

BILL NO. S-26-08-42

SPECIAL ORDINANCE NO. _____

AN ORDINANCE approving a CONSTRUCTION CONTRACT for OXFORD STREETSCAPE RECONSTRUCTION PROJECT - RESOLUTION/WORK ORDER #1107N - (\$3,464,056.93) between E & B PAVING, INC., 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 FOR OXFORD STREETSCAPE RECONSTRUCTION PROJECT - RESOLUTION/WORK ORDER #1107N - between E & B PAVING, INC. 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:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary to CONSTRUCT THE OXFORD STREETSCAPE RECONSTRUCTION PROJECT. THE PROPOSED IMPROVEMENTS INCLUDE NEW PAVEMENT, CURB/GUTTER, SIDEWALKS, ORNAMENTAL LIGHTING, ADA RAMPS, PAVEMENT MARKINGS AND RESTORATION;

involving a total cost of THREE MILLION FOUR HUNDRED SIXTY-FOUR THOUSAND FIFTY-SIX AND 93/100 DOLLARS - (\$3,464,056.93). 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

Bkd Tabulation

Bkd Date: 07/23/24		RES. NO. 7 W/O 10771		BODER: E & B PAVING, INC		BODER: CROSBY EXCAVATING		BODER: MALOTT CONTRA		BODER: SAS DIRECTIONAL BORING, LTD	
ITEM CODE	ITEM	PLAN QTY	UNIT	UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)	UNIT COST (\$)	AMOUNT (\$)
10	CONSTRUCTION ERECTION	1	LB	\$9,600.00	\$9,600.00	\$10,600.00	\$10,600.00	\$13,000.00	\$13,000.00	\$15,100.00	\$15,100.00
11	WORKER AND DEMOLITION	1	LB	\$100,000.00	\$100,000.00	\$100,250.00	\$100,250.00	\$118,000.00	\$118,000.00	\$131,500.00	\$131,500.00
20	TREE & FILL REMOVE	2	EACH	\$1,000.00	\$2,000.00	\$450.00	\$900.00	\$1,100.00	\$2,200.00	\$550.00	\$1,100.00
40	CLEARING THE RIGHT OF WAY	1	LS	\$55,000.00	\$55,000.00	\$18,822.93	\$18,822.93	\$45,000.00	\$45,000.00	\$11,600.00	\$11,600.00
50	PAVEMENT REMOVAL	2770	SYS	\$20.00	\$55,400.00	\$25.00	\$69,250.00	\$12.50	\$34,625.00	\$15.83	\$43,807.50
60	CURB CONCRETE REMOVE	5700	LFT	\$10.00	\$57,000.00	\$16.00	\$91,200.00	\$5.50	\$31,350.00	\$4.63	\$26,676.00
70	CATCH BASIN REMOVE	4	EACH	\$700.00	\$2,800.00	\$2,000.00	\$8,000.00	\$725.00	\$2,900.00	\$350.00	\$1,400.00
80	CONCRETE STEPS REMOVE	2	EA	\$700.00	\$1,400.00	\$420.57	\$841.14	\$375.00	\$750.00	\$500.00	\$1,000.00
90	TROLLEY TRACKS REMOVE	4500	LFT	\$45.00	\$202,500.00	\$25.00	\$112,500.00	\$20.00	\$90,000.00	\$22.00	\$99,000.00
100	CONCRETE REMOVE	2600	SYS	\$15.00	\$39,000.00	\$55.00	\$143,000.00	\$12.50	\$32,500.00	\$18.84	\$49,024.00
110	WATER MAIN REMOVE	15	LFT	\$50.00	\$750.00	\$97.28	\$1,459.20	\$55.00	\$825.00	\$55.00	\$825.00
120	SIGN AND SUPPORTS, CHANNEL POSTS, REMOVE	17	EA	\$75.00	\$1,275.00	\$50.00	\$850.00	\$275.00	\$4,675.00	\$500.00	\$8,500.00
