

1 **BILL NO. S-19-09-03**

2 SPECIAL ORDINANCE NO. S-115-19

3 AN ORDINANCE approving CONSTRUCTION  
4 CONTRACT - BECKETTS RELIEF SEWER  
5 FORESTED WETLAND EARTHWORK -  
6 RESOLUTION/WORK ORDER #76478 - \$413,544.70  
7 between CROSBY EXCAVATING, INC. and the City of  
8 Fort Wayne, Indiana, in connection with the Board of  
9 Public Works.

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

12 **SECTION 1.** That the CONSTRUCTION CONTRACT - BECKETTS  
13 RELIEF SEWER FORESTED WETLAND EARTHWORK - RESOLUTION/WORK  
14 ORDER #76478 - \$413,544.70 by and between CROSBY EXCAVATING, INC. and  
15 the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is  
16 hereby ratified, and affirmed and approved in all respects, respectfully for:

17 All labor, insurance, material, equipment, tools, power,  
18 transportation, miscellaneous equipment, etc., necessary for  
19 Bank stabilization, earthen berm construction, and wetland  
20 mitigation along the Becketts Run;

21 involving a total cost of FOUR HUNDRED THIRTEEN THOUSAND FIVE  
22 HUNDRED FORTY-FOUR AND 70/100 DOLLARS - (\$413,544.70). A copy of said  
23 Contract is on file with the Office of the City Clerk and made available for public  
24 inspection, according to law.  
25  
26  
27  
28  
29  
30



PROJECT:		Beckets Relief Sewer Forested Wetland Earthwork													
Resolution#:		76478													
Work Order#:		76478													
Project Designer:		Nathan Duggett													
Construction Manager:		Zack Schaefer													
Manager:		Michael Kistner													
Bid Date: (Quote Date)		July 30, 2019													
Funding:															
BID		Engineer's Estimate		Crosby Excavating, Inc		Bunn, Inc		Fleming Excavating, Inc		Fox Contractors Corp.		Yardberry Landscap			
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	Mobilization and Demobilization	1	LS	\$ 20,999.50	\$ 20,999.50	\$ 17,000.00	\$ 17,000.00	\$ 9,896.25	\$ 9,896.25	\$ 19,835.00	\$ 19,835.00	\$ 20,221.00	\$ 20,221.00	\$	\$
2	Work Allowance	1	LS	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
3	Troughway Fencing for Wetlands	3,809	LF	\$ 4.00	\$ 15,236.00	\$ 6.25	\$ 23,824.50	\$ 4.85	\$ 18,473.25	\$ 2.00	\$ 7,618.00	\$ 4.00	\$ 15,236.00	\$ 3.00	\$ 11,427.00
4	Silt Fence	794	LF	\$ 3.00	\$ 2,382.00	\$ 4.00	\$ 3,176.00	\$ 7.60	\$ 5,992.40	\$ 3.85	\$ 3,056.15	\$ 3.00	\$ 2,382.00	\$ 3.50	\$ 2,787.00
5	Setback Walls	4,302	LF	\$ 3.75	\$ 16,132.50	\$ 7.00	\$ 30,114.00	\$ 19.62	\$ 84,417.24	\$ 7.35	\$ 31,421.35	\$ 4.00	\$ 17,208.00	\$ 7.00	\$ 30,114.00
6	Excise Control Shovel	5,429	SV	\$ 7.60	\$ 41,240.40	\$ 3.80	\$ 20,649.80	\$ 4.19	\$ 22,738.81	\$ 3.74	\$ 20,304.38	\$ 4.00	\$ 21,716.00	\$ 5.00	\$ 27,145.00
7	Excise Control Mat	1,000	SV	\$ 16.50	\$ 16,500.00	\$ 30.00	\$ 30,000.00	\$ 22.11	\$ 22,110.00	\$ 16.88	\$ 16,880.00	\$ 18.00	\$ 18,000.00	\$ 10.00	\$ 10,000.00
8	Temporary Construction Access	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 9,000.00	\$ 9,000.00	\$ 37,500.00	\$ 37,500.00	\$ 50,700.00	\$ 50,700.00	\$ 23,777.00	\$ 23,777.00	\$ 6,000.00	\$ 6,000.00
9	Crosscut Washout	1	LS	\$ 2,500.00	\$ 2,500.00	\$ 600.00	\$ 600.00	\$ 370.00	\$ 370.00	\$ 350.00	\$ 350.00	\$ 1,000.00	\$ 1,000.00	\$ 1,500.00	\$ 1,500.00
10	Value Determination of Conditions	1	LS	\$ 1,500.00	\$ 1,500.00	\$ 875.00	\$ 875.00	\$ 1,284.00	\$ 1,284.00	\$ 1,091.00	\$ 1,091.00	\$ 1,478.00	\$ 1,478.00	\$ 7,500.00	\$ 7,500.00
11	Field Engineering	1	LS	\$ 6,000.00	\$ 6,000.00	\$ 8,750.00	\$ 8,750.00	\$ 7,612.50	\$ 7,612.50	\$ 4,370.00	\$ 4,370.00	\$ 7,477.00	\$ 7,477.00	\$ 21,000.00	\$ 21,000.00
12	Concrete Guide Bases	1	LS	\$ 7,000.00	\$ 7,000.00	\$ 11,243.00	\$ 11,243.00	\$ 19,273.54	\$ 19,273.54	\$ 9,687.00	\$ 9,687.00	\$ 6,552.00	\$ 6,552.00	\$ 21,000.00	\$ 21,000.00
13	Common Excavation Area 1	1	LS	\$ 221,200.00	\$ 221,200.00	\$ 27,860.00	\$ 27,860.00	\$ 80,289.52	\$ 80,289.52	\$ 116,950.00	\$ 116,950.00	\$ 95,000.00	\$ 95,000.00	\$ 200,000.00	\$ 200,000.00
14	Common Excavation Area 2	1	LS	\$ 3,500.00	\$ 3,500.00	\$ 11,310.00	\$ 11,310.00	\$ 5,310.40	\$ 5,310.40	\$ 3,700.00	\$ 3,700.00	\$ 38,000.00	\$ 38,000.00	\$ 23,000.00	\$ 23,000.00
15	Common Excavation Area 3	1	LS	\$ 2,500.00	\$ 2,500.00	\$ 11,040.00	\$ 11,040.00	\$ 4,623.36	\$ 4,623.36	\$ 10,800.00	\$ 10,800.00	\$ 18,000.00	\$ 18,000.00	\$ 15,000.00	\$ 15,000.00
16	Common Excavation Area 4	1	LS	\$ 2,000.00	\$ 2,000.00	\$ 9,813.00	\$ 9,813.00	\$ 3,118.00	\$ 3,118.00	\$ 4,248.75	\$ 4,248.75	\$ 18,000.00	\$ 18,000.00	\$ 11,000.00	\$ 11,000.00
17	Common Excavation Area 5	1	LS	\$ 3,000.00	\$ 3,000.00	\$ 24,600.00	\$ 24,600.00	\$ 4,899.41	\$ 4,899.41	\$ 13,802.50	\$ 13,802.50	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
18	Dem Construction	1	LS	\$ 70,000.00	\$ 70,000.00	\$ 68,720.00	\$ 68,720.00	\$ 65,271.28	\$ 65,271.28	\$ 56,702.50	\$ 56,702.50	\$ 107,500.00	\$ 107,500.00	\$ 22,500.00	\$ 22,500.00
19	Rip Rip	6	TON	\$ 350.00	\$ 2,100.00	\$ 150.00	\$ 900.00	\$ 481.00	\$ 2,886.00	\$ 400.00	\$ 2,400.00	\$ 190.00	\$ 1,140.00	\$ 400.00	\$ 2,400.00
20	Pinpoint Stems	6,000	SF	\$ 10.00	\$ 60,000.00	\$ 7.23	\$ 43,380.00	\$ 8.72	\$ 52,320.00	\$ 8.98	\$ 53,880.00	\$ 11.00	\$ 66,000.00	\$ 11.00	\$ 66,000.00
21	Seed Mix "C"	1	LS	\$ 1,000.00	\$ 1,000.00	\$ 3,500.70	\$ 3,500.70	\$ 3,897.16	\$ 3,897.16	\$ 2,875.00	\$ 2,875.00	\$ 1,500.00	\$ 1,500.00	\$ 2,000.00	\$ 2,000.00
22	Seed Mix "B"	1	LS	\$ 3,500.00	\$ 3,500.00	\$ 6,545.00	\$ 6,545.00	\$ 7,212.79	\$ 7,212.79	\$ 5,402.50	\$ 5,402.50	\$ 3,000.00	\$ 3,000.00	\$ 4,750.00	\$ 4,750.00
TOTAL BASE BID				\$ 881,998.00	\$ 881,998.00	\$ 413,544.70	\$ 413,544.70	\$ 489,915.12	\$ 489,915.12	\$ 479,948.85	\$ 479,948.85	\$ 978,978.00	\$ 978,978.00	\$ 611,061.00	\$ 611,061.00
Addendum No. 1						X		X		X		X		X	
Bidder's Bond						X		X		X		X		X	
Form 90						X		X		X		X		X	
Non-Collusion Affidavit						X		X		X		X		X	
Cert In Lieu Financial Statement						X		X		X		X		X	
Employee Drug Testing Program (-\$150K)						X		X		X		X		X	
Reviewed By		Nathan Duggett 7-30-19													

