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2 **BILL NO. S-16-04-20**

SPECIAL ORDINANCE NO. S-48-16

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4 AN ORDINANCE approving CONSTRUCTION  
5 CONTRACT #0005A - W.O. 0005A - MAUMEE  
6 AVENUE REALIGNMENT-HARMAR ST TO  
7 UNIVERSITY ST - (\$1,156,432.00) between  
8 BROOKS CONSTRUCTION and the City of Fort  
9 Wayne, Indiana, in connection with the Board of  
10 Public Works.

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

13 **SECTION 1.** That the CONSTRUCTION CONTRACT #0005A -  
14 W.O. 0005A - MAUMEE AVENUE REALIGNMENT-HARMAR ST TO  
15 UNIVERSITY ST - \$1,156,432.00 by and between BROOKS  
16 CONSTRUCTION and the City of Fort Wayne, Indiana, in connection with the  
17 Board of Public Works, is hereby ratified, and affirmed and approved in all  
18 respects, respectfully for:

19 All labor, insurance, material, equipment, tools, power,  
20 transportation, miscellaneous equipment, etc., necessary for  
21 the constructing and realigning/straightening of Maumee  
22 Avenue from Harmar Street to University Street to a new 37'  
23 wide roadway corridor, removing the existing pavement,  
24 curb, sidewalks, and street lights, extending King and  
25 Comparet Streets to the newly aligned roadway, adding new  
26 street lighting, storm drainage structures and pipe; and  
27 constructing new 5' concrete sidewalks, ADA curb ramps,  
28 and Type "II-B" curb and gutter:

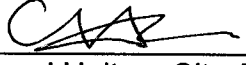
29 involving a total cost of ONE MILLION ONE HUNDRED FIFTY-SIX  
30 THOUSAND FOUR HUNDRED THIRTY-TWO AND 00/100 DOLLARS  
(\$1,156,432.00). A copy of said Contract is on file with the Office of the City  
Clerk and made available for public inspection, according to law.

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**SECTION 2.** That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

  
\_\_\_\_\_  
Council Member

APPROVED AS TO FORM AND LEGALITY

  
\_\_\_\_\_  
Carol Helton, City Attorney

Form 96  
 Non-Collusion Affidavit  
 Cert In Lieu/Financial Statement  
 Bidder's Bond  
 Street Barricade Maint. Info  
 EBE Declaration Form  
 E-Verify Affidavit  
 Drug Policy  
 Addendum No. 1  
 Addendum No. 2  
 Addendum No. 3

best bid column

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TOTAL: \$1,177,339.00      TOTAL: \$1,158,432.00      TOTAL: \$1,282,042.50