130	LIGHT STRUCTURE AND FOUNDATION REMOVE	25	EA	\$1,000.00	\$25,000.00	\$300.00	\$7,500.00	\$675.00	\$16,875.00	\$1,341.00	\$33,525.00
140	UTILITY POLE AND LIGHT REMOVE	1	EA	\$1,500.00	\$1,500.00	\$2,000.00	\$2,000.00	\$1,150.00	\$1,150.00	\$2,600.00	\$2,600.00
150	UTILITY POLE REMOVE	1	EACH	\$500.00	\$500.00	\$1,500.00	\$1,500.00	\$1,050.00	\$1,050.00	\$1,650.00	\$1,650.00
160	EXCAVATION COMMON	2500	CYB	\$35.00	\$87,500.00	\$35.00	\$87,500.00	\$83.00	\$207,500.00	\$37.12	\$92,800.00
170	TEMPORARY EROSION CONTROL	1	LS	\$15,000.00	\$15,000.00	\$7,850.00	\$7,850.00	\$25,000.00	\$25,000.00	\$3,000.00	\$3,000.00
180	SUBGRADE TREATMENT, TYPE II	150	SYS	\$45.00	\$6,750.00	\$45.00	\$6,750.00	\$7.25	\$1,087.50	\$11.60	\$1,740.00
190	SUBGRADE TREATMENT, TYPE II	6300	SYS	\$3.00	\$18,900.00	\$3.44	\$21,672.00	\$1.50	\$9,450.00	\$5.72	\$35,916.00
200	STRUCTURE BACKFILL TYPE 2	200	CYB	\$50.00	\$10,000.00	\$123.33	\$24,666.00	\$55.00	\$11,000.00	\$59.74	\$11,948.00
210	GEORG. TYPE B	150	SYS	\$9.00	\$1,350.00	\$0.65	\$97.50	\$5.00	\$750.00	\$11.33	\$1,699.50
220	COMPACTED AGGREGATE 10.5 CHECKED WITH 10F S	2500	TON	\$50.00	\$125,000.00	\$35.00	\$87,500.00	\$31.00	\$77,500.00	\$35.20	\$88,000.00
230	COMPACTED AGGREGATE 10.5	1700	TON	\$45.00	\$76,500.00	\$62.00	\$105,400.00	\$22.00	\$37,400.00	\$25.20	\$42,840.00
240	WILLIS ASPHALT 1.1/2 IN	6350	SYS	\$2.50	\$15,875.00	\$3.00	\$19,050.00	\$5.75	\$36,512.50	\$7.20	\$45,720.00
250	HVA B. 6.4 SURFACE 3.5 CM	1000	TON	\$115.00	\$115,000.00	\$58.00	\$58,000.00	\$108.00	\$108,000.00	\$127.00	\$127,000.00
260	HVA B. 6.4 INTERGRADE 12.5 mm	650	TON	\$106.00	\$68,900.00	\$115.00	\$75,750.00	\$112.00	\$72,800.00	\$110.00	\$71,500.00
270	HVA WEDGE AND LEVEL TYPE B	175	TON	\$150.00	\$26,250.00	\$109.22	\$19,113.50	\$121.00	\$21,175.00	\$124.00	\$21,700.00
280	ASPHALT EMULSION FOR TACK COAT	6	TON	\$450.00	\$2,700.00	\$1.00	\$6.00	\$500.00	\$3,000.00	\$700.00	\$4,200.00
290	JOINT ADHESIVE	12420	LFT	\$7.50	\$93,150.00	\$3.01	\$37,342.20	\$1.00	\$12,420.00	\$5.60	\$69,432.00
300	SEWALK CONCRETE	1450	SYS	\$70.00	\$101,500.00	\$55.00	\$79,750.00	\$75.00	\$108,750.00	\$65.00	\$95,250.00
310	CURBSIDE SEWALK CONCRETE	4500	SYS	\$75.00	\$337,500.00	\$77.00	\$346,500.00	\$135.00	\$607,500.00	\$100.00	\$450,000.00
320	CURB RAMP CONCRETE	350	SYS	\$150.00	\$52,500.00	\$209.70	\$73,395.00	\$106.00	\$37,100.00	\$150.00	\$52,500.00
330	DETECTABLE WARNING SURFACES	60	SYS	\$225.00	\$13,500.00	\$100.00	\$6,000.00	\$300.00	\$18,000.00	\$200.00	\$12,000.00
340	HAND RAIL PEDESTAL	50	LFT	\$50.00	\$2,500.00	\$19.00	\$950.00	\$165.00	\$8,250.00	\$300.00	\$15,000.00