Crosby Excavating, Inc.  
1030 Osage St.  
Fort Wayne IN 46808

#76478

City of Fort Wayne  
Board of Public Works  
Suite 210, Citizens Square  
Fort Wayne, IN 46802

Job# 76478  
Becketts Relief Sewer  
Forested Wetland Earthwork

**BID ENCLOSED**

07-33-191150 0010

**BID FORM**

**PROJECT IDENTIFICATION:** Becketts Relief Sewer Forested Wetland Earthwork

**RESOLUTION NUMBER:** 76478

**ARTICLE 1 – BID RECIPIENT**

1.01 THIS BID IS SUBMITTED TO: City of Fort Wayne, Indiana  
Board of Public WorksPublic Works  
Suite 210  
Citizens Square  
Fort Wayne, IN 46802

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents, to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid, and in accordance with the other terms and conditions of the Bidding Documents.

**ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS**

2.01 Bidder accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for 60 days after the bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner

**ARTICLE 3 - BIDDER’S REPRESENTATIONS**

3.01 In submitting this Bid, Bidder represents, as set forth in the Agreement, that:

A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all which is hereby acknowledged.

<u>Addendum No.</u>	<u>Addendum Date</u>
#1	7/26/19
_____	_____
_____	_____

B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions, and two (2) reports and drawings of a Hazardous Environmental condition, if any,

which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.