% over 0.00%      % over 7.19%  
 % under 1.78%      % under 0.00%

**Bid Tabulation**

Proj:	RES. No.: 0005A				BIDDER:		BIDDER:		
Maumee Avenue Realignment - Harmar Street to University Street	W.O. No.: 0005A				Brooks Construction Company, Inc.		Wayne Asphalt & Construction Company, Inc.		
Bid Date:	Engineer's Estimate				UNIT COST	AMOUNT	UNIT COST	AMOUNT	
Wednesday, April 06, 2016	PLAN QTY.	UNIT	UNIT COST Est. (\$)	AMOUNT Est. (\$)	(\$)	(\$)	(\$)	(\$)	
ITEM NO.	ITEM								
1	Pavement Removal, Total Depth (Includes Concrete and/or Brick under Asphalt)	5450	SY	\$10.00	\$54,500.00	\$9.00	\$49,050.00	\$8.00	\$43,600.00
2	Excavation, Common	1750	CYS	\$38.00	\$66,500.00	\$20.00	\$35,000.00	\$33.00	\$57,750.00
3	Concrete Removal (Includes Sidewalk, Curbside Walk, Ramps, and Drives)	1975	SY	\$8.00	\$15,800.00	\$8.00	\$15,800.00	\$7.00	\$13,825.00
4	Concrete Curb Removal	2410	LF	\$10.00	\$24,100.00	\$4.00	\$9,640.00	\$10.50	\$25,305.00
5	Concrete for Commercial Drives and Alley Approaches (6")	28	SY	\$50.00	\$1,400.00	\$90.00	\$2,520.00	\$45.00	\$1,260.00
6	Concrete for Residential Drive Approach (6")	28	SY	\$48.00	\$1,344.00	\$60.00	\$1,680.00	\$40.00	\$1,120.00
7	Concrete for Sidewalks (4")	1525	SY	\$41.00	\$62,525.00	\$47.00	\$71,875.00	\$37.00	\$56,425.00
8	Concrete Curb, Type "II-B"	2950	LF	\$25.00	\$73,750.00	\$20.00	\$59,000.00	\$23.00	\$67,850.00
9	Concrete Curb, Type "II-B", with Patch	40	LF	\$100.00	\$4,000.00	\$50.00	\$2,000.00	\$25.00	\$1,000.00
10	Concrete Curb, Type "III"	5	LF	\$28.00	\$140.00	\$60.00	\$300.00	\$50.00	\$250.00
11	Concrete for Walkway and Ramps (6")	120	SY	\$100.00	\$12,000.00	\$105.00	\$12,600.00	\$120.00	\$14,400.00
12	ADA Solutions, Armor Tile, or Armor Cast "Wet Set" 2' x 5' Composite Tactile Warning Surface Unit	22	EA	\$250.00	\$5,500.00	\$105.00	\$2,310.00	\$200.00	\$4,400.00
13	Geogrid, BX1300, or Approved Equal (Includes 12" Undercut) (Undistributed Quantity)	1550	SY	\$9.00	\$13,950.00	\$17.00	\$26,350.00	\$13.25	\$20,637.50
14	9.5mm HMA Surface, Type B (165#/SY)	510	TON	\$80.00	\$30,800.00	\$70.00	\$35,700.00	\$65.00	\$33,150.00
15	19.0mm HMA Intermediate, Type B (330-440#/SY)	800	TON	\$55.00	\$44,000.00	\$58.00	\$46,400.00	\$45.00	\$36,000.00
16	25.0mm HMA Base, Type B (660#/SY)	1340	TON	\$50.00	\$67,000.00	\$50.00	\$67,000.00	\$45.00	\$60,300.00
17	#1 or #2 Aggregate, Choked with #10FF's (Undistributed Quantity Included for Geogrid Area)	2240	TON	\$20.00	\$44,800.00	\$17.50	\$39,200.00	\$15.00	\$33,600.00
18	Bituminous Material for Tack Coat	4.5	TON	\$150.00	\$675.00	\$100.00	\$450.00	\$600.00	\$2,700.00
19	Surface Profile Milling, Bituminous, Variable Depth, 1"-3"	1580	SY	\$3.00	\$4,740.00	\$8.00	\$12,640.00	\$5.00	\$7,900.00
20	#53 Aggregate, Type "O", Compacted for Base Material	1140	TON	\$22.00	\$25,080.00	\$25.00	\$28,500.00	\$15.00	\$17,100.00
21	Storm Drainage Structure, 2'x3' Inlet	7	EA	\$1,500.00	\$10,500.00	\$2,000.00	\$14,000.00	\$1,926.00	\$13,482.00
22	Storm Drainage Structure, 33" Round Catch Basin, Precast	9	EA	\$1,750.00	\$15,750.00	\$1,800.00	\$16,200.00	\$2,094.00	\$18,846.00
23	Storm Drainage Structure, 48" Manhole	1	EA	\$2,500.00	\$2,500.00	\$3,500.00	\$3,500.00	\$2,800.00	\$2,800.00
24	Storm Drainage Structure, 48" Doghouse Manhole	3	EA	\$2,700.00	\$8,100.00	\$3,525.00	\$10,575.00	\$2,910.00	\$8,730.00
25	24" Solid Storm Manhole Casting Frame and Lid (Neenah R-1772 or East Jordan 102221 w/Environmental Lettering & Symbols)	5	EA	\$600.00	\$3,000.00	\$215.00	\$1,075.00	\$710.00	\$3,550.00
26	2'x3' Curb and Gutter Casting (Neenah R-3067 w/Type R Grate or East Jordan 703021 w/Type M5 or M3 Grate w/Environmental Lettering & Symbols)	7	EA	\$550.00	\$3,850.00	\$395.00	\$2,765.00	\$910.00	\$6,370.00
27	33" Round Curb and Gutter Casting (Neenah R-3159-A w/Type S Grate or East Jordan 70202 w/Type M2 Grate w/Environmental Lettering & Symbols)	9	EA	\$500.00	\$4,500.00	\$370.00	\$3,330.00	\$800.00	\$7,200.00
28	Casting, Adjust to Grade	2	EA	\$250.00	\$500.00	\$225.00	\$450.00	\$400.00	\$800.00
29	Core Drill Existing Structure	2	EA	\$500.00	\$1,000.00	\$500.00	\$1,000.00	\$581.00	\$1,162.00
30	Special Pipe Backfill, No. 53/73 Aggregate	155	CYS	\$35.00	\$5,425.00	\$25.00	\$3,875.00	\$39.00	\$6,045.00
31	12" D.I. Non-Pressure Utility Piping, CL 350 (Storm)	124	LF	\$85.00	\$10,540.00	\$90.00	\$11,160.00	\$114.00	\$14,136.00
32	12" RCP Non-Pressure Utility Piping, Class III (Storm)	471	LF	\$70.00	\$32,970.00	\$75.00	\$35,325.00	\$77.00	\$36,287.00
33	6" Dual Wall Corrugated Perforated HDPE Pipe In Filler Sock (Includes #8 Aggregate for Backfill)	36	LF	\$25.00	\$900.00	\$50.00	\$1,800.00	\$29.00	\$1,044.00
34	Plug Existing Pipe (Bulkhead)	7	EA	\$250.00	\$1,750.00	\$300.00	\$2,100.00	\$350.00	\$2,450.00
35	Flowable Fill / Crush Existing Pipe (Sewer Pipe Abandonment)	2	EA	\$750.00	\$1,500.00	\$1,000.00	\$2,000.00	\$683.00	\$1,366.00
36	Yard Drain and Cover Casting (Neenah R-5901-A or Approved Equal)	1	EA	\$250.00	\$250.00	\$400.00	\$400.00	\$706.00	\$706.00
37	Existing Structure, Remove	12	EA	\$500.00	\$6,000.00	\$450.00	\$5,400.00	\$636.00	\$7,632.00
38	Water Valve Furnished and Adjusted to Grade (Undistributed Quantity)	4	EA	\$200.00	\$800.00	\$250.00	\$1,000.00	\$125.00	\$500.00
39	Existing Pole, Remove	13	EA	\$300.00	\$3,900.00	\$500.00	\$6,500.00	\$250.00	\$3,250.00
40	Existing Luminaire and Mast Arm Assembly, Remove	13	EA	\$200.00	\$2,600.00	\$150.00	\$1,950.00	\$100.00	\$1,300.00
41	Existing Aerial Span, Remove	16	EA	\$75.00	\$1,200.00	\$100.00	\$1,600.00	\$100.00	\$1,600.00
42	FTW STD Stenberg Pole with #12 Wire	19	EA	\$1,650.00	\$31,350.00	\$2,500.00	\$47,500.00	\$1,700.00	\$32,300.00
43	G743 Stenberg Acorn LED Luminaire	19	EA	\$1,635.00	\$31,065.00	\$2,000.00	\$38,000.00	\$1,525.00	\$28,975.00
44	Concrete Street Light Base, 24" x 60"	19	EA	\$1,000.00	\$19,000.00	\$900.00	\$17,100.00	\$800.00	\$15,200.00
45	Wire, 3C/B THWN, B,R,G, In Tray Cable In Bore Tube or Sch. 80 PVC	2700	LF	\$11.00	\$29,700.00	\$8.50	\$22,950.00	\$10.00	\$27,000.00