350	CURB CONCRETE ALL TYPES	3850	LFT	\$55.00	\$211,750.00	\$35.00	\$134,750.00	\$38.00	\$146,600.00	\$50.00	\$193,500.00
360	HVA FOR APPROACHES, TYPE B	85	TON	\$150.00	\$12,750.00	\$115.70	\$9,834.50	\$193.00	\$16,405.00	\$150.00	\$12,750.00
370	POC FOR APPROACHES & H	650	SYS	\$115.00	\$74,750.00	\$132.00	\$85,800.00	\$59.00	\$38,350.00	\$87.00	\$56,550.00
380	POC FOR APPROACHES & H	500	SYS	\$55.00	\$27,500.00	\$128.55	\$64,275.00	\$81.00	\$40,500.00	\$78.00	\$39,000.00
390	RIVER ROCK	2	TON	\$150.00	\$300.00	\$250.00	\$500.00	\$275.00	\$550.00	\$550.00	\$1,100.00
400	ANCHOR PLAT BELT	3	EACH	\$1,000.00	\$3,000.00	\$1,650.00	\$4,950.00	\$1,000.00	\$3,000.00	\$1,650.00	\$4,950.00
410	HYDROSEEDING WITH STRAW	2200	SYS	\$5.00	\$11,000.00	\$2.85	\$6,270.00	\$3.10	\$6,820.00	\$3.15	\$6,930.00
420	BROWN TOPSOIL	500	CYB	\$5.00	\$2,500.00	\$4.00	\$2,000.00	\$5.00	\$2,500.00	\$4.50	\$2,250.00
430	BROWN MULCH	120	CYB	\$5.00	\$600.00	\$7.00	\$840.00	\$6.00	\$720.00	\$5.00	\$600.00
440	RETAINING WALL	530	SFT	\$100.00	\$53,000.00	\$16.94	\$8,978.20	\$39.00	\$20,730.00	\$75.35	\$39,935.50
450	PPE TYPE 4 CIRCULAR DAWNER & H	1030	LFT	\$35.00	\$36,050.00	\$20.15	\$20,754.50	\$21.50	\$22,145.00	\$18.06	\$18,581.80
460	PPE TYPE 4 CIRCULAR DAWNER & H	26	LFT	\$50.00	\$1,300.00	\$136.33	\$3,544.58	\$10.00	\$260.00	\$51.36	\$1,335.36
470	GEOTEXTILE FOR UNDERDRAIN TYPE 1B	755	SYS	\$12.00	\$9,060.00	\$2.00	\$1,510.00	\$4.00	\$3,020.00	\$3.83	\$2,895.15
480	TRENCH DRAIN	40	LFT	\$75.00	\$3,000.00	\$219.63	\$8,785.20	\$230.00	\$9,200.00	\$410.00	\$16,400.00
490	ADJUST WATER VALVE TO GRADE	30	EACH	\$500.00	\$15,000.00	\$230.50	\$6,915.00	\$100.00	\$3,000.00	\$220.00	\$6,600.00
500	PPE - 12" ROP CLASS II	140	LFT	\$122.00	\$17,080.00	\$153.82	\$21,534.80	\$245.00	\$34,300.00	\$34.44	\$4,821.60
510	CASTING FURNISH AND ADJUST TO GRADE	9	EACH	\$1,200.00	\$10,800.00	\$1,201.75	\$10,815.75	\$500.00	\$4,500.00	\$831.00	\$7,479.00
520	WASHHOLE - 4" STORM	2	EACH	\$5,500.00	\$11,000.00	\$7,165.85	\$14,331.70	\$4,000.00	\$8,000.00	\$5,192.00	\$10,384.00
530	WASHHOLE - 6" STORM	3	EACH	\$9,600.00	\$28,800.00	\$8,655.33	\$25,965.99	\$7,760.00	\$23,280.00	\$7,531.62	\$22,594.86
540	CASTING CATCH BASIN ADJUST TO GRADE	6	EACH	\$5,000.00	\$30,000.00	\$1,592.78	\$9,556.68	\$3,300.00	\$19,800.00	\$5,340.00	\$32,040.00
550	CATCH BASIN - 4"	12	EACH	\$5,300.00	\$63,600.00	\$4,635.83	\$55,630.00	\$4,100.00	\$49,200.00	\$5,407.00	\$64,884.00
560	WELL 2' X 2'	2	EACH	\$9,800.00	\$19,600.00	\$7,131.00	\$14,262.00	\$3,050.00	\$6,100.00	\$3,350.00	\$6,700.00