- E. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder 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 Bidding Documents.
- H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies and data with the Bidding Documents.
- I. Bidder has given Design Manager written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof provided by Design Manager is acceptable to Bidder.
- J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- K. In connection with the performance of Work under this Contract, Bidder agrees to comply with Anti-Discrimination Under Indiana Code Chapter 5-16-6-1 and 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 12<sup>th</sup>, 1978. The successful Bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of the construction or upon request of the Office of Compliance.

#### **ARTICLE 4 – FURTHER REPRESENTATIONS**

4.01 Bidder further represents that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

**ARTICLE 5 - BASIS OF BID**

**NAME:** Crosby Excavating, Inc.

**Becketts Relief Sewer Forested Wetland Earthwork**

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

<b>BID SCHEDULE - Base Bid</b>						
<b>ITEM #</b>	<b>WORK ITEM #</b>	<b>DESCRIPTION</b>	<b>ESTIMATED QUANTITY</b>	<b>UNIT</b>	<b>UNIT PRICE</b>	<b>AMOUNT</b>
1	01 11 21-A	Mobilization and Demobilization	1	LS	\$ 17,950.00	\$ 17,950.00
2	01 11 21-B	Work Allowance	1	LS	\$ 10,000.00	\$ 10,000.00
3	01 57 00-A	Temporary Fencing for Wetlands	5,050	LF	\$ 6.25	\$ 31,562.50
4	01 57 13-A	Silt Fence	704	LF	\$ 4.00	\$ 2,816.00
5	01 57 13-B	Sediment Wattle	4,302	LF	\$ 7.60	\$ 32,695.20
6	01 57 13-C	Erosion Control Blanket	5,420	SY	\$ 3.80	\$ 20,596.00
7	01 57 13-D	Erosion Control Mat	1,050	SY	\$ 20.00	\$ 21,000.00
8	01 57 13-E	Temporary Construction Access	1	LS	\$ 9,000.00	\$ 9,000.00
9	01 57 13-F	Concrete Washout	1	LS	\$ 600.00	\$ 600.00
10	01 71 16.13-A	Video Documentation of Conditions	1	LS	\$ 875.00	\$ 875.00
11	01 71 23-A	Field Engineering	1	LS	\$ 8,250.00	\$ 8,250.00
12	03 00 05-A	Concrete Grade Beam	1	LS	\$ 11,145.00	\$ 11,145.00
13	31 00 05-A	Common Excavation Area 1	1	LS	\$ 57,865.00	\$ 57,865.00
14	31 00 05-B	Common Excavation Area 2	1	LS	\$ 14,110.00	\$ 14,110.00
15	31 00 05-C	Common Excavation Area 3	1	LS	\$ 14,040.00	\$ 14,040.00
16	31 00 05-D	Common Excavation Area 4	1	LS	\$ 9,815.00	\$ 9,815.00
17	31 00 05-E	Common Excavation Area 5	1	LS	\$ 24,660.00	\$ 24,660.00
18	31 00 05-F	Berm Construction	1	LS	\$ 69,720.00	\$ 69,720.00
19	31 00 05-G	Hand Laid Rip Rap	6	TON	\$ 550.00	\$ 3,300.00
20	32 05 19.19-A	Flexamat System	6,000	SF	\$ 7.25	\$ 43,500.00
21	32 90 00-A	Seed Mix "C"	1	LS	\$ 3,500.00	\$ 3,500.00
22	32 90 00-B	Seed Mix "E"	1	LS	\$ 6,545.00	\$ 6,545.00
<b>TOTAL BASE BID:</b>						<b>\$ 413,544.70</b>

Unit prices have been computed in accordance with paragraph 11.03.B of the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided in the Contract Documents.

**ARTICLE 6 – TIME OF COMPLETION**

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 14.07.B of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the Contract Times.

**ARTICLE 7 – ATTACHMENTS TO THIS BID**

- 7.01 The following documents are attached to and made a condition of this Bid:
  - A. Unbound Copy of the Bid Form
  - B. Required Bid security in the form of (Certified Check) or (Bank Check) or (Bid Bond).
  - C. State Board of Accounts Form 96
    - 1. With Bidder’s Financial Statement as required in Section III; or
    - 2. Have a complete Financial Statement on file with the Board, which has been on file fifteen months or less, in which case the Bidder can instead submit a Certificate in Lieu of a Financial Statement.
  - D. Employee Drug Testing Program (if Contract Price is \$150,000 or more).

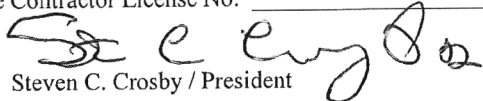
**ARTICLE 8 – DEFINED TERMS**

- 8.01 The terms used in this Bid with initial capital letters have the meanings indicated in the Instruction to Bidders, the General Conditions, and the Supplementary Conditions.

**ARTICLE 9 – BID SUBMITTAL**

9.01 This Bid SUBMITTED ON July 30th, 2019.

State Contractor License No. N/A (if applicable)

by:   
Steven C. Crosby / President

If Bidder is:

**An Individual**

Name (typed or printed): \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
(Individual’s signature)

Doing business as: \_\_\_\_\_

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

**A Partnership**

Partnership Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
(Signature of general partner – attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

**A Corporation**

Corporation Name: Crosby Excavating, Inc. \_\_\_\_\_ (SEAL)

State of Incorporation: Indiana \_\_\_\_\_

Type (General Business, Professional, Service, Limited Liability): General Business \_\_\_\_\_

By: St C Crosby  
(Signature – attach evidence of authority to sign)

Name (typed or printed): Steven C. Crosby \_\_\_\_\_

Title: President \_\_\_\_\_ (CORPORATE SEAL)