46	Riser / Relay Assembly, Two Pole, 30 Amp, with Surge Protection, 2 Inch	2	EA	\$1,100.00	\$2,200.00	\$2,500.00	\$5,000.00	\$600.00	\$1,200.00
47	Handhole, Lighting, INDOT, In Place	1	EA	\$1,050.00	\$1,050.00	\$1,000.00	\$1,000.00	\$1,200.00	\$1,200.00
48	Service Unit, FTW STD Pole	1	EA	\$1,470.00	\$1,470.00	\$1,500.00	\$1,500.00	\$1,650.00	\$1,650.00
49	Service Unit, Luminaire	1	EA	\$1,400.00	\$1,400.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00
50	Borrow	5000	TON	\$12.00	\$60,000.00	\$14.00	\$70,000.00	\$11.70	\$58,500.00
51	Topsoil	850	TON	\$33.00	\$28,050.00	\$30.00	\$25,500.00	\$30.00	\$25,500.00
52	Hydroseeding with HydroStik or Equivalent Tackifier Polymer for Erosion Control	6850	SY	\$2.50	\$17,125.00	\$2.00	\$13,700.00	\$2.00	\$13,700.00
53	Sedguard Inlet Protection Device or Approved Equal	18	EA	\$75.00	\$1,350.00	\$80.00	\$1,080.00	\$80.00	\$1,080.00
54	Existing Fence, Remove	235	LF	\$8.00	\$1,880.00	\$5.00	\$1,175.00	\$8.00	\$1,410.00
55	Existing Nuckol's Memorial Park Brick Pavers, Remove, Salvage, and Reinstall	1	LS	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00
56	Existing Nuckol's Memorial Park Benches, Remove, Salvage, and Reinstall	1	LS	\$1,500.00	\$1,500.00	\$750.00	\$750.00	\$750.00	\$750.00
57	Existing Nuckol's Memorial Park "East Central" Monument, Remove and Relocate	1	LS	\$25,000.00	\$25,000.00	\$45,000.00	\$45,000.00	\$82,300.00	\$82,300.00
58	Tree Removal (3"-6" Diameter) (Undistributed Quantity)	9	EA	\$500.00	\$4,500.00	\$75.00	\$675.00	\$75.00	\$675.00
59	Line, Paint, Solid, White, 6"	150	LF	\$0.80	\$120.00	\$1.60	\$240.00	\$2.00	\$300.00
60	Line, Paint, Solid, White, Gore Area, 12"	50	LF	\$2.00	\$100.00	\$6.55	\$327.50	\$7.00	\$350.00
61	Line, Paint, Solid, White, Transverse Marking (Crosswalk), 6"	450	LF	\$0.80	\$360.00	\$4.40	\$1,980.00	\$4.50	\$2,025.00
62	Pavement Markings, White, Thermoplastic, 24" Crosswalk (Piano Keys)	70	LF	\$4.00	\$280.00	\$23.50	\$1,645.00	\$24.00	\$1,680.00
63	Line, Paint, Broken, White, 4"	1200	LF	\$1.00	\$1,200.00	\$1.85	\$1,980.00	\$1.70	\$2,040.00
64	Existing Line Removal, Broken, White, 4"	250	LF	\$4.00	\$1,000.00	\$4.25	\$1,062.50	\$4.50	\$1,125.00
65	Temporary Pavement Markings, Paint/Tape, White/Yellow, Removable, 4"	2400	LF	\$1.00	\$2,400.00	\$1.00	\$2,400.00	\$0.50	\$1,200.00
66	Construction Engineering and Staking	1	LS	\$25,000.00	\$25,000.00	\$12,500.00	\$12,500.00	\$19,700.00	\$19,700.00
67	Maintenance of Traffic	1	LS	\$110,000.00	\$110,000.00	\$78,547.00	\$78,547.00	\$107,200.00	\$107,200.00
68	Mobilization / Demobilization	1	LS	\$50,000.00	\$50,000.00	\$57,500.00	\$57,500.00	\$152,200.00	\$152,200.00
69	Work Allowance	1	LS	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00
70	Surface Profile Milling, Bituminous, Variable Depth, 3"-6"	850	SY	\$8.00	\$6,800.00	\$10.00	\$8,500.00	\$9.00	\$7,650.00