570	CASTING WASHHOLE ADJUST TO GRADE	18	EACH	\$5,000.00	\$90,000.00	\$3,489.95	\$62,819.10	\$2,200.00	\$39,600.00	\$2,200.00	\$39,600.00
580	CASTING GAS VALVE ADJUST TO GRADE	5	EACH	\$5,000.00	\$25,000.00	\$71.91	\$359.55	\$100.00	\$500.00	\$275.00	\$1,375.00
590	DETOUR ROUTE MARKER ASSEMBLY	35	EACH	\$250.00	\$8,750.00	\$175.00	\$6,125.00	\$200.00	\$7,000.00	\$150.00	\$5,250.00
600	CONSTRUCTION SIGN TYPE A	30	EACH	\$125.00	\$3,750.00	\$250.00	\$7,500.00	\$125.00	\$3,750.00	\$375.00	\$11,250.00
610	WARRANTAGE OF TRAFFIC	1	LS	\$125,000.00	\$125,000.00	\$30,644.44	\$30,644.44	\$25,000.00	\$25,000.00	\$15,275.00	\$15,275.00
620	BURSCADE I.B.	120	LFT	\$110.00	\$13,200.00	\$20.00	\$2,400.00	\$22.70	\$2,724.00	\$22.00	\$2,640.00
630	BURSCADE I.B.	80	LFT	\$110.00	\$8,800.00	\$20.00	\$1,600.00	\$22.70	\$1,816.00	\$22.00	\$1,760.00
640	EQ. POST SQUARE TYPE 2 W/ST. FORCED ANCHOR BASE	200	LFT	\$25.00	\$5,000.00	\$15.00	\$3,000.00	\$20.00	\$4,000.00	\$27.50	\$5,500.00
650	SGH SHEET RELOCATE	2	EACH	\$100.00	\$200.00	\$75.00	\$150.00	\$52.00	\$104.00	\$165.00	\$330.00
660	SGH SHEET WITH LEGEND 36" X 48" THICKNESS	60	SFT	\$150.00	\$9,000.00	\$30.00	\$1,800.00	\$50.00	\$3,000.00	\$45.00	\$2,700.00
670	3/4" X 1/2" 2" RTRAY CABLE #115 RTRAY BOX TUBE	7500	LFT	\$5.00	\$37,500.00	\$11.00	\$82,500.00	\$19.00	\$141,000.00	\$19.70	\$148,650.00
680	SERVICE POINT RISER AND WEATHER-HEAD	2	EACH	\$1,500.00	\$3,000.00	\$1,550.00	\$3,100.00	\$1,415.00	\$2,830.00	\$1,375.00	\$2,750.00
690	HANDHOLE SIGNAL TYPE 1	1	EACH	\$3,500.00	\$3,500.00	\$2,200.00	\$2,200.00	\$2,550.00	\$2,550.00	\$1,600.00	\$1,600.00
700	PEDESTAL SIGNAL HEAD COUNTERDOWN 18" H	8	EACH	\$2,500.00	\$20,000.00	\$450.00	\$3,600.00	\$1,300.00	\$10,400.00	\$1,100.00	\$8,800.00
710	SGH SIGNAL POLE FOUNDATION 24" X 24" X 36" H	4	EACH	\$13,000.00	\$52,000.00	\$1,300.00	\$5,200.00	\$1,600.00	\$6,400.00	\$1,500.00	\$6,000.00
720	SGH SIGNAL POLE PEDESTAL LFT	4	EACH	\$2,000.00	\$8,000.00	\$1,150.00	\$4,600.00	\$7,400.00	\$29,600.00	\$1,600.00	\$6,400.00
730	PEDESTAL SIGNAL HEAD COUNTERDOWN 18" H	8	EACH	\$7,000.00	\$56,000.00	\$1,750.00	\$14,000.00	\$1,925.00	\$15,400.00	\$1,800.00	\$14,400.00
740	SGH CABLE CONTROL COPPER 30' X 1/4"	150	LFT	\$4.00	\$600.00	\$5.00	\$750.00	\$5.65	\$847.50	\$5.50	\$825.00
750	SGH CABLE CONTROL COPPER 30' X 1/4"	150	LFT	\$5.00	\$750.00	\$6.00	\$900.00	\$6.20	\$930.00	\$5.50	\$825.00
760	HANDHOLE LIGHTING	17	EACH	\$3,500.00	\$59,500.00	\$1,600.00	\$27,200.00	\$1,130.00	\$19,210.00	\$1,000.00	\$17,000.00
770	LIGHT POLE ORNAMENTAL	55	EACH	\$5,000.00	\$275,000.00	\$5,000.00	\$275,000.00	\$5,515.00	\$303,225.00	\$5,367.50	\$295,212.50

