

BILL NO. S-25-01-30

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE APPROVING PURCHASING
CONSTRUCTION SERVICES AGREEMENT –
POTHOLING & TRAFFIC CONTROL FOR WATER
MAIN CONDITION ASSESSMENT – QUEST
#9156253 – (\$183,717.00) - BETWEEN BERCOT INC.
AND THE CITY OF FORT WAYNE, INDIANA by and
through its Department of Purchasing.

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

SECTION 1. That the PURCHASING CONSTRUCTION SERVICES
AGREEMENT – POTHOLING & TRAFFIC CONTROL FOR WATER MAIN
CONDITION ASSESSMENT – QUEST #9156253 - BETWEEN BERCOT INC.
AND THE CITY OF FORT WAYNE, INDIANA by and through its Department of
Purchasing, is hereby ratified, and affirmed and approved in all respects,
respectfully for:

BERCOT INC. shall furnish all labor, insurance, equipment,
materials and power for the completion of the project:
construction support of condition assesment including installation
of pothole access locations to be used for inspection sensor
attachment on water mains and providing traffic control during
follow on inspection by others;

involving a total cost of ONE HUNDRED EIGHTY-THREE THOUSAND SEVEN
HUNDRED SEVENTEEN AND 00/100 DOLLARS - (\$183,717.00). 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



PURCHASING CONSTRUCTION SERVICES AGREEMENT: RFQ # 9156263

SUPPLIER NAME	CITY DEPARTMENT
Bercot Inc.	City Utilities Engineering
STREET ADDRESS	STREET ADDRESS
6016 Huguenard Road	200 E. Berry Street
CITY, STATE, ZIP CODE	CITY, STATE, ZIP CODE
Fort Wayne, IN 46818	Fort Wayne, IN 46802
ATTENTION/PHONE	
Johnbercot@comcast.net	

Service Description	Rates
Pot Holing & Traffic Control Cohort B - RFQ# 9156263	\$142,613.00
Aggregate Price	

The following is made a part of this Agreement:

REQUIRED ☒ Certificate of Insurance ☒ Quotations ☒ Tab Sheet
OPTIONAL ☐ EBE Rider (waiver process) ☐ Retainage ☐ Performance Bonding ☐ Bid Bonding ☐ Maintenance Bonding ☐ Formal Acceptance Required

This Agreement is entered into between Supplier and the City. The additional terms and conditions on the reverse side hereof are part of this Agreement. Capitalized terms on this page are used as defined terms when the context so requires. The City may extend the Contract at its option, for an equivalent period, by written notice to the Supplier not less than thirty days prior to the expiration date.

SUPPLIER:

For Independent Contractors: Will any individuals other than yourself perform work on this project? ☒ Yes ☐ No If yes, see reverse side for Worker's Comp. requirement.		CITY OF FORT WAYNE:	
By (Signature): <i>John W. Bercot</i>	By (Signature): <i>Tara Schilt</i>		
Printed Name: JOHN W. BERCO	Printed Name: Tara Schilt		
Date: 07/01/2024	Date: 1/16/25		