Award: Resolution No: 0005A - *Maumee Ave. Realignment.*  
*Harmar to University*  
to: Brooks Construction  
Company, Inc.


in the amount of \$1,156,432.00

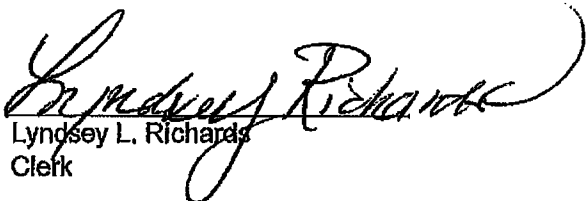
CITY OF FORT WAYNE  
BOARD OF PUBLIC WORKS

DATE: 4/13/2016

  
Robert Kennedy, Chair

  
Mike Avila, Member

  
Kumar Menon, Member

ATTEST:   
Lyndsey L. Richards  
Clerk

## CONSTRUCTION CONTRACT

Contract : 0005A

Work Order: 0005A

**THIS CONTRACT** made and entered into in triplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between **BROOKS CONSTRUCTION** herein called **CONTRACTOR**, and the **CITY OF FORT WAYNE, INDIANA**, an Indiana Municipal Corporation, acting by and through the **MAYOR** and the **Board of Public Works**, herein called **OWNER**;

**WITNESSETH**, that the **CONTRACTOR** and the **OWNER**, for the considerations hereinafter named, agree as follows:

### ARTICLE 1: SCOPE OF WORK

**CONTRACTOR** shall furnish all labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following improvement:

#### **MAUMEE AVENUE REALIGNMENT-HARMAR TO UNIVERSITY**

According to **all provisions of RESOLUTION NO. 0005A**, and do everything required by this contract and the other documents constituting a part hereof.

### ARTICLE 2: THE CONTRACT SUM

The **OWNER** shall pay **CONTRACTOR** for the performance of the contract the amount of **\$1,156,432.00**. In the event the amount of work is increased or decreased by **OWNER**, the contract sum shall be increased or decreased according to the unit price schedule set forth in the **CONTRACTOR'S Proposal**.

### ARTICLE 3: PROGRESS PAYMENTS AND RETAINAGE

The **CONTRACTOR** may submit requests for payments no more often than every thirty (30) days for work performed and accepted under the contract. If the **CONTRACTOR** is in compliance with the provisions of the contract, the Board will make payments for such work performed and completed. However, in any such case, the Board will retain **FIVE percent ( 5% )** of the total amount owing to insure **CONTRACTOR'S** compliance with the E.B.E. provisions in Article 17 attached to this contract. Payments to the **CONTRACTOR** are not to exceed **95%** of the total contract amount until the **OWNER** has verified that the **CONTRACTOR** has made good faith efforts to attain the E.B.E. goal stipulated in Article 17.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final **5%** of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. goals stipulated in Article 17 attached hereto, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the aforementioned Article 17.

### ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract, including the E.B.E. provisions in Article 17 attached hereto, is fully performed. Payments to the **CONTRACTOR** are not to exceed **95%** of the total contract amount until the **OWNER** has verified that the **CONTRACTOR** has made good faith efforts to attain the E.B.E. goal stipulated in Article 17.

Upon filing of a **Completion Affidavit** by the **CONTRACTOR** that the work is ready for final inspection and acceptance, the **Board of Public Works** will direct the **Engineering Department** of the **OWNER** to promptly make such inspection, and will direct the **CONTRACT COMPLIANCE DEPARTMENT** of the **OWNER** to make a final recommendation on whether the **CONTRACTOR** made good faith efforts to attain the E.B.E. goal stipulated in Article 17.

