

1 **BILL NO. S-21-12-12**

2 SPECIAL ORDINANCE NO. S-140-21

3 AN ORDINANCE approving CONSTRUCTION  
4 CONTRACT – 76881 2021 SEWER OPEN CUT 1 –  
5 WORK ORDER #76881 - \$592,210.00 between  
6 BERCOT, INC. and the City of Fort Wayne, Indiana, in  
connection with the Board of Public Works.

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

9 **SECTION 1.** That the CONSTRUCTION CONTRACT - 76881 2021  
10 SEWER OPEN CUT 1 – WORK ORDER #76881 - \$592,210.00 between  
11 BERCOT, INC. and the City of Fort Wayne, Indiana, in connection with the Board  
12 of Public Works, is hereby ratified, and affirmed and approved in all respects,  
13 respectfully for:  
14

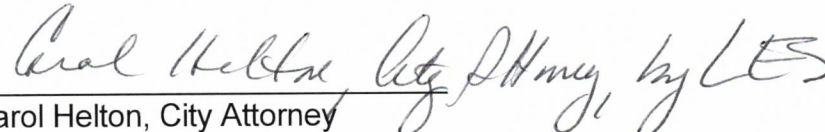
15 All labor, insurance, material, equipment, tools, power,  
16 transportation, miscellaneous equipment, etc., necessary for  
17 THE OPEN CUT EXCAVATION TO REPAIR 9 AREAS OF  
PARTIALLY COLLAPSED SEWERS LOCATED  
18 THROUGHOUT THE CITY;

19 involving a total cost of FIVE HUNDRED NINETY-TWO THOUSAND TWO  
20 HUNDRED TEN AND 00/100 DOLLARS - (\$592,210.00). A copy of said Contract  
21 is on file with the Office of the City Clerk and made available for public inspection,  
according to law.

