegible]

(Paragraph deleted)

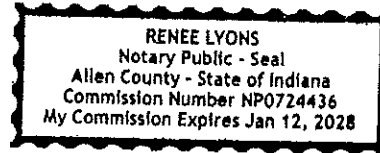
BEFORE ME, a Notary Public, in and for said County and State, this 21 day of November, 2024, personally appeared the within named Greg Schenkel who being by me first duly sworn upon his oath says that he is the President of Schenkel Construction, Inc., and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of said Contractor for the uses and purposes therein set forth.

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

Notary Public  
Renee Lyons  
Printed Name of Notary

(Table deleted)  
My Commission Expires: Jan. 12, 2028

Resident of Allen County.



## ACKNOWLEDGMENT

(Table deleted)

STATE OF INDIANA     )  
                                  SS: )  
COUNTY OF ALLEN     )

BEFORE ME, a Notary Public, in and for said County and State, this \_\_\_\_ day of \_\_\_\_\_, 2024, personally appeared the within named Sharon Tucker, 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, Chairman, Members, and Clerk of the Board of Public Works of the City of Fort Wayne, Indiana, and that said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledge said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

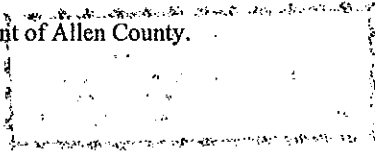
IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: \_\_\_\_\_

Resident of Allen County.



IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement (Contract/Resolution Number 111-10-8-24-2.

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

**CONTRACTOR**

**SCHENKEL CONSTRUCTION, INC.**

By: [Signature]

Print Name: Greg Schenkel

Title: President

Date: 11-21-2024  
(Date signed by Contractor)

Address for giving notices:  
\_\_\_\_\_  
\_\_\_\_\_

**OWNER**

**CITY OF FORT WAYNE**

By: \_\_\_\_\_  
Sharon Tucker, Mayor

**BOARD OF PUBLIC WORKS**

By: \_\_\_\_\_  
Shan Gunawardena, Chair

By: \_\_\_\_\_  
Kumar Menon, Member

By: \_\_\_\_\_  
Chris Guerrero, Member

Init.

ATTEST: \_\_\_\_\_  
Michelle Fulk-Vondran, Clerk

Date: \_\_\_\_\_  
(Date signed by Board)

(Table deleted)

Init.

# COUNCIL DIGEST SHEET

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

## RFPs & BIDS

|                               |                                                                     |
|-------------------------------|---------------------------------------------------------------------|
| Bid/RFP #                     | #111-10-8-24-2 CSQ Northwest Patio Improvements (# 9365689)         |
| Awarded To                    | Schenkel Construction                                               |
| Amount                        | \$449,400.00                                                        |
| Conflict of interest on file? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Number of Registrants         | 6                                                                   |
| Number of Bidders             | 6                                                                   |
| Required Attachments          | RFPs – attach Award Matrix; Bids – attach Tab Sheet                 |

## EXTENSIONS

|                              |      |
|------------------------------|------|
| Date Last Bid Out            | N/A  |
| # Extensions Granted To Date | None |

## SPECIAL PROCUREMENT

|                                                            |  |
|------------------------------------------------------------|--|
| Contract #/ID<br>(State, Federal,<br>Piggyback--Authority) |  |
| Sole Source/<br>Compatibility Justification                |  |

## BID CRITERIA *(Take Buy Indiana requirements into consideration.)*

|                                        |                                                                                                 |
|----------------------------------------|-------------------------------------------------------------------------------------------------|
| Most Responsible,<br>Responsive Lowest | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If no, explain below</i> |
| If not lowest, explain                 |                                                                                                 |

# COUNCIL DIGEST SHEET

## COST COMPARISON

|                                                                                                  |  |
|--------------------------------------------------------------------------------------------------|--|
| <i>Increase/decrease amount<br/>from prior years<br/>For annual purchase<br/>(if available).</i> |  |
|--------------------------------------------------------------------------------------------------|--|

## DESCRIPTION OF PROJECT / NEED

|                                                                                                                |                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Identify need for project &amp;<br/>describe project; attach<br/>supporting documents as<br/>necessary.</i> | Removal of the northwest patio area due to its deterioration and safety<br>Concerns, and necessary site and parking improvements as needed. |
|                                                                                                                |                                                                                                                                             |
|                                                                                                                |                                                                                                                                             |
|                                                                                                                |                                                                                                                                             |
|                                                                                                                |                                                                                                                                             |

## REQUEST FOR PRIOR APPROVAL

|                                                                            |  |
|----------------------------------------------------------------------------|--|
| <i>Provide justification if<br/>prior approval is being<br/>requested.</i> |  |
|                                                                            |  |
|                                                                            |  |
|                                                                            |  |
|                                                                            |  |

## FUNDING SOURCE

|                             |               |
|-----------------------------|---------------|
| <i>Account Information.</i> | 0002BER3-5369 |
|                             |               |
|                             |               |
|                             |               |
|                             |               |



# CITY OF FORT WAYNE

SHARON TUCKER, MAYOR

Property Management Department  
200 E. Berry St., Suite 510  
Fort Wayne, IN 46802  
(260) 427-1457  
Fax: (260) 427-1393

November 20, 2024

City Council Members  
City of Fort Wayne

RE: Citizens Square Northwest Patio Improvements  
Schenkel Construction – Construction Contract

Dear Council Members:

We are asking for City Council approval of this construction contract for Schenkel Construction in the amount of \$449,400.00 to perform the improvements on the northwest corner of Citizens Square.

The funds for these expenditures are appropriated out of Citizens Square Budget 0002BER2-5369.

If you have any questions on the above, please feel free to contact me at 427-1457.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry C. Marquart", written over a horizontal line.

Barry C. Marquart  
Property Manager – 200 E. Berry St.

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