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4 **AN ORDINANCE** approving CONSTRUCTION CONTRACT  
5 – PETTIT-RUDISILL NEIGHBORHOOD CONCRETE  
6 STREET REPAIRS PH IV - WORK ORDER #0723C –  
7 (\$1,064,892.10) – between MALOTT CONTRACTING INC.  
8 and the City of Fort Wayne, Indiana, by and through its  
9 Board of Public Works.

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

12 **SECTION 1.** That the CONSTRUCTION CONTRACT - PETTIT-RUDISILL  
13 NEIGHBORHOOD CONCRETE STREET REPAIRS PH IV - WORK ORDER #0723C –  
14 between MALOTT CONTRACTING INC. and the City of Fort Wayne, Indiana, by and  
15 through its Board of Public Works, is hereby ratified, and affirmed and approved in all  
16 respects, respectfully for:

17 All labor, insurance, material, equipment, tools, power, transportation,  
18 miscellaneous equipment, etc., necessary for THE REMOVAL AND  
19 REPLACEMENT OF THE EXISTING CONCRETE STREET OF HOLTON  
20 AVENUE FROM CAPITOL AVENUE TO SENATE AVENUE AND REED  
21 STREET FROM CAPITOL AVENUE TO MCKINNIE AVENUE. THIS  
22 PROJECT WILL ALSO INCLUDE SIDEWALK REPAIRS, CURB RAMPS,  
23 DRIVE APPROACHES, SUBSURFACE DRAINAGE INSTALLATION,  
24 SEWER CASTING ADJUSTMENTS AND RESTORATION OF  
25 DISTURBED AREAS;

26 involving a total cost of ONE MILLION SIXTY-FOUR THOUSAND EIGHT HUNDRED  
27 NINETY-TWO and 10/100 DOLLARS - (\$1,064,892.10). A copy of said Contract is on file  
28 with the Office of the City Clerk and made available for public inspection, according to law.