When the **Engineering Department** finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the **Board of Public Works**. Likewise, when the **Contract Compliance Department** determines that the **CONTRACTOR's** efforts constitute good faith efforts to attain the E.B.E. goal as agreed in the Article 17 and that all required contract compliance reports have been submitted, it shall so inform the **Board of Public Works** through an E.B.E. Compliance Final Report.

Upon receiving both the **Engineering Department's** and the **Contract Compliance Department's** recommendations, the **Board of Public Works** shall issue a **final certificate** stating that the work provided for in this Contract has been completed and is accepted, and further stating that the aforementioned E.B.E. goal in Article 17 has been met. Thereupon, **the entire balance** of the Contract sum shall be due and payable to the **CONTRACTOR**; provided only that **CONTRACTOR** shall first furnish **OWNER**, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required contract compliance reports for this project have been submitted.

In the event that the **Board of Public Works** determines that good faith compliance with the E.B.E. goals and provisions in Article 17 has not occurred, appropriate reduction in the final payment will be made, pursuant to paragraph 6 of the aforementioned Article 17 attached hereto. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and the **CONTRACTOR** agrees to accept the reduced amount as full payment under the terms of his/her contract.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 5% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. goals in Article 17, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the aforementioned Article 17 attached hereto.

#### **ARTICLE 5: WORKMEN'S COMPENSATION ACT**

The **CONTRACTOR** will furnish immediately a certificate from the **Industrial Board of the State of Indiana**, that he has complied with the **Workmen's Compensation Act** in accordance with **Statutes of the State of Indiana** and **Ordinances of the City of Fort Wayne**.

Any judgment rendered against the **City of Fort Wayne** in any suits for Damages for injury to real or personal property, or for injury sustained by any person growing out of any act or doing of **CONTRACTOR**, or its agents, employees or workmen or any judgment of any court or award of any **Board of Arbitrators** or of the **Industrial Board of the State of Indiana** rendered against the **City of Fort Wayne** in any suit or claim arising under said **Workmen's Compensation** for accidental injuries or death suffered by his employees or the employees of any Subcontractor(s) in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said **CONTRACTOR**, shall be conclusive against **CONTRACTOR** as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that **CONTRACTOR** indemnify and hold harmless **OWNER** in the premises.

## **ARTICLE 6: NONDISCRIMINATION OF LABOR**

The **CONTRACTOR** further agrees to be bound by **Chapter 93.036**, of the **Code of the City of Fort Wayne**, Indiana of 1974, passed by the **Common Council of the City of Fort Wayne, Indiana** as **General Ordinance No. G-34-78 (as amended)** on December 12th, 1978. The successful bidder shall file a **Manpower Utilization Report** for this project with the **Compliance Office** within ten (10) days after completion of construction or upon request of the **Office of Compliance**.

## **ARTICLE 7: [RESERVE]**

## **ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT**

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. **Notice to contractors for Resolution: 0005A**
- b. **Instructions to Bidders for Resolution: 0005A**
- c. **Contractor's Proposal dated 04/06/2016**
- d. **Fort Wayne Engineering Department Drawing Number ST-0005A**
- e. **Supplemental Specifications for Resolution: 0005A**
- f. **Workmen's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne**
- g. **Non-Discrimination of Labor, Chapter 93.036, Code of City.**
- h. **[Reserve]**
- i. **Performance and Guaranty Bond.**
- j. **Labor and Material Payment Bond**
- k. **Right-of-Way Cut Permit**
- l. **Comprehensive Liability Insurance Coverage**
- m. **Form 96**
- n. **Article 17: Emerging Business Enterprise**
- o. **Contract Compliance Reports**
- p. **Vendor Disclosure Statement**
- q. **E-Verify Affidavit**
- r. **Drug Policy Acknowledgement Form (Contracts less than \$150,000) Written Drug Testing Plan (Contract \$150,000 or more)**
- s. **Completion Affidavit**

## **ARTICLE 9: GUARANTEE OF WORKMANSHIP**

At the time of execution of this contract, the **CONTRACTOR** shall furnish a **Performance and Guaranty Bond** in favor of the **City of Fort Wayne** in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of **TWO (2) YEARS** following written acceptance of the work by the **OWNER**. "The requirement of a Performance/Payment and Guaranty Bond shall be waived for **EMERGENCY** projects under **TEN THOUSAND DOLLARS (\$10,000)**."

## **ARTICLE 10: INDEMNITY**

**CONTRACTOR** shall furnish to **OWNER**, within ten (10) days of the date hereof, a certificate from an insurer acceptable to **OWNER** showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to

**OWNER** and in accordance with the **Statutes of the State of Indiana**.

#### **ARTICLE 11: ADJUSTMENTS OF DISPUTES**

All questions or controversies which may arise between the **CONTRACTOR** and the **OWNER** under the provisions of this Contract shall be subject to the decision of the **Chair of Board of Public Works** of the **OWNER**, and his/her decision shall be final and conclusive upon the parties. Provided, however, no changes in the plans, specifications, or other phases of work covered by this Contract will be permitted except on prior written authorization by the **Board of Public Works**.