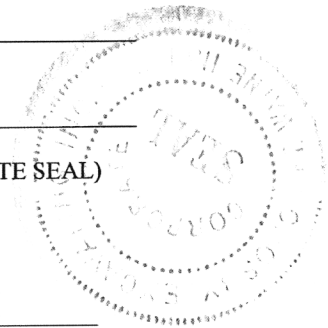
Attest: [Signature]  
(Signature of Corporate Secretary)

Business Address: 1030 Osage Street, Fort Wayne, IN 46808 \_\_\_\_\_

Phone No: 260-447-1053 \_\_\_\_\_ FAX No.: 260-447-6226 \_\_\_\_\_

Email: estimating@crosbyexcavating.com \_\_\_\_\_

Date of Authorization to do business in Indiana is 1/19/1990 \_\_\_\_\_



**RESOLUTION:  
RATIFY ACTS**

WHEREAS, Steven C Crosby, as President of the Corporation, has made a full report to the Board of Directors of all major matters and actions to which Crosby Excavating, Inc. has been a party; be it

RESOLVED, that the Board does hereby ratify and affirm each and every action undertaken by Steven C Crosby, on behalf of the Corporation wherein said Board has knowledge of said act and wherein it has been fully and accurately stated.

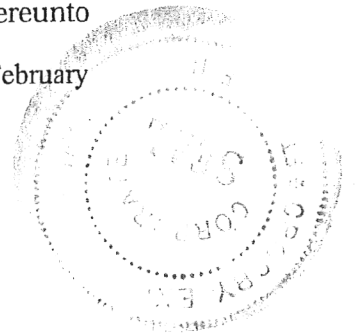
The undersigned hereby certifies that he/she is the duly elected and qualified Secretary and the custodian of the books and records and seal of Crosby Excavating, Inc., a corporation duly formed pursuant to the laws of the State of Indiana, and that the foregoing is a true record of a resolution duly adopted at a meeting of the Board of Directors, and that said meeting was held in accordance with state law and the Bylaws of the above-named Corporation on January 25, 1990 (year), and that said resolution is now in full force and effect without modification or rescission.

IN WITNESS WHEREOF, I have executed my name as Secretary and have hereunto affixed the corporate seal of the above-named Corporation this 1st day of February, 1990 (year).

A True Record.

Attest.

  
Secretary



**A Joint Venture**

Name of Joint Venturer: \_\_\_\_\_

First Joint Venturer Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
(Signature of first joint venture partner – attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

Second Joint Venturer Name: \_\_\_\_\_  
(SEAL)

By: \_\_\_\_\_  
(Signature of second joint venture partner – attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

Phone and FAX Number, and Address for receipt of official communications:

\_\_\_\_\_

\_\_\_\_\_

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

**BID BOND FORM**

Any singular reference to Bidder, Surety, Owner, or other party shall be considered plural where applicable.

**BIDDER (Name and Address):**

**Crosby Excavating, Inc.**  
1030 Osage  
Ft. Wayne, IN 46808

**SURETY (Name and Address of Principal Place of Business):**

**Western Surety Company**  
Chicago, IL

**OWNER (Name and Address):**

**City of Fort Wayne, Indiana**  
**Board of Public Works**  
**Citizens Square, Suite 210**  
**Fort Wayne, IN 46802**

**BID**

**Bid Due Date: July 30, 2019**

**Project (Brief Description Including Location):**

**Becketts Relief Sewer Forested Wetland Earthwork**

**CONTRACT/RESOLUTION NUMBER 76478**

**Work Order: 76478**

**BOND**

Bond Number: N/A

Date (Not later than Bid due date): **July 25, 2019**

Penal sum Five Percent of the Total Bid (Words) ( 5% of Total Bid ) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

**BIDDER**

**SURETY**

Crosby Excavating, Inc. )  
Bidder's Name and Corporate Seal

Western Surety Company )  
Surety's Name and Corporate Seal

By: [Signature]  
Signature and Title

By: [Signature]  
Signature and Title **Jennifer L. Kasznia, Attorney-in-Fact**  
(Attach Power of Attorney)

Attest: [Signature]  
Signature and Title **controller**

Attest: [Signature]  
Signature and Title **Cheryl Alkire, Secretary**

Note: Above addresses are to be used for giving required notice.

## PENAL SUM FORM

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Surety's liability.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2. All Bids are rejected by Owner, or
  - 3.3. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.



July 25, 2019

City of Fort Wayne, Board of Public Works  
200 East Berry Street  
Fort Wayne, IN 46802

Re: **Crosby Excavating, Inc.**

Gentlemen:


Please be advised if **Crosby Excavating, Inc.** is successful in bidding the construction of the project known as Becketts Relief Sewer Forested Wetland Earthwork and enters into a contract, it is the present intention of the **Western Surety Company** as surety to write the performance and payment bonds, as necessary, for the successful execution of that contract.

The continued availability of this surety credit will be subject to our normal underwriting requirements being satisfied at the time of the actual request.

Additionally, in compliance with the United States Department of Treasury's Listing of Certified Companies, this letter will serve to confirm that at this time the surety company **Western Surety Company** is listed with the United States Department of Treasury's Listing of Approved Sureties according to Department Circular 570.