[illegible]

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

Resolution/Work Order #1107N

This Agreement is by and between the City of Fort Wayne – Board of Public Works (“Owner”) and E&B Paving, 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: Removing and replacing sidewalks and drive approaches, upgrading ADA pedestrian crossings, new landscaping areas with trees and bioswale areas, added storm drainage, new street lighting placements, and installation of site furnishings in various locations from Lafayette to Oliver. The section of road between Lafayette and Warsaw will be removed and replaced with asphalt and the road will be milled and resurfaced from Warsaw to Oliver.

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Oxford Streetscape Phases I & II – Lafayette to Oliver

ARTICLE 3—ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by Jones Petrie Rafinski.

ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

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

4.02 *Contract Times: Dates*

- A. The Work will be substantially complete on or before 7-01-27, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before 7-31-27

A.

4.04 *Milestones*

- A. Parts of the Work must be substantially completed on or before the following Milestone(s):
 - 1. Milestone 1 **This project will need to be started after the NTP is issued and progress shown before the end of 2026.**
 - 2.

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 **\$3,464,056.93**

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. 97 percent of the value of the Work completed (with the balance being retainage).

b. 97 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 75 sheets with each sheet bearing the following general title: **Oxford Streetscape Phase I & II - Lafayette to Oliver.**
7. Addenda (numbers 1 to 5, 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 three percent (3%) 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 97% 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 3% 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 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, 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 **1107N**)

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

CONTRACTOR

OWNER

CITY OF FORT WAYNE

E&B Paving, Inc.