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

31   
Council Member

32 APPROVED AS TO FORM AND LEGALITY

33   
34 Malak Heiny, City Attorney

Proj: Bid		RES. NO. / W/O 0723C										TOTAL: \$1,102,734.00		TOTAL: \$1,064,892.10		TOTAL: \$1,172,485.00		TOTAL: \$1,253,333.33			
Date:		02/13/24										% over % under		0.00% 3.43%		% over % under		6.33% 0.00%		13.66% 0.00%	
Line	Item	Plan	Unit	Est (\$)	Est (\$)	Est (\$)	Est (\$)	Est (\$)	Est (\$)	Est (\$)	Est (\$)	Unit Cost (\$)	Amount (\$)	Unit Cost (\$)	Amount (\$)	Unit Cost (\$)	Amount (\$)	Unit Cost (\$)	Amount (\$)		
NO.	NO.	QTY																			
1	110- MOBILIZATION AND DEMOBILIZATION	1	LS	\$50,500.00	\$50,500.00	\$50,500.00	\$50,500.00	\$50,500.00	\$50,500.00	\$50,500.00	\$50,500.00	\$25,450.00	\$25,450.00	\$25,450.00	\$25,450.00	\$25,450.00	\$25,450.00	\$25,450.00	\$25,450.00		
2	201- TREE 18 IN., REMOVE (INCLUDES STUMP GRINDING)	5	EACH	\$2,250.00	\$11,250.00	\$11,250.00	\$11,250.00	\$11,250.00	\$11,250.00	\$11,250.00	\$1,397.00	\$6,985.00	\$6,985.00	\$2,800.00	\$14,000.00	\$1,100.00	\$5,500.00	\$1,100.00	\$5,500.00		
3	201- TREE 30 IN., REMOVE (INCLUDES STUMP GRINDING)	10	EACH	\$4,500.00	\$45,000.00	\$45,000.00	\$45,000.00	\$45,000.00	\$45,000.00	\$45,000.00	\$1,474.00	\$14,740.00	\$14,740.00	\$3,800.00	\$38,000.00	\$2,050.00	\$20,500.00	\$2,050.00	\$20,500.00		
4	202- TREE 48 IN., REMOVE (INCLUDES STUMP GRINDING)	1	EACH	\$12.75	\$12.75	\$12.75	\$12.75	\$12.75	\$12.75	\$12.75	\$1,595.00	\$1,595.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00		
5	202- PAVEMENT REMOVAL (INCLUDE INTEGRAL CURB AND ANY SUB-GRADE/ SUB-BASE REQUIRED TO ACHIEVE PROPOSED SUB-BASE)	7775	SYS	\$12.75	\$99,131.25	\$99,131.25	\$99,131.25	\$99,131.25	\$99,131.25	\$99,131.25	\$12.76	\$99,209.00	\$116,625.00	\$15.00	\$116,625.00	\$15.00	\$116,625.00	\$15.00	\$116,625.00		
6	202- CONCRETE, REMOVE	1500	SYS	\$15.00	\$22,500.00	\$22,500.00	\$22,500.00	\$22,500.00	\$22,500.00	\$22,500.00	\$14.08	\$21,120.00	\$24,000.00	\$16.00	\$24,000.00	\$17.00	\$25,500.00	\$17.00	\$25,500.00		
7	203- EXCAVATION, COMMON	388	CYS	\$40.00	\$15,440.00	\$15,440.00	\$15,440.00	\$15,440.00	\$15,440.00	\$15,440.00	\$31.35	\$12,101.10	\$30.00	\$11,580.00	\$30.00	\$11,580.00	\$30.00	\$11,580.00	\$30.00	\$11,580.00	
8	205- TEMPORARY INLET PROTECTION	14	EACH	\$75.00	\$1,050.00	\$1,050.00	\$1,050.00	\$1,050.00	\$1,050.00	\$1,050.00	\$88.00	\$1,232.00	\$70.00	\$980.00	\$70.00	\$980.00	\$70.00	\$980.00	\$70.00	\$980.00	
9	214- GEOGRID, TYPE IB (INCLUDES EXCAVATION, TX160) (UNDISTRIBUTED)	2750	SYS	\$12.00	\$33,000.00	\$33,000.00	\$33,000.00	\$33,000.00	\$33,000.00	\$33,000.00	\$13.31	\$36,602.50	\$10.00	\$27,500.00	\$10.00	\$27,500.00	\$8.00	\$22,000.00	\$8.00	\$22,000.00	
10	301- COMPACTED AGGREGATE NO. 53	3375	TON	\$30.00	\$101,250.00	\$101,250.00	\$101,250.00	\$101,250.00	\$101,250.00	\$101,250.00	\$32.10	\$108,337.50	\$35.00	\$118,125.00	\$35.00	\$118,125.00	\$35.00	\$118,125.00	\$35.00	\$118,125.00	
11	07490 HMA PATCHING, TYPE B	30	TON	\$150.00	\$4,500.00	\$4,500.00	\$4,500.00	\$4,500.00	\$4,500.00	\$4,500.00	\$291.50	\$8,745.00	\$10.00	\$300.00	\$10.00	\$300.00	\$250.00	\$7,500.00	\$250.00	\$7,500.00	