Sincerely,

**Western Surety Company**

  
Jennifer L. Kasznia  
Attorney in Fact



www.GibsonIns.com



t (800) 814-2122  
f (800) 836-2122



South Bend, IN  
Plymouth, IN  
Indianapolis, IN  
Fort Wayne, IN  
Elkhart, IN  
Kalamazoo, MI

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Barbara E Pearson, Sandra L Junk, Nicole L Bicknell, Cheryl E Alkire, Megan E Riesenberg, Mark E Wobbe, Jennifer L Kasznia, William J Cerney III, Jordan M Scheiber, Wesley L Mantooth, Theresa M Burns, Individually**

of Plymouth, IN, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

**- In Unlimited Amounts -**

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 19th day of December, 2018.



WESTERN SURETY COMPANY

Paul T. Bruflat  
Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 19th day of December, 2018, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires  
June 23, 2021



J. Mohr  
J. Mohr, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 25<sup>th</sup> day of July 2019.



WESTERN SURETY COMPANY

L. Nelson  
L. Nelson, Assistant Secretary



**CONTRACTOR'S BID FOR PUBLIC WORK - FORM 96**

State Form 52414 (R2 / 2-13) / Form 96 (Revised 2013)

Prescribed by State Board of Accounts

**PART I**

*(To be completed for all bids. Please type or print)*

Date (month, day, year): July 30th, 2019

- 1. Governmental Unit (Owner): Board of Public Works, City of Fort Wayne
- 2. County: Allen
- 3. Bidder (Firm): Crosby Excavating, Inc.  
Address: 1030 Osage Street  
City/State/ZIP code Fort Wayne, IN 46808
- 4. Telephone Number: 260-447-1053
- 5. Agent of Bidder (if applicable): Steven C. Crosby

Pursuant to notices given, the undersigned offers to furnish labor and/or material necessary to complete the public works project of Board of Public Works, City of Fort Wayne (Governmental Unit) in accordance with plans and specifications prepared by EarthSource, Inc., Fort Wayne, IN entitled Becketts Relief Sewer Forested Wetland Earthwork and dated July 2019 for the sum of Four Hundred Thirteen Thousand Five Hundred Forty-Four Dollars and 70/100\*

\$ 413,544.70

The undersigned further agrees to furnish a bond or certified check with this bid for an amount specified in the notice of the letting. If alternative bids apply, the undersigned submits a proposal for each in accordance with the notice. Any addendums attached will be specifically referenced at the applicable page.

If additional units of material included in the contract are needed, the cost of units must be the same as that shown in the original contract if accepted by the governmental unit. If the bid is to be awarded on a unit basis, the itemization of the units shall be shown on a separate attachment.

The contractor and his subcontractors, if any, shall not discriminate against or intimidate any employee, or applicant for employment, to be employed in the performance of this contract, with respect to any matter directly or indirectly related to employment because of race, religion, color, sex, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the contract.

**CERTIFICATION OF USE OF UNITED STATES STEEL PRODUCTS**  
*(If applicable)*

I, the undersigned bidder or agent as a contractor on a public works project, understand my statutory obligation to use steel products made in the United States (1.C. 5-16-8-2). I hereby certify that I and all subcontractors employed by me for this project will use U.S. steel products on this project if awarded. I understand that violations hereunder may result in forfeiture of contractual payments.

## ACCEPTANCE

The above bid is accepted this \_\_\_\_\_ day of \_\_\_\_\_, subject to the following conditions: \_\_\_\_\_

Contracting Authority Members:


### PART II

*(For projects of \$150,000 or more - IC 36-1-12-4)*

Governmental Unit: City of Fort Wayne / Board of Public Works

Bidder (Firm) Crosby Excavating, Inc.

Date (month, day, year): July 30th, 2019

These statements to be submitted under oath by each bidder with and as a part of his bid. Attach additional pages for each section as needed.

### SECTION I EXPERIENCE QUESTIONNAIRE

1. What public works projects has your organization completed for the period of one (1) year prior to the date of the current bid?

Contract Amount	Class of Work	Completion Date	Name and Address of Owner
602,651.50	Trail/Site	Nov 2018	City of Fort Wayne, Indiana
612,352.00	Drainage	Nov 2018	City of Butler, Indiana
3,643,327.07	FWA Improvements	March 2019	FW-Allen Airport Authority
42,392.40	4th Street Alley	August 2018	Malott Contracting/City of Fort Wayne

2. What public works projects are now in process of construction by your organization?

Contract Amount	Class of Work	Expected Completion	Name and Address of Owner
2,471,942.07	Riverfront/Site	July 2019	Board of Park Commissioners
499,844.25	Lawrence Drain/Ditch Regrade	November 2019	City of Fort Wayne
331,483.00	Greater McMillen/Concrete Removal	August 2019	Malott Contracting/City of Fort Wayne
1,821,743.35	Hessen Cassel/Storm	June 2020	City of Fort Wayne

3. Have you ever failed to complete any work awarded to you? NO If so, where and why?

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4. List references from private firms for which you have performed work.

Hagerman Inc. 510 Washington Blvd. Fort Wayne, IN 46802

Weigand Construction 7808 Honeywell Drive, Fort Wayne, IN 46825

Shawnee Construction 7701 Opportunity Drive, Fort Wayne, IN 46825

Fetters Construction 5417 County Road 421, Auburn, IN 46706

Schenkel Construction 1120 St. Marys Ave., Fort Wayne, IN 46808

#### SECTION II PLAN AND EQUIPMENT QUESTIONNAIRE

1. Explain your plan or layout for performing proposed work. *(Examples could include a narrative of when you could begin work, complete the project, number of workers, etc. and any other information which you believe would enable the governmental unit to consider your bid.)*

Project to be started & completed as per specifications pending weather and changes to the project

Project will require a crew of 4-8 workers

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2. Please list the names and addresses of all subcontractors *(i.e. persons or firms outside your own firm who have performed part of the work)* that you have used on public works projects during the past five (5) years along with a brief description of the work done by each subcontractor.