ADDITIONAL TERMS AND CONDITIONS

1. **SERVICES.** Supplier agrees to perform the Services beginning on the Begin Date and continuing until the Services are completed. Supplier warrants that the Services will be completed on or before the End Date. **TIME IS OF THE ESSENCE.** Supplier warrants that all Services shall conform to the Service Description, be of good quality and workmanship, and be free from defects. Supplier further warrants that all goods furnished in connection with the Services shall be merchantable and suitably safe and sufficient for the purpose for which they are normally used. Supplier warrants that it has good title to goods supplied hereunder and that they are free of all liens and encumbrances. These warranties are in addition to those implied in fact or in law. For the purposes of this Agreement, the term "Services" shall include any goods furnished in connection with the Services.
2. **INVOICES.** Supplier shall invoice the City for Services performed according to the Rates, Billing Interval, and Invoice Address. Invoices shall be rendered in triplicate and shall itemize the Services performed, the Service Address, and the corresponding rates and taxes, if any. Payment shall be due within thirty (30) days after the invoice date or the date of completion of the invoiced Services, whichever occurs later, provided that the City shall not be obligated to make any payment to Supplier hereunder until Supplier has furnished proof satisfactory to the City of full payment for all labor, materials, supplies, machinery, and equipment furnished for or used in performance of this Agreement or has furnished all necessary waivers of lien supported by affidavits, all satisfactory to the City, establishing that all liens and claims to claim items that could arise out of the performance of the Services have been waived. Payment of Invoices shall not constitute acceptance of the Services, and Invoices shall be subject to adjustment for defects in quality or any other failure of Supplier to meet the requirements of this Agreement. The City may at any time set off any amount owed by the City to Supplier against any amount owed by Supplier or any of its affiliated companies to the City.
3. **INDEPENDENT CONTRACTOR RELATIONSHIP.** The relationship between City and Supplier is and shall at all times remain as independent contractors. Persons provided by Supplier to perform and deliver the Services shall be Supplier's employees under the sole and exclusive direction and control of Supplier and shall not be considered employees of City for any purpose. Supplier shall be responsible for compliance by Supplier's employees and any other person or entity contracted or permitted by Supplier to perform and deliver the Services, with all laws, rules and regulations applicable to the performance and delivery of the Services hereunder, including but not limited to employment, labor, wage and hour, health and safety, and working conditions. Supplier shall be responsible for the payment of all federal, state and local taxes and charges of any type or nature assessed with respect to Supplier's employees and any other persons or entities contracted or permitted by Supplier to provide and deliver the Services, including Social Security, unemployment, Workmen's Compensation, disability insurance and federal and state withholding. Supplier shall be responsible for providing such reasonable accommodations which may be required under the Americans with Disabilities Act, 42 U.S.C. 12101 et seq. in order that any person with disabilities employed, contracted or permitted by Supplier to provide the Services to be able to perform the essential functions of such person's job-related duties. Supplier agrees to defend, indemnify and hold harmless City, to the extent permitted by law, from and against any loss, cost, claim, liability, damage or expense (including attorney's fees) that may be asserted against or incurred by City as a result of Supplier's failure to comply with the covenants and obligations of this paragraph.
4. **INDEMNITY.** Supplier shall defend, indemnify and hold harmless City, its officers, directors, employees, representatives, agents, departments and divisions, to the extent permitted by law, from and against all demands, damages, liabilities, costs and expenses (including reasonable attorneys' fees), judgments, settlements and penalties of every kind and nature asserted against, charged to or imposed upon City which directly or indirectly arise or are associated with the performance and delivery of the Services by Supplier, the employees of Supplier or any person or entity contracted or permitted by Supplier to provide and deliver the Services, which is claimed to be caused directly or indirectly to the negligent or intentional act or omission of Supplier, any employee of Supplier or any person or entity contracted or permitted by Supplier to perform and deliver the Services, including, without limitation, damages for personal injury, death or loss of or damage to property. City may elect to participate in the defense of any lawsuit, claim or demand in which City is a named party or in which City may have an interest by employing attorneys selected by City at City's expense or to be represented by Supplier's counsel at Supplier's expense, without waiving Supplier's defense, indemnity and hold harmless obligations to City contained herein. Supplier shall not settle or compromise any claim, suit or action or consent to entry or a judgment without the prior written consent of City and without the unconditional release of City from liability by each claimant or plaintiff. The indemnification covenants contained herein shall survive the completion of the performance and delivery of the Services.
5. **LIMITATION OF LIABILITY.** Supplier's liability hereunder for any loss, cost, claim liability, damage or expense (including attorneys' fees) arising out of any negligent or intentional act or omission of the performance of the obligations hereunder by Supplier, Supplier's employees or any person or entity contracted or permitted by Supplier to perform any obligation under this Agreement shall be limited to the amount of the direct damage incurred by City. Absent grossly negligent or willful misconduct by Supplier, Supplier's employees or any person or entity contracted or permitted by Supplier to perform the obligations under this Agreement, Supplier shall not be liable for any indirect, incidental, special, consequential or punitive damages of any kind whatsoever.
6. **INSURANCE.** Supplier shall maintain in full force and effect during the performance and delivery of the Services, and shall require any person or entity contracted or permitted by Supplier to perform and deliver the Services, the following insurance coverage:

(a) General Liability	\$1,000,000 minimum per occurrence \$2,000,000 aggregate
Personal & Advertising Liability	\$1,000,000 any one person or organization
Products/Completed Operations Liability	\$2,000,000 aggregate
(b) Automobile Liability, including Titled and Non-Titled Auto	\$1,000,000 minimum per occurrence
(c) Worker's Compensation*	\$500,000 each accident
Bodily Injury by Accident	\$500,000 policy limit
Bodily Injury by Disease	\$500,000 each employee

*ANY PERSON OR ENTITY CONTRACTED OR PERMITTED BY SUPPLIER TO PERFORM AND DELIVER THE SERVICES AND DOES NOT CARRY WORKMEN'S COMPENSATION INSURANCE MUST SUBMIT A VALID CLEARANCE CERTIFICATE APPROVED BY THE WORKMEN'S COMPENSATION BOARD OF INDIANA.

The Certificate of Insurance must show the City of Fort Wayne, its Divisions and Subsidiaries as an Additional Insured and a Certificate Holder, with 30 days notification of cancellation or non-renewal. All Certificates of Insurance should be sent to the following address:
City of Fort Wayne Purchasing Department
200 East Berry Street, Suite 450
Fort Wayne, IN 46802

7. **HAZARDOUS MATERIALS.** Supplier will provide to the City before performing any Services, a statement describing any Hazardous Materials intended and necessary for use in performing the Services. "Hazardous Materials" means any item which may be classified under federal, state, or local law, as hazardous or toxic. Supplier must comply with all federal, state, or local law in the use, transportation, and disposal of such Hazardous Materials.
8. **PROGRESS REPORTS.** The Supplier shall submit progress reports to the City upon request. The report shall serve the purpose of assuring the City that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date. This contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.
9. **CONFLICT OF INTEREST.** Supplier certifies and warrants that neither it nor any of its directors, officers, agents, representatives, board members, or employees which will participate in any way in the performance of the Supplier's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City of Fort Wayne or any of its departments, divisions, agencies, officers, directors, board members, or agents.
10. **CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS, AND COPYRIGHT PROTECTION.** Supplier further agrees that all information, data findings, recommendations, proposals, etc. by whatever name described and by whatever form therein secured, developed, written or produced by the Supplier in furtherance of this contract—shall be the property of the City. The Supplier shall take action as is necessary under law to preserve such property rights in and of the City while such property is within the control and/or custody of the Supplier. By this contract the Supplier specifically waives and/or releases to the City any cognizable property right of the Supplier to copyright, license, patent or other wise use such information, data findings, recommendations proposals, etc.
11. **CONFIDENTIALITY OF CITY INFORMATION.** Supplier understands and agrees that data, materials, and information disclosed to Supplier may contain confidential and protected data. Therefore, the Supplier promises and assures that data, material, and information gathered, based upon or disclosed to the Supplier for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the City.
12. **EMPLOYER CERTIFICATION.** In accordance with I.C. 522-5-1.7, Supplier understands and agrees to enroll and verify work eligibility status of all newly hired employees of the contractor through E-Verify program or any other system of legal residence verification as approved by the United States Department of Homeland Security or the department of homeland security. Supplier further understands that they are not required to verify work eligibility of status of newly hired employees of the Supplier through the E-Verify program if the E-Verify program no longer exists. Supplier certifies that they do not knowingly employ any unauthorized aliens.
13. **COMPLIANCE WITH LAWS.** Supplier warrants that the Services shall be in strict conformity with all applicable local, state and federal laws including, but not limited to, the standards promulgated by the Occupational Safety and Health Act, Executive Order 11246, as amended, relative to Equal Employment Opportunity and all other applicable laws, rules, and regulations, including the Civil Rights Act of 1964 pertaining to equal opportunity, Section 503 of the Vocational Rehabilitation Act of 1973, the American with Disabilities Act, Section 402 of the Vietnam War Veterans Readjustment Assistance Act of 1974 and all applicable immigration laws and regulations including the 1986 Immigration Reform and Control Act et seq. Supplier agrees to indemnify and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained because of Supplier's breach of such warranty.