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

24   
25 \_\_\_\_\_  
26 Council Member

27 APPROVED AS TO FORM AND LEGALITY

28   
29 \_\_\_\_\_  
30 Carol Helton, City Attorney

| PROJECT:   |                                       | 2021 Sewer Open Cut |      |             |                    |             |              |             |              |             |                  |              |               |                  |           |  |
|--|---------------------------------------|---------------------|------|-------------|--------------------|-------------|--------------|-------------|--------------|-------------|------------------|--------------|---------------|------------------|-----------|--|
| Resolution#:                                     |                                       | 76881               |      |             |                    |             |              |             |              |             |                  |              |               |                  |           |  |
| Work Order#:                                     |                                       | 76881               |      |             |                    |             |              |             |              |             |                  |              |               |                  |           |  |
| Project Designer:                                |                                       | Eric Steinman       |      |             |                    |             |              |             |              |             |                  |              |               |                  |           |  |
| Construction Manager:                            |                                       | Nick Ruplev         |      |             |                    |             |              |             |              |             |                  |              |               |                  |           |  |
| Manager:   |                                       | Mike Kiesler        |      |             |                    |             |              |             |              |             |                  |              |               |                  |           |  |
| Bid Date: (Quote Date):                          |                                       | November 18, 2021   |      |             |                    |             |              |             |              |             |                  |              |               |                  |           |  |
| Funding:   |                                       | Sewer Revenue       |      |             |                    |             |              |             |              |             |                  |              |               |                  |           |  |
| BID  |                                       | Engineer's Estimate |      |             | J&L Excavating LLC |             |              | Beret Inc   |              |             | API Construction |              |               | T-E INCORPORATED |           |  |
| 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   | \$30,000.00 | \$ 30,000.00       | \$26,000.00 | \$ 26,000.00 | \$29,059.00 | \$ 29,059.00 | \$26,250.00 | \$ 26,250.00     | \$25,000.00  | \$ 25,000.00  |                  |           |  |
| 2  | Maintenance and Protection of Traffic | 1                   | LS   | \$20,000.00 | \$ 20,000.00       | \$24,000.00 | \$ 24,000.00 | \$9,000.00  | \$ 9,000.00  | \$23,250.00 | \$ 23,250.00     | \$15,000.00  | \$ 15,000.00  |                  |           |  |
| 3  | Video Documentation of Conditions     | 1                   | LS   | \$10,000.00 | \$ 10,000.00       | \$9,000.00  | \$ 9,000.00  | \$31,676.00 | \$ 31,676.00 | \$30,000.00 | \$ 30,000.00     | \$29,000.00  | \$ 29,000.00  |                  |           |  |
| 4  | Remove and Replace Tree(s)            | 1                   | EA   | \$10,000.00 | \$ 10,000.00       | \$3,500.00  | \$ 3,500.00  | \$3,147.00  | \$ 3,147.00  | \$3,200.00  | \$ 3,200.00      | \$2,500.00   | \$ 2,500.00   |                  |           |  |
| 5  | Repair 1                              | 1                   | LS   | \$50,000.00 | \$ 50,000.00       | \$19,500.00 | \$ 19,500.00 | \$26,264.00 | \$ 26,264.00 | \$34,000.00 | \$ 34,000.00     | \$22,000.00  | \$ 22,000.00  |                  |           |  |
| 6  | Repair 2                              | 1                   | LS   | \$60,000.00 | \$ 60,000.00       | \$31,325.00 | \$ 31,325.00 | \$50,847.00 | \$ 50,847.00 | \$74,500.00 | \$ 74,500.00     | \$57,000.00  | \$ 57,000.00  |                  |           |  |
| 7  | Repair 3                              | 1                   | LS   | \$55,000.00 | \$ 55,000.00       | \$34,650.00 | \$ 34,650.00 | \$50,668.00 | \$ 50,668.00 | \$40,500.00 | \$ 40,500.00     | \$42,000.00  | \$ 42,000.00  |                  |           |  |
| 8  | Repair 4                              | 1                   | LS   | \$55,000.00 | \$ 55,000.00       | \$32,750.00 | \$ 32,750.00 | \$28,472.00 | \$ 28,472.00 | \$32,500.00 | \$ 32,500.00     | \$32,000.00  | \$ 32,000.00  |                  |           |  |
| 9  | Repair 5                              | 1                   | LS   | \$35,000.00 | \$ 35,000.00       | \$33,200.00 | \$ 33,200.00 | \$15,885.00 | \$ 15,885.00 | \$24,750.00 | \$ 24,750.00     | \$17,000.00  | \$ 17,000.00  |                  |           |  |
| 10   | Repair 6                              | 1                   | LS   | \$70,000.00 | \$ 70,000.00       | \$41,900.00 | \$ 41,900.00 | \$97,359.00 | \$ 97,359.00 | \$87,200.00 | \$ 87,200.00     | \$160,000.00 | \$ 160,000.00 |                  |           |  |
| 11   | Repair 7                              | 1                   | LS   | \$40,000.00 | \$ 40,000.00       | \$29,540.00 | \$ 29,540.00 | \$21,607.00 | \$ 21,607.00 | \$23,750.00 | \$ 23,750.00     | \$23,000.00  | \$ 23,000.00  |                  |           |  |
| 12   | Repair 8                              | 1                   | LS   | \$75,000.00 | \$ 75,000.00       | \$43,800.00 | \$ 43,800.00 | \$91,828.00 | \$ 91,828.00 | \$78,000.00 | \$ 78,000.00     | \$75,000.00  | \$ 75,000.00  |                  |           |  |