#### **ARTICLE 12: COMPLETION DATE**

The **CONTRACTOR** agrees to complete the work specified in the contract by 11/04/2016 after having been ordered by the **OWNER** to commence work under this contract.

#### **ARTICLE 13: COUNCILMANIC APPROVAL**

This Agreement, although executed on behalf of the **OWNER** by the **Mayor and Board of Public Works** of the **City of Fort Wayne, Indiana**, shall not be binding upon the **OWNER** unless and until the same shall have been ratified and approved by the **Common Council** of the **City of Fort Wayne, Indiana**, and should said **Common Council** fail to approve the contract within ninety (90) days after the date of the bid opening, then the **CONTRACTOR** shall not be bound to the contract unless he/she/it elects to be so bound.

#### **ARTICLE 14: CITY OF FORT WAYNE ALCOHOL AND DRUG POLICY**

The City of Fort Wayne has in place an Alcohol and Drug Policy that also applies to any **CONTRACTORS** doing business with the City when the Contract is less than \$150,000. A copy of this policy is available for inspection in the Office of Risk Management, 200 E. Berry Street, Suite 470. The successful bidder will be furnished a copy of said policy and, as a condition of being awarded any contract, the successful bidder shall execute an acknowledgement of receipt of said policy and agree to be bound by those provisions of the policy that may be applicable. A copy of this form will be retained by the Risk Management of the City of Fort Wayne.

Pursuant to IC 36-1-12-24, when the contract is at least \$150,000, the Contractor shall implement the employee drug testing program submitted as part of its Bid. Owner may cancel this Contract if it determines that the Contractor:

- A. Has failed to implement its employee drug testing program during the term of this Contract;
- B. Has failed to provide information regarding implementation of the Contractor's employee drug testing program at the request of Owner; or
- C. Has provided to the Owner false information regarding the Contractor's employee drug testing program.

#### **ARTICLE 15: EMPLOYMENT ELIGIBILITY VERIFICATION**

Pursuant to IC 22-5-1.7, **CONTRACTOR** shall enroll in and verify the work eligibility status of all hired employees of **CONTRACTOR** through the E-Verify Program ("Program"). **CONTRACTOR** is not required to verify work eligibility status of all hired employees through the Program if the Program no longer exists.

**CONTRACTOR** and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that **CONTRACTOR** or its subcontractor subsequently learns is an unauthorized alien. If **CONTRACTOR** violates this Section 16.23, **OWNER** shall require **CONTRACTOR** to remedy the violation not later than thirty (30) days after **OWNER** notifies **CONTRACTOR**. If **CONTRACTOR** fails to remedy the violation within the thirty (30) day period, **OWNER** shall terminate the contract for breach of contract. If **OWNER** terminates the contract, **CONTRACTOR** shall, in addition to any other contractual remedies, be liable to **OWNER** for actual damages.

There is a rebuttable presumption that **CONTRACTOR** did not knowingly employ an unauthorized alien if **CONTRACTOR** verified the work eligibility status of the employee through the Program.

If **CONTRACTOR** employs or contracts with an unauthorized alien but **OWNER** determines that terminating the contract would be detrimental to the public interest or public property, **OWNER** may allow the contract to remain in effect until **OWNER** procures a new contractor.

**CONTRACTOR** shall, prior to performing any work, require each subcontractor to certify to **CONTRACTOR** that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. **CONTRACTOR** shall maintain on file a certification from each subcontractor throughout the duration of the Project. If **CONTRACTOR** determines that a subcontractor is in violation of this section, **CONTRACTOR** may terminate its contract with the subcontractor for such violation. Such termination may not be considered a breach of contract by **CONTRACTOR** or the subcontractor.

In addition, prior to commencing performance of the Contract, each Contractor and Subcontractor(s) shall submit to Owner the E-Verify case verification number for each individual required to be verified under IC 22-5-1.7. An individual may not commence performance of the Contract if the individual's final case result is "Final Nonconfirmation." If Owner suspects a violation of this requirement, Owner is required to refer the matter to the Indiana Department of Labor.

#### **ARTICLE 16:**

This contract is governed by Laws of the State of Indiana.

#### **ARTICLE 17: EMERGING BUSINESS ENTERPRISE**

**THIS AGREEMENT** made and entered into by and between the **CITY OF FORT WAYNE**, hereinafter referred to as **OWNER** and **BROOKS CONSTRUCTION**, hereinafter referred to as **CONTRACTOR**,

#### **WITNESSETH:**

**WHEREAS**, the **CONTRACTOR** is the apparent low bidder on construction project commonly referred to as the **MAUMEE AVENUE REALIGNMENT-HARMAR TO UNIVERSITY**, which project was bid under Resolution Number **0005A**; and

**WHEREAS**, **CONTRACTOR** agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as **E.B.E.'s** as subcontractors on this project is **10%** of the contract amount; and

**WHEREAS**, **OWNER** has, pursuant to Executive Order 90-01 (as amended 05-08-06), adopted a goal of at least 10% of the contract amount to Emerging Business Enterprises as defined under said Executive Order (as amended 05-08-06); and