D&L tree services, Mersino Dewatering, SES Enviromental, Ley Enterprises, Garcia Concrete, Commercial Signs

Pin Pointe Drilling, A&B Boring, Chucks Concrete, Gleave Construction, Eagle Fence, R&C Fence

Pulver Asphalt, Harlow Enterprises, Lowe Construction, Minnichs Lawn Care, Wayne Asphalt, J&S Liquid

Malott Contracting

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3. If you intend to sublet any portion of the work, state the name and address of each subcontractor, equipment to be used by the subcontractor, and whether you will require a bond. However, if you are unable to currently provide a listing, please understand a listing must be provided prior to contract approval. Until the completion of the proposed project, you are under a continuing obligation to immediately notify the governmental unit in the event that you subsequently determine that you will use a subcontractor on the proposed project.

Harlow Enterprises & Malott Contracting

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4. What equipment do you have available to use for the proposed project? Any equipment to be used by subcontractors may also be required to be listed by the governmental unit.

Excavators, Dozer's, Skidsteers, Rollers/Compaction Equipment, Loaders & Dump Trucks

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5. Have you entered into contracts or received offers for all materials which substantiate the prices used in preparing your proposal? If not, please explain the rationale used which would corroborate the prices listed.

Received offers for all materials

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### SECTION III CONTRACTOR'S FINANCIAL STATEMENT

Attachment of bidder's financial statement is mandatory. Any bid submitted without said financial statement as required by statute shall thereby be rendered invalid. The financial statement provided hereunder to the governing body awarding the contract must be specific enough in detail so that said governing body can make a proper determination of the bidder's capability for completing the project if awarded.

SECTION IV CONTRACTOR'S NON-COLLUSION AFFIDAVIT

The undersigned bidder or agent, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such sale.

SECTION V OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID FOR PUBLIC WORKS ARE TRUE AND CORRECT.

Dated at Fort Wayne, IN this 30th day of July, 2019

Crosby Excavating, Inc

(Name of Organization)

By [Signature]

Steven C. Crosby, President

(Title of Person Signing)

ACKNOWLEDGEMENT

STATE OF IN )
COUNTY OF Allen ) ss

Before me, a Notary Public, personally appeared the above-named Steven C. Crosby and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to before me this 30th day of July, 2019

[Signature]
Notary Public
Angela L. Mick



My Commission Expires: 10/25/19
County of Residence: Allen

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**BID OF**

Crosby Excavating, Inc

\_\_\_\_\_  
*(Contractor)*

1030 Osage Street, Fort Wayne, IN 46808

\_\_\_\_\_  
*(Address)*

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**FOR**

**PUBLIC WORKS PROJECTS**

**OF**

City of Fort Wayne

\_\_\_\_\_  
Becketts Relief Sewer Forested Wetland Earthwork  
\_\_\_\_\_  
\_\_\_\_\_

Filed \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Action taken \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





**A DRUG TESTING PROGRAM HAS BEEN  
RECEIVED AND IS ON FILE WITH THE  
BOPW CLERK.**

**THIS DOCUMENT HAS BEEN INSERTED  
BY BOPW STAFF**



**THE FINANCIAL STATEMENT HAS BEEN  
RECEIVED WITH THIS BID AND IS ON  
FILE WITH THE BOPW CLERK.**

**THIS DOCUMENT HAS BEEN INSERTED  
BY BOPW STAFF**

**AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
ON THE BASIS OF A STIPULATED PRICE**

Resolution **76478**

Work Order **76478**

THIS AGREEMENT is by and between the Board of Public Works of the City of Fort Wayne, Indiana (hereinafter called Owner) and Crosby Excavating, Inc. (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, 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:

**Bank stabilization, earthen berm construction, and wetland mitigation along the Becketts Run.**

**ARTICLE 2 – THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**Becketts Relief Sewer Forested Wetland Earthwork**

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by EarthSource, Inc., Fort Wayne, IN, which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. Owner will confirm to Contractor prior to issuance of Notice to Proceed as to who will serve as Engineer.

**ARTICLE 4 – CONTRACT TIMES**

4.01 Time 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 Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within **110** days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and

completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within **180** days after the date when the Contract Times commence to run.

- B. Definitions of Substantial Completion for this Work shall consist of all earthwork completed and grading plan approved for seeding.

4.03 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 loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. 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), Contractor shall pay Owner **\$1,500.00** for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **\$1,000.00** for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

**ARTICLE 5 – CONTRACT PRICE**

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

- A. Not Used
- B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

UNIT PRICE WORK

		Estimated				Total
<u>No.</u>	<u>Item</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Estimated</u>	<u>Estimated</u>

**See Article 5 (itemized Bid Schedule) of the Bid Form**

TOTAL OF ALL UNIT PRICES Four Hundred Thirteen Thousand Five Hundred Forty Four and 70/100 Dollars

\$ 413,544.70

The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

C. Not Used.

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 14 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 account of the Contract Price on the basis of Contractor's Applications for Payment within 30 days of receipt during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of 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 in the General Requirements.

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 Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

a. 95% of Work completed (with the balance being retainage). and

b. 95% of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 % of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200% of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion. However, payments to the Contractor are not to exceed 95% of the total Contract Price until the Owner has verified that the Contractor has made good faith efforts to attain the 10% EBE goal stipulated in Paragraph 10.06. Payment of the final 5% of the total Contract Price will be dependent upon acceptance of the Work, in accordance with Paragraph 14.07 of the General

Conditions, and good faith efforts to comply with the EBE participation requirements; subject to reduction in the event of non-compliance as provided in Paragraph 10.06E.