| 13   | Repair 9                              | 1                   | LS   | \$60,000.00 | \$ 60,000.00       | \$37,900.00 | \$ 37,900.00 | \$44,078.00 | \$ 44,078.00 | \$37,000.00 | \$ 37,000.00     | \$38,000.00  | \$ 38,000.00  |                  |           |  |
| 14   | Lateral Repair and Reconnection       | 17                  | EA   | \$2,000.00  | \$ 34,000.00       | \$3,800.00  | \$ 64,600.00 | \$1,960.00  | \$ 33,320.00 | \$11,500.00 | \$ 195,500.00    | \$1,200.00   | \$ 20,400.00  |                  |           |  |
| 15   | Utility Pole Bracing 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  |                  |           |  |
| 16   | Owner's Work Allowance                | 1                   | LS   | \$25,000.00 | \$ 25,000.00       | \$25,000.00 | \$ 25,000.00 | \$25,000.00 | \$ 25,000.00 | \$25,000.00 | \$ 25,000.00     | \$25,000.00  | \$ 25,000.00  |                  |           |  |
| TOTAL BASE BID                                   |                                       |                     |      | \$          | 639,000.00         | \$          | 466,665.00   | \$          | 588,210.00   | \$          | 575,400.00       | \$           | 592,900.00    |                  |           |  |
| Bid Alternate #1                                 |                                       | Engineer's Estimate |      |             | J&L Excavating LLC |             |              | Beret Inc   |              |             | API Construction |              |               | T-E INCORPORATED |           |  |
| Item#  | Description                           | Quantity            | Unit | Unit Price  | Extension          | Unit Price  | Extension    | Unit Price  | Extension    | Unit Price  | Extension        | Unit Price   | Extension     | Unit Price       | Extension |  |
| 17   | Owner Supplied Special Backfill       | 2000                | CY   | \$27.00     | \$ 54,000.00       | \$22.50     | \$ 45,000.00 | \$12.00     | \$ 24,000.00 | \$20.00     | \$ 40,000.00     | \$15.00      | \$ 30,000.00  |                  |           |  |
| Total Base Bid plus Alternate #1                 |                                       |                     |      | \$          | 693,000.00         | \$          | 511,665.00   | \$          | 592,210.00   | \$          | 615,400.00       | \$           | 622,900.00    |                  |           |  |
| Bid Alternate #2                                 |                                       | Engineer's Estimate |      |             | J&L Excavating LLC |             |              | Beret Inc   |              |             | API Construction |              |               | T-E INCORPORATED |           |  |
| Item#  | Description                           | Quantity            | Unit | Unit Price  | Extension          | Unit Price  | Extension    | Unit Price  | Extension    | Unit Price  | Extension        | Unit Price   | Extension     | Unit Price       | Extension |  |
| 18   | Contractor Supplied Special Backfill  | 2000                | CY   | \$40.00     | \$ 80,000.00       | \$36.00     | \$ 72,000.00 | \$32.00     | \$ 64,000.00 | \$46.50     | \$ 93,000.00     | \$35.00      | \$ 70,000.00  |                  |           |  |
| Total Base Bid plus Alternate #2                 |                                       |                     |      | \$          | 719,000.00         | \$          | 538,665.00   | \$          | 632,210.00   | \$          | 672,400.00       | \$           | 662,900.00    |                  |           |  |
| Basis of Award is Base Bid plus Lowest Alternate |                                       |                     |      | Rejected    | \$                 | 511,665.00  | \$           | 592,210.00  | \$           | 615,400.00  | \$               | 622,900.00   |               |                  |           |  |
| Addendum No.1                                    |                                       |                     |      |             |                    |             |              |             |              |             |                  |              |               |                  |           |  |
| Bidder's Bond                                    |                                       |                     |      |             |                    |             |              |             |              |             |                  |              |               |                  |           |  |
| Form 96  |                                       |                     |      |             |                    |             |              |             |              |             |                  |              |               |                  |           |  |
| Non-Collision Affidavit                          |                                       |                     |      |             |                    |             |              |             |              |             |                  |              |               |                  |           |  |
| Cert In Lieu/Financial Statement                 |                                       | Not on File         |      |             |                    |             |              |             |              |             |                  |              |               |                  |           |  |
| Employee Drug Testing Program (>\$150K)          |                                       | Not on File         |      |             |                    |             |              |             |              |             |                  |              |               |                  |           |  |
| Reviewed By:                                     |                                       | Eric Steinman       |      |             |                    |             |              |             |              |             |                  |              |               |                  |           |  |