WHEREAS, said Executive Order (as amended 05-08-06) states:

**"Section 2, Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded.**

**In the event a contractor is unable to subcontract 10% of the contract amount or secure services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts taken to comply with the participation goals."**

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. **Conditional Award - Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Article is attached, OWNER awards the construction contract to the CONTRACTOR.**
2. **E.B.E. Retainage requirements - If the contractor is in compliance with the provisions of the construction contract to which this Article is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain FIVE percent ( 5% ) of the total amount owing to insure compliance with this Article. 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 10% of the contract amount to emerging business enterprises, the contractor will be paid in full.**

**In the event there is a determination that good faith compliance with this Article has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this Article will be made.**

**If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the CONTRACTOR are not to exceed 95% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in this Article. Payment of the final 5% of the total contract amount will be dependent upon good faith efforts to comply with this Article, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this Article**

3. **Request for Waiver - If, at the time final payment application is made, contractor has not attained the ten 10% E.B.E. 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 10% E.B.E. goal.**
4. **Determination of Waiver Requests - The Contract 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.**

5. **Good Faith Per Se.** - In any case, a Contractor shall be deemed to have made good faith efforts at compliance where E.B.E.'s have subcontracted for every sub-contract for which there are qualified E.B.E.'s available.
6. **Consequence 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 shall be reduced by the amount calculated as the difference between 10% and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.
7. **Waiver approved** - In the event the Board of Public Works determines that a good faith effort to comply with this Article has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

#### **ARTICLE 18: PREMATURE WORK COMMENCEMENT**

Contractor shall not commence any work or operation as described in these Project Specifications and/or Project Bid items, in part or whole, prior to the Notice-to-Proceed. Work performed prior to the date of the Notice to Proceed shall be considered work outside of the scope of the contract for purposes of payment. Contractor agrees that any work or operation, as described in the Project Specifications and/or Project Bid Items, in part or whole, prior to the Notice to Proceed shall be deducted from the project Bid Quantities and Project Cost. Contractor agrees that such action is at the Contractor's risk and without liability on the part of the City.

#### **ARTICLE 19: FINDING DETERMINATION OF RESPONSIBILITY FOLLOWING COMMENCEMENT OF WORK**

A determination of responsibility may be made after work has commenced if the contractor fails to remedy certain violations under IC 5-16-13 within thirty (30) days. For purposes of this determination, the term "contractor" refers generally to a contractor in any contractor tier. For example, a contractor may be found not responsible for a period up to forty-eight (48) months if one of the following occur:

- (1) The contractor does not maintain general liability insurance in the amount of \$1,000,000 for each occurrence and \$2,000,000 for the general aggregate;
- (2) The Tier 1 contractor does not contribute 15% of the contract in work, materials, or services;
- (3) The contractor does not fit within the "contractor tier" structure, as that term is defined under IC 5-16-13-4;
- (4) The contractor pays cash to any individual for work performed in connection with the contract; or
- (5) The contractor fails to provide the City with the E-verify case verification number for those individuals required to be verified prior to beginning work on the contract.

When making a determination of responsibility after work has commenced, the severity of the violation will be taken into consideration when determining the length of time the contractor will be found not responsible. The period during which the contractor is considered not responsible begins on the date of substantial completion of the public works project.

**ACKNOWLEDGEMENT**

STATE OF INDIANA)

SS:

COUNTY OF ALLEN)

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

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

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

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

My Commission Expires:

Resident of \_\_\_\_\_ County.

**ACKNOWLEDGMENT**

STATE OF INDIANA )

SS: )

COUNTY OF ALLEN )

BEFORE ME, a Notary Public, in and for said County and State, this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally appeared the within named **Thomas C. Henry, Robert Kennedy, Mike Avila, Kumar Menon and Lyndsey L. Richards**, 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, the parties hereto have executed this Agreement the day and year first above written.

**CONTRACTOR**

**CITY OF FORT WAYNE**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
**THOMAS C. HENRY, MAYOR**

**BOARD OF PUBLIC WORKS**

**BY:** \_\_\_\_\_  
**ROBERT KENNEDY, CHAIRMAN**

**BY:** \_\_\_\_\_  
**KUMAR MENON, MEMBER**

**BY:** \_\_\_\_\_  
**MIKE AVILA, MEMBER**

**ATTEST:** \_\_\_\_\_  
**LYNDSEY L. RICHARDS, CLERK**

# COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Transportation Engineering Services is providing this information to Council as an overview of the Maumee Avenue Realignment-Harmer St to University St award.