14. **DEFAULT.** In the event that (a) Supplier breaches any warranty contained herein; (b) Supplier fails to enroll and verify work eligibility status of all newly hired employees of the contractor through E-Verify program or any other system of legal residence verification as approved by the United States Department of Homeland Security or the department of homeland security; (c) Supplier's performance of the Services violates applicable laws; (d) Supplier admits insolvency, makes an assignment for the benefit of creditors, or has a trustee appointed to take over all or a substantial part of its assets; or (e) Supplier fails to perform or comply with any other provision of this Agreement, such failure, breach, or violation shall constitute a default under this Agreement.
15. **TERMINATION.** In the event of default by Supplier under this Agreement, the City reserves the right without liability, in addition to its other rights and remedies, to terminate this Agreement by notice to Supplier as to the portion of the Services not yet rendered and to purchase substitute services at Supplier's expense. Supplier shall reimburse the City for the cost of such substitute services upon Supplier's receipt of an invoice, therefore.
16. **WAIVER.** No action or inaction by the City shall constitute a waiver of any right or remedy.
17. **CANCELLATION.** City may at any time cancel this Agreement in whole or in part for its convenience upon written notice to Supplier, and Supplier shall stop performing the Services on the date specified in such notice. The City shall have no liability as a result of such cancellation, except that the City will pay Supplier the Rates for completed Services accepted by the City and the actual incurred cost to Supplier for Services in progress. These payments shall not exceed the Aggregate Price.
18. **FORCE MAJEURE.** Neither party shall be liable to the other or responsible for nonperformance of any of the terms of this Agreement due to unforeseeable causes beyond the reasonable control and without the fault or negligence of such party, including, but not restricted to acts of God or the public enemy, acts of government, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.
19. **NOTICES.** All notices required or permitted to be made or given hereunder by one party to the other party shall be in writing and shall be deemed to have been given when hand delivered, or on the date stated on the receipt if deposited in the United States mail in certified form, postage prepaid with return receipt requested, and addressed to such other party at its Notice Address or at such other address as may be specified by such other party by written notice sent or delivered in accordance herewith.
20. **ASSIGNMENT.** Any assignment, in whole or in part, of Supplier's rights or obligation under this Agreement without the prior written consent of the City shall be void. Supplier shall not use subcontractors to perform any part of the Services without the prior written consent of the City.
21. **DISPUTE RESOLUTION.** The City shall be the sole judge of the quality of services. In the event of any dispute or disagreement between the parties either with respect to the interpretation of any provision of this agreement, or with respect to the performance of either party hereunder, the dispute shall be resolved by the Director of Finance and Administration and will not be subject to arbitration.
22. **ACCESS TO RECORDS.** The Supplier shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred. They shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the

Interoffice Memo

Date: January 15, 2025
To: Common Council Members
From: Eric Ruppert, Manager, City Utilities Engineering
RE: Construction Services Agreement RFQ #9156253
Potholing & Traffic Control for Water Main Condition Assessment

Eric Ruppert
01/23/2025

Council Districts # 2, #5, & #6

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project: Construction support of condition assessment including installation of pothole access locations to be used for inspection sensor attachment on water mains and providing traffic control during follow on inspection by others.

Implications of not being approved: The City has over 1,400 miles of water lines and some of those are reaching their useful design life. Of these 1,400 miles of water lines, transmission mains are the most critical. This project supports the transmission main condition assessment and rehabilitation program.

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

This project was advertised to contractors as RFQ# 9156253 on 5/30/2024 via the online Quest system.

The construction service agreement was awarded to Bercot Inc. for \$142,613.00. Bercot Inc. was the lowest most responsive bidder.

Additional work was required to complete the project bringing the total to \$183,717.00

The cost of said project funded by Water Utility Revenue.

Council Introduction Date: January 28, 2025

CC: Matthew Wirtz
Jill Helfrich
File