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

This Agreement is by and between **Board of Public Works** ("Owner") and Bercot, Inc. ("Contractor").

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

Owner and Contractor hereby agree as follows:

### **ARTICLE 1—WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: **The open cut excavation to repair 9 areas of partially collapsed sewers located throughout the City.**

### **ARTICLE 2—THE PROJECT**

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **76881 2021 Sewer Open Cut 1**

### **ARTICLE 3—ENGINEER**

3.01 The Owner will retain a qualified firm ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

### **ARTICLE 4—CONTRACT TIMES**

4.01 Time is of the Essence

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

4.02 ::NOT USED::

4.03 Contract Times: Days

A. The Work will be substantially complete within **150** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions.

B. Work shall be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **180** days after the date when the Contract Times commence to run.

C. Definition of Substantial Completion for this Work shall consist of **the point at which all work, including all pavement restoration and seeding, has been installed and televised.**

4.04 Milestones

A. Parts of the Work must be completed on or before the following Milestone(s):

1. Milestone 1 **120 days after the date when Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions is the point at which all work, with exception of bypass pipe/pump removal, final pavement restoration and seeding, has been installed.**

4.05 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner **\$1,000.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
  2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$500.00** for each day that expires after such time until the Work is completed and ready for final payment.
  3. Milestones: Contractor shall pay Owner **\$1,000.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.05.A.1 will apply, rather than the Milestone rate.
  4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.
- C. ::NOT USED::

4.06 ::NOT USED::

#### **ARTICLE 5—CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
- A. :: NOT USED ::
  - B. :: NOT USED ::
  - C. :: NOT USED ::
  - D. For all Work, at the prices stated in Contractor's Bid on the QuestCDN online bid submittal, attached hereto as an exhibit.

TOTAL OF ALL UNIT PRICES Five Hundred Ninety-Two Thousand, Two Hundred Ten Dollars and Zero Cents

\$ 592,210.00

**Basis of Award is Base Bid plus Alternate #1**

**PAYMENT PROCEDURES**

5.02 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.03 Progress Payments; Retainage

- A. Owner shall make progress payments during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted within 45-days of the portions complete, and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Final Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
  - a. 95 percent of the value of the Work completed (with the balance being retainage).
  - b. 95 percent 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 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment. 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 EBE goal stipulated in Paragraph 9.03.E. Payment of the final 5% of the total Contract Price will be dependent upon acceptance of the Work, in accordance with Paragraph 15.06 of the General Conditions, and good faith efforts to comply with the EBE participation requirements; subject to reduction in the event of non-compliance as provided in Paragraph 9.03.E.

C. Escrow Agreement.

1. 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.

5.04 Final Payment

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

5.05 Consent of Surety

- A. Owner will not make final payment or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

**ARTICLE 6—CONTRACT DOCUMENTS**

6.01 Contents

- A. The Contract Documents consist of the following:
1. This Agreement (00 52 00, inclusive);
  2. Escrow Account Agreement (00 54 43, inclusive);
  3. Drug Policy Acknowledgment Form (00 54 52, inclusive);
  4. E-Verify Affidavit (00 54 53, inclusive);
  5. Performance Bond Form (00 61 13.13, inclusive);
  6. Payment Bond Form (00 61 13.16, inclusive);
  7. General Conditions (00 72 00, inclusive);
  8. Supplementary Conditions (00 73 00, inclusive);
  9. Specifications as listed in the table of contents of the project manual
  10. Drawings consisting of 0, inclusive, with each sheet bearing the following general title:  
2021 Sewer Open Cut 1;
  11. All Exhibits and Appendices;
  12. Addenda (numbers 1 to 1, inclusive);
  13. Attachments to this Agreement (enumerated as follows);
    - a. Contractor's Bid Worksheet;
    - b. Documentation submitted by Contractor prior to Notice of Award.
  14. 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. Written Amendments;
    - c. Work Change Directives;
    - d. Change Orders;
- B. ::NOT USED::
- C. There are no Contract Documents other than those listed above in this Article 7.

- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **ARTICLE 7—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **7.01 Contractor's Representations**

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
  - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
  - 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
  - 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
  - 7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  - 8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  - 9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.
12. 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 12th, 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.

#### 7.02 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 7.03 Standard General Conditions

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

### ARTICLE 8—MISCELLANEOUS

#### 8.01 Terms

Terms used in this Agreement will have the meanings stated in the General Conditions

#### 8.02 Severability

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 8.03 Emerging Business Enterprise (EBE) Participation

EBE Retainage Requirements – If the Contractor is in compliance with the provisions of the construction Contract the Owner will make payments for such work performed and completed. Pursuant to Executive Order 90-01 (amended 5-8-06); the Owner will retain 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 9.03.E will be made.

If the Contract Price is in excess of \$200,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the Contractor are not to exceed 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 15.06 of the General Conditions, and good faith efforts to comply with these EBE participation requirements; subject to reduction in the event of non-compliance as provided in paragraph 9.03.E.

- A. Request for Waiver – If, at the time final payment application is made, Contractor has not attained the ten percent (10%) EBE goal, Contractor shall file with the final payment application a “Request for Waiver.” Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the ten percent (10%) EBE goal.
- B. Determination of Waiver Requests – The Vendor Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor’s efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.
- C. Good Faith Efforts. – In determining whether or not the Contractor used “good faith” efforts, the following shall be considered:
  1. Whether the contract can be subdivided as determined by the Engineer and Administrator of Contract Compliance;
  2. Availability of certified EBE businesses to participate as subcontractors;
  3. Non-competitive price quotes received from EBE firms. The Board of Public Works determination for granting a reduction or waiver of the goal because of higher quotes from EBE firms will be based on factors that include, but are not limited to the following:
    - a. The Engineer’s estimate for the work under a specific contract;
    - b. The Contractor’s own estimate for the work under the subcontract;

- c. An average of the valid prices quoted for the subcontract;
  - d. Demonstrated increase in other contract costs as a result of sub-contracting to EBE firm(s).
- 4. Documented measures taken by the Contractor to comply with the EBE participation goal;
- 5. EBE subcontractor failed to fulfill their obligation in regard to the time delivery of goods and/or services. Also in regards to the quality of the goods and/or services set forth in the bid specifications.
- 6. Such other matters as the Board of Public Works deems relevant.
- D. Consequences of Noncompliance – In the event the Board of Public Works approves a recommendation that Contractor failed to make good faith efforts at compliance, the Contract Price shall be reduced by the amount calculated as the difference between the EBE participation goal of 10% and the actual participation level met by the Contractor, but in no case shall it be reduced by more than 5%. Said amount shall be added to the City of Fort Wayne EBE Bond Guarantee Fund and Contractor agrees to accept the reduced amount as full payment under the terms of his/her Contract.
- E. Waiver Approved – In the event the Board of Public Works determines that a good faith effort to comply with these EBE participation requirements has been made, the Contract Price shall not be reduced, and the balance owing to the Contractor shall be paid in full.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement (Contract/Resolution Number 76881). 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:**

**Bercot, Inc.**

**OWNER:**

**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: \_\_\_\_\_  
Chris Guerrero, MEMBER

**ATTEST:** \_\_\_\_\_  
Michelle Fulk-Vondran, CLERK

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



CITY OF FORT WAYNE, INDIANA

Bercot, 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%  \*See Schedule following this page
- (ii) Distributable income share exceeding 5%
- (iii) Not Applicable (If N/A, go to Section 2)

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

Address: \_\_\_\_\_ 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: \_\_\_\_\_ % \*See Schedule following this page

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).