## RFPs & BIDS

Bid/RFP #	0005A
Awarded To	Brooks Construction
Amount	\$1,156,432.00
Conflict of interest on file?	X Yes <input type="checkbox"/> No    n/a
Number of Registrants	8
Number of Bidders	2
Attachments	AWARD APPROVAL AND BID TAB ANALYSIS SHEET

## EXTENSIONS

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

## SPECIAL PROCUREMENT

Contract #/ID <i>(State, Federal, Piggyback--Authority)</i>	0005A
Sole Source/ Compatibility Justification	N/A

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

Most Responsible, Responsive Lowest	X Yes <input type="checkbox"/> No <i>If no, explain below</i>
If not lowest, explain	N/A

# COUNCIL DIGEST SHEET

**COST COMPARISON**

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

**DESCRIPTION OF PROJECT / NEED**

<i>Identify need for project &amp; describe project; attach supporting documents as necessary.</i>	SEE ATTACHED COMMON COUNCIL SUPPLEMENTAL

**REQUEST FOR PRIOR APPROVAL**

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

**FUNDING SOURCE**

<i>Account Information.</i>	CEDIT

**COMMON COUNCIL DIGEST SHEET - SUPPLEMENTAL**  
**MAUMEE AVENUE REALIGNMENT-HARMAR ST TO**  
**UNIVERSITY ST**

**Action Requested:**

Requesting approval of an award to Brooks Construction. in the amount of \$1,156,432.00 pursuant to Board of Works resolution 0005A.

Note: Brooks Construction was the lowest most responsive bidder among 2 bidders and 1.78% under the engineer's estimate.

**Description and Scope of Work:**

The constructing and realigning/straightening of Maumee Avenue from Harmar Street to University Street to a new 37' wide roadway corridor, removing the existing pavement, curb, sidewalks, and street lights, extending King and Comparet Streets to the newly aligned roadway, adding new street lighting, storm drainage structures and pipe; and constructing new 5' concrete sidewalks, ADA curb ramps, and Type "II-B" curb and gutter.

BILL NO. S-16-04-20

REPORT OF COMMITTEE ON PUBLIC WORKS

MAY 3, 2016

*Michael Barranda, Chair  
Paul Ensley, Co-Chair  
All Council Members*

AN ORDINANCE approving CONSTRUCTION CONTRACT  
MAUMEE AVENUE REALIGNMENT-HARMAR ST TO UNIVERSITY  
ST between BROOKS CONSTRUCTION and the City of Fort Wayne,  
Indiana, in connection with the Board of Public Works

Total project cost of \$1,156,432.00

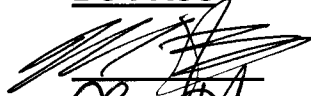
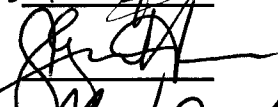
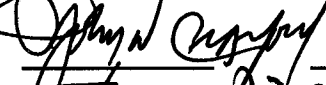
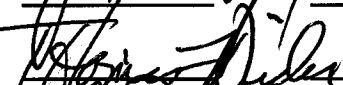
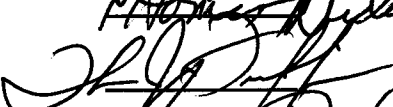

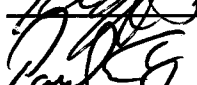
COMMITTEE ON PUBLIC WORKS HAVE HAD SAID Ordinance under  
consideration and beg leave to report back to the Common Council  
that said ordinance

DO PASS

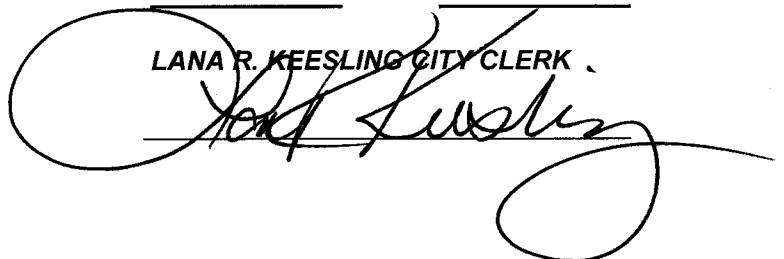
DO NOT PASS

ABSTAIN

NO REC

	_____	_____	_____
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_____	_____	_____	_____

LANA R. KEESLING CITY CLERK



Public Hearing Date, if applicable N/A.

Read the first time in full and on motion by Councilman Barranda.

Read the second time by title and referred to the Public Works Committee.

Read the third time in full and on motion by Councilman Barranda, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BARRANDA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CRAWFORD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: May 10, 2016

  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK


Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as  
 Special No. S-16-04-20 on the 10th day of May, 2016

ATTEST:

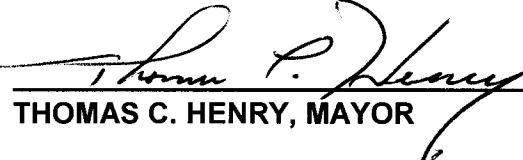
  
 \_\_\_\_\_  
 LANA R. KEESLING  
 CITY CLERK

  
 \_\_\_\_\_  
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 11th  
 of May 2016, at the hour of 9:45 o'clock A.M. E.S.T.

  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 11<sup>TH</sup> day of MAY  
 2016, at the hour of 11:00 O'clock AM E.S.T.

  
 \_\_\_\_\_  
 THOMAS C. HENRY, MAYOR