- C. If the contract is in excess of \$200,000, the contract will be subject to the standard Board of Public Works escrow agreement unless written notice is received from Contractor prior to execution of the Agreement stating that an Escrow Account is not desired. If an Escrow Account is not desired, then the Board of Public Works, in accordance with IC 36-1-12-14, shall hold the retainage and will not pay interest on the amounts of retainage that it holds

### 6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

## ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

## ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
  - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
  - E. Contractor has considered the information known to Contractor; 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 Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the

means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that 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 Documents.
- G. 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.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. In connection with the performance of Work under this Contract, Contractor agrees to comply with Anti-Discrimination Under Indiana Code Chapter 5-16-6-1 and 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 12<sup>th</sup>, 1978. Contractor shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of the construction or upon request of the Office of Compliance.

## **ARTICLE 9 – CONTRACT DOCUMENTS**

### **9.01 Contents**

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 00 52 00-1 to 00 52 00-11, inclusive);
  - 2. Escrow Account Agreement (pages 00 54 43-1 to 00 54 43-3, inclusive);
  - 3. E-Verify Affidavit (page 00 54 53-1, inclusive);
  - 4. Performance Bond Form (pages 00 61 13.13-1 to 00 61 13.13-2, inclusive);
  - 5. Payment Bond Form(pages 00 61 13.16-1 to 00 61 13.16-2, inclusive);
  - 6. General Conditions (pages 00 72 00-1 to 00 72 00-41, inclusive);
  - 7. Supplementary Conditions (pages 00 73 00-1 to 00 73 00-12 inclusive);

8. Specifications as listed in the Table of Contents of the Project Manual;
  9. Drawings consisting of Drawing SY-21001, Sheets 1 through 10, inclusive, with each sheet bearing the following general title: Becketts Relief Sewer Forested Wetland Earthwork;
  10. Addenda (numbers 1 to 1, inclusive);
  11. Attachments to this Agreement (enumerated as follows);
    - a. Contractor's Bid Schedule (page 00 41 00-3, inclusive);
    - b. Documentation submitted by Contractor prior to Notice of Award
  12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
- B. The documents listed in Paragraph 9.01.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 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### 10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### 10.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 10.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 10.04 Severability

- A. 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.

### 10.05 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 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing 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.

### 10.06 Emerging Business Enterprise (EBE) Participation

**EBE Retainage Requirements** – If the Contractor is in compliance with the provisions of the construction Contract the Owner will make payments for such work performed and completed. Pursuant to Executive Order 90-01 (amended 5-8-06); the Owner will retain five percent (5%) of the Contract Price to ensure compliance with the EBE participation requirements. Upon final inspection and acceptance of the Work, and determination by the Fort Wayne Board of Public Works that the Contractor has made a good faith effort to subcontract ten percent (10%) of the Contract Price to emerging business enterprises, the Contractor will be paid in full.

In the event there is a determination that good faith compliance with these EBE participation requirements has not occurred, appropriate reduction in the final payment pursuant to paragraph 10.06.E will be made.

If the Contract Price is in excess of \$200,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the Contractor are not to exceed 95% of the total Contract Price until the Owner has verified that the Contractor has made good faith efforts to attain the 10% EBE goal stipulated in here within. Payment of the final 5% of the total Contract Price will be dependent upon acceptance of the Work, in accordance with Paragraph 14.07 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 10.06.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.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement (Contract/Resolution Number 76478). One counterpart has been delivered to Owner, and one counterpart delivered to Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

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

**CONTRACTOR:**

**OWNER:**

**CROSBY EXCAVATING, INC.**

**CITY OF FORT WAYNE**

BY: \_\_\_\_\_  
(Name)

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

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_  
(Date signed by Contractor)

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BOARD OF PUBLIC WORKS**

BY: \_\_\_\_\_  
SHAN GUNAWARDENA, CHAIR

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

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

**ATTEST:** \_\_\_\_\_  
MICHELLE FULK-VONDRAN, CLERK

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

**ACKNOWLEDGMENT (CONTRACTOR)**

STATE OF \_\_\_\_\_ )

SS: )

COUNTY OF \_\_\_\_\_ )

**BEFORE ME**, a Notary Public, in and for said County and State, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared the within named \_\_\_\_\_ who under penalty of perjury 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 (OWNER)**

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 Thomas C. Henry, Shan Gunawardena, Mike Avila, Kumar Menon 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**

# 76478

**CITY OF FORT WAYNE, INDIANA**

Crosby Excavating, Inc.