Coldwater Road Force Main Redirection - 76878 - 62,707.00

Maintain Flood Gates - CFW Flood Control - Open end contract

- 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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c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

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

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms:

\_\_\_\_\_

Name / Position / Payment Terms:

\_\_\_\_\_

Name / Position / Payment Terms:

\_\_\_\_\_

d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.). NO

Company / Name / Payment Terms: \_\_\_\_\_

Company / Name / Payment Terms: \_\_\_\_\_

**Section 4: CERTIFICATION OF DISCLOSURES**

**In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:**

- a. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- c. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;
- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same

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>Bercot, Inc.</u><br>(Name of Vendor) | <u>6015 Huguenard Rd, FW, IN 46818</u><br>Address<br><u>( ) 260-489-4561</u><br>Telephone<br><u>johnbercot@comcast.net</u><br>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>John W. Bercot</u>   | Title <u>President</u>   |
| Signature <u><i>John W. Bercot</i></u> | Date <u>May 28, 2021</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: December 9, 2021  
To: Common Council Members  
From: Michael Kiester, Manager, City Utilities Engineering  
RE: **2021 Sewer Open Cut 1**  
**76881**

*Michael Kiester*  
12.9.2021

Council District # City Wide

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project: The open cut excavation to repair 9 areas of partially collapsed sewers located throughout the City.

Implications of not being approved: This project is to replace portions of pipe that are partially collapsed. If the pipes are not repaired soon, they will collapse, causing sewer backups in homes and sewer overflows.

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

This project was advertised to contractors on 10/28/2021, and 11/4/2021 in the Journal Gazette.

The contract for Resolution # 76881 awarded to Bercot, Inc. for \$592,210.00 was the lowest most responsive bidder of four bidders and 15% below the Engineer's estimate of \$693,000. The second lowest bidder was \$23,190.00 above Bercot, Inc.

The cost of said project funded Sewer Revenue.

Council Introduction Date 12/14/2021

CC: Matthew Wirtz  
Jill Helfrich  
File

**BILL NO. S-21-12-12**

**REPORT OF COMMITTEE ON CITY UTILITIES  
December 21, 2021**

***Michelle Chambers Chair***

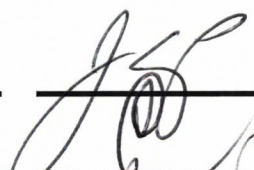
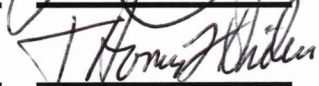


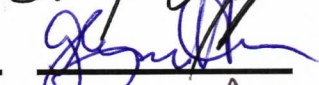
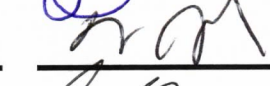
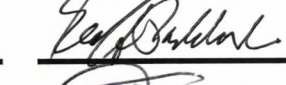

***Thomas Didier Co-Chair***

***All Council Members***

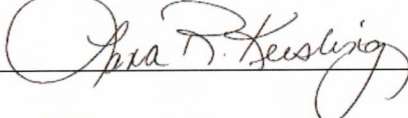
An Ordinance approving construction contract – 76881 2021 sewer open cut 1 – work order #76881 - between Bercot, Inc. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works

*Involving a total cost of \$592,210.00*

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

| <u>COUNCIL MEMBER</u> | <u>DO PASS</u>  | <u>DO NOT PASS</u> | <u>ABSTAIN</u> |
|-----------------------|---|--------------------|----------------|
| ARP                   |  |                    |                |
| CHAMBERS              |   |                    |                |
| DIDIER                |  |                    |                |
| ENSLEY                |  |                    |                |
| FREISTROFFER          |  |                    |                |
| HINES                 |  |                    |                |
| JEHL                  |  |                    |                |
| PADDOCK               |  |                    |                |
| TUCKER                |  |                    |                |

**LANA R. KEESLING  
CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilperson Chambers.

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

Read the third time in full and on motion by Councilperson Chambers, 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"/> |
| CHAMBERS           | <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"/> |
| TUCKER             | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |


DATED: December 21, 2021

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

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Special Ordinance No. S-21-12-12 on the 21st day of December, 2021

ATTEST:


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

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

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 22nd of December 2021, at the hour of 8:50 o'clock A.M. E.S.T.

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

Approved and signed by me this 22<sup>nd</sup> day of December 2021, at the hour of 1:00 o'clock PM E.S.T.

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