Print Name

BY: _____
SHARON TUCKER, MAYOR

TITLE: _____
BY: _____

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)

DIGEST SHEET

TITLE OF ORDINANCE. The Community Development Division hereby requests that the Common Council consider and approve a construction contract for the Oxford Streetscape Reconstruction Project-- Resolution/Work Order #1107N - between E & B Paving, Inc. and the City of Fort Wayne, Indiana, by and through its Board of Public Works.

DEPARTMENT REQUESTING RESOLUTION. Community Development

SYNOPSIS OF ORDINANCE. Approves a contract for construction for the Oxford Street Reconstruction Project -- Resolution/Work Order #1107N between E & B Paving, Inc. and the City of Fort Wayne, Indiana. The contract amount is \$3,464,056.93.

EFFECT OF PASSAGE. E & B Paving Inc. will be responsible for installing a new concrete sidewalk and curb on north and south side of Oxford Street between Lafayette Street on the west and Oliver Street on the east. Additionally, 56 new streetlights will be installed along the corridor. Removing concrete street from Warsaw to Lafayette and putting back in asphalt. Milling and resurfacing the rest of the corridor. Some upgraded green infrastructure (bioswales), new pedestrian infrastructure including updated ADA Ramps. Removal of historic trolley tracks. Also, improved pavement markings for street parking and pedestrian safety bumpouts at key intersections. This work is part of Community Development's Southeast Strategy 2021 Plan completed by the Planning and Policy team. Construction will start in fall of this year and will be substantially completed by July 1, 2027, with restoration and final completion on July 30, 2027.

EFFECT OF NON-PASSAGE. If this contract is not approved, construction of this project will not move forward. City will not be able to improve degraded sidewalks and pavement. New lighting to upgrade safety for people and cars will not be installed.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS). \$3,464,056.93 as budgeted from the Community Development's LIT Southeast ED (CEDIT) budget

ASSIGNED TO COMMITTEE (PRESIDENT). _____



COMMUNITY DEVELOPMENT REDEVELOPMENT

Sharon Tucker, Mayor

City of Fort Wayne
Community Development
200 East Berry Street, Suite 320
Fort Wayne, IN 46802
260 427-1127 fwcommunitydevelopment.org

MEMO

To: City of Fort Wayne Common Council

Copy: City of Fort Wayne Community Development Division

From: P.J. Thuringer, Community Development Administrator, 427-2144

Subject: Council Approval of a construction contract for Oxford Streetscape Reconstruction between E & B Paving, Inc. and the City of Fort Wayne, Indiana, by and through its Board of Public Works

Date: August 5, 2026

The Community Development Division hereby requests that the Common Council consider and approve a construction contract for the Oxford Streetscape Reconstruction Project – Resolution/Work Order #1107N between E & B Paving, Inc. and the City of Fort Wayne, Indiana. The contract amount is \$3,464,056.93.

The proposed improvements include new curb, gutter, sidewalk and pavement from Lafayette to Oliver (9 blocks). New ornamental lighting, ADA ramps, and restoration work are also included in the project as well. This work is part of Community Development's Southeast Strategy which was adopted in 2021. Construction will start in fall of this year and will be substantially completed by July 1, 2027, with restoration and final completion on July 30, 2027.

Requests for bids for this project were publicly advertised through Questcdn (Resolution/Work Order #1107N). We received 4 responsive bids. Staff reviewed the bids and determined that E & B Paving, Inc. is the lowest and most responsive bidder. The cost is 14% below the engineer's estimate.

Please find attached the Construction Contract, Digest Summary, and Bid Tab summarizing the request.

Please feel free to contact me directly if you have any questions

P.J. Thuringer
Community Development Administrator
O: 260.427.2144
Paul.thuringer@cityoffortwayne.org

Vibrant. Prosperous. Growing.

An Equal Opportunity Employer