(Vendor Name)

**VENDOR DISCLOSURE STATEMENT RELATING TO:**

- 1. **FINANCIAL INTERESTS;**
- 2. **POTENTIAL CONFLICTS OF INTEREST;**
- 3. **CURRENT AND PENDING CONTRACTS OR PROCUREMENTS**

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$50,000 or more. Vendors shall disclose their financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the Vendor's contract, bid, proposal or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

**Section 1: Disclosure of Financial Interest in Vendor**

a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

(i) Equity ownership exceeding 5%

(ii) Distributable income share exceeding 5%

(iii) Not Applicable (If N/A, go to Section 2)

Steven C. Crosby

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: 9213 Trentman Road, Fort Wayne, IN 46816

Address: \_\_\_\_\_

b. For each individual listed in Section 1a. show his/her type of equity ownership:

sole proprietorship  stock

partnership interest  units (LLC)

other (explain) \_\_\_\_\_

c. For each individual listed in Section 1a. show the percentage of ownership interest in Vendor (or its parent):  
ownership interest:

Name: Steven C. Crosby 100 %

Name: \_\_\_\_\_ %

**Section 2: Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)**

For each individual listed in Section 1a. check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

- a. City employment, currently or in the previous 3 years, including contractual employment for services:  
Yes \_\_\_\_\_ No  X

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- b. City employment of "Member of Immediate Family" (defined herein as: *Spouse, Child, Step Child, Parent or Step Parent, Father-in-law or Mother-in-law, Brother or Sister, Step Brother or Step Sister, Half Brother or Half Sister, Brother-in-law or Sister-in-law, Son-in-law or Daughter-in-law, Grandparent or Step Grandparent, Grandparent or Step Grandparent of Spouse, Grandchild*)  
Including contractual employment for services in the previous 3 years:

Yes \_\_\_\_\_ No  X

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- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years: Yes \_\_\_\_\_ No  X

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**Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION**

- a. Does Vendor have current contracts (including leases) with the City? Yes  X  No \_\_\_\_\_

If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact below (attach additional pages as necessary).

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Hessen Cassel/Storm	Res# 83626	May 2019
Lawrence Drain	Res# 83396	March 2019

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- b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes \_\_\_\_\_ No  X

If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

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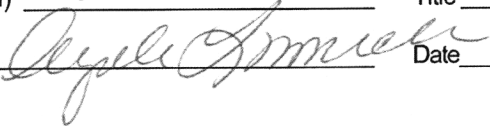
elements as the offense of bid-rigging or bid-rotating

- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

<u>Crosby Excavating, Inc.</u>	<u>1030 Osage Street, Fort Wayne, IN 46808</u>
(Name of Vendor)	Address
	<u>( ) 260-447-1053</u>
	Telephone
	<u>amick@crosbyexcavating.com</u>
	E-Mail Address

The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed)	<u>Angela L. Mick</u>	Title	<u>Controller</u>
Signature		Date	<u>7/30/19</u>

**NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.**

# Interoffice Memo

Date: August 30, 2019  
To: Common Council Members  
From: Michael Kiester, Manager, City Utilities Engineering  
RE: **Becketts Relief Sewer Forested Wetland Earthwork  
Resolution/Work Order # 76478**

*Michael Kiester  
8.30.2019*

Council District # District 3

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project: Becketts Relief Sewer Forested Wetland Earthwork as follows: Bank stabilization, earthen berm construction, and wetland mitigation along the Becketts Run.

Implications of not being approved: This project is being undertaken to repair eroded areas and to fulfill IDEM and Army Corp of Engineers permits from construction of the Becketts Relief Sewer Interceptor. If not constructed, damaging erosion will continue and we will be in violation of our IDEM and Army Corps permits.

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

This project was advertised to contractors on 7/12/2019 and 7/19/2019 in the Journal Gazette.

The contract for Resolution #76478 awarded to Crosby Excavating, Inc. for \$413,544.70 was the lowest most responsive bidder of five bidders and 24.6% below the Engineer's estimate of \$548,500.00. The second lowest bidder was \$38,370.42 above Crosby Excavating, Inc. bid.

The cost of said project funded by Sewer Revenue.

Council Introduction Date: 9/10/2019

CC: Matthew Wirtz  
Diane Brown  
File

**BILL NO. S-19-09-03**

**REPORT OF COMMITTEE ON CITY UTILITIES**  
**September 17, 2019**

***Geoff Paddock Chair***

***Thomas Didier Co-Chair***

***All Council Members***

An Ordinance approving Construction Contract - Becketts Relief Sewer Forested Wetland Earthwork - Resolution/Work Order #76478 between Crosby Excavating, Inc. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works

*Involving a total cost of \$413,544.70*




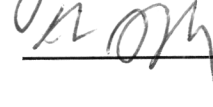
**COMMITTEE ON CITY UTILITIES HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance**

DO PASS

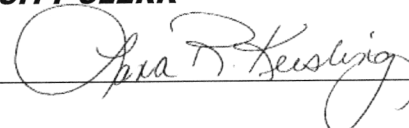
DO NOT PASS

ABSTAIN

NO REC

	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
_____	_____	_____	_____

**LANA R. KEESLING**  
**CITY CLERK**



Public Hearing Date: N/A

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

Read the second time by title and referred to the City Utilities Committee.


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

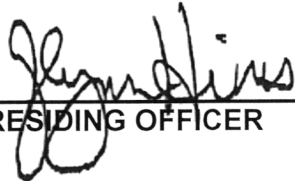
<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BARRANDA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CRAWFORD	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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: September 24, 2019

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

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as  
 Special Ordinance No. S-19-09-03 on the 24th day of September, 2019

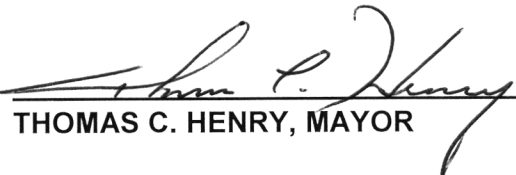
  
 \_\_\_\_\_  
 LANA R. KEESLING  
 CITY CLERK

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

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 25th  
 of September 2019, at the hour of 10:25 o'clock A.M. E.S.T.

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

Approved and signed by me this 25<sup>th</sup> day of September  
 2019, at the hour of 4:00 o'clock P.M. E.S.T.

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