12	06457 PCGP, 7 IN.	7775	SYS	\$40.00	\$311,000.00	\$311,000.00	\$311,000.00	\$311,000.00	\$311,000.00	\$311,000.00	\$43.00	\$334,325.00	\$40.00	\$311,000.00	\$40.00	\$311,000.00	\$49.00	\$380,975.00	\$49.00	\$380,975.00	
13	604- SIDEWALK, CONCRETE	1175	SYS	\$54.00	\$63,450.00	\$63,450.00	\$63,450.00	\$63,450.00	\$63,450.00	\$63,450.00	\$55.00	\$64,625.00	\$52.00	\$61,100.00	\$52.00	\$61,100.00	\$59.00	\$69,325.00	\$59.00	\$69,325.00	
14	604- CURB RAMP, CONCRETE	75	SYS	\$145.00	\$10,875.00	\$10,875.00	\$10,875.00	\$10,875.00	\$10,875.00	\$10,875.00	\$120.00	\$9,000.00	\$100.00	\$7,500.00	\$100.00	\$7,500.00	\$200.00	\$15,000.00	\$200.00	\$15,000.00	
15	FWR0 DETECTABLE WARNING SURFACES	10	EACH	\$325.00	\$3,250.00	\$3,250.00	\$3,250.00	\$3,250.00	\$3,250.00	\$3,250.00	\$285.00	\$2,850.00	\$250.00	\$2,500.00	\$250.00	\$2,500.00	\$450.00	\$4,500.00	\$450.00	\$4,500.00	
16	605- CURB, CONCRETE (TYPE I/A, PIN-ON CURB AFTER PAVEMENT HAS BEEN POURED)	4050	LFT	\$13.00	\$52,650.00	\$52,650.00	\$52,650.00	\$52,650.00	\$52,650.00	\$52,650.00	\$14.50	\$58,725.00	\$15.00	\$60,750.00	\$15.00	\$60,750.00	\$19.00	\$76,950.00	\$19.00	\$76,950.00	
17	610- PCGP FOR APPROACHES, 8 IN.	50	SYS	\$80.00	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00	\$80.00	\$4,000.00	\$90.00	\$4,000.00	\$90.00	\$4,000.00	\$85.00	\$4,250.00	\$85.00	\$4,250.00	
18	610- PCGP FOR APPROACHES, 6 IN. (RESIDENTIAL) (UNDISTRIBUTED, APPROACHES NOT SHOWN ON THE PLANS SHALL BE APPROVED BY APPROACHES WITH HYDROSTICK TACKIFIER OR EQUIVALENT	625	SYS	\$65.00	\$40,625.00	\$40,625.00	\$40,625.00	\$40,625.00	\$40,625.00	\$40,625.00	\$68.00	\$42,500.00	\$70.00	\$43,750.00	\$70.00	\$43,750.00	\$68.00	\$42,500.00	\$68.00	\$42,500.00	
19	621- HYDROSEED WITH HYDROSTICK TACKIFIER OR EQUIVALENT POLYMER FOR EROSION CONTROL AND STRAW MULCH	2700	SYS	\$5.00	\$13,500.00	\$13,500.00	\$13,500.00	\$13,500.00	\$13,500.00	\$13,500.00	\$5.50	\$14,850.00	\$5.00	\$13,500.00	\$5.00	\$13,500.00	\$5.00	\$13,500.00	\$5.00	\$13,500.00	
20	623- FWR1 TOPSOIL	275	TON	\$50.00	\$13,750.00	\$13,750.00	\$13,750.00	\$13,750.00	\$13,750.00	\$13,750.00	\$55.00	\$15,125.00	\$45.00	\$12,375.00	\$45.00	\$12,375.00	\$50.00	\$13,750.00	\$50.00	\$13,750.00	
21	715- PIPE, TYPE 4, CIRCULAR, 6 IN. WIAGGREGATE FOR UNDERDRAIN	4600	LFT	\$12.00	\$55,200.00	\$55,200.00	\$55,200.00	\$55,200.00	\$55,200.00	\$55,200.00	\$9.90	\$45,540.00	\$12.00	\$55,200.00	\$12.00	\$55,200.00	\$13.00	\$59,800.00	\$13.00	\$59,800.00	
22	715- ADJUST WATER VALVE TO GRADE (CURB BOX AND VALVE BOX) (UNDISTRIBUTED)	20	EACH	\$150.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$198.00	\$3,960.00	\$90.00	\$1,600.00	\$90.00	\$1,600.00	\$250.00	\$5,000.00	\$250.00	\$5,000.00	
23	720- CASTING, ADJUST TO GRADE (UNDISTRIBUTED)	17	EACH	\$300.00	\$5,100.00	\$5,100.00	\$5,100.00	\$5,100.00	\$5,100.00	\$5,100.00	\$205.00	\$3,485.00	\$300.00	\$5,100.00	\$300.00	\$5,100.00	\$750.00	\$12,750.00	\$750.00	\$12,750.00	
24	720- CASTING, 24" SOLID SANITARY MANHOLE, FURNISH AND ADJUST TO GRADE	2	EACH	\$850.00	\$1,700.00	\$1,700.00	\$1,700.00	\$1,700.00	\$1,700.00	\$1,700.00	\$715.00	\$1,430.00	\$1,000.00	\$2,000.00	\$1,000.00	\$2,000.00	\$850.00	\$1,700.00	\$850.00	\$1,700.00	
25	801- MAINTENANCE OF TRAFFIC	1	LS	\$41,000.00	\$41,000.00	\$41,000.00	\$41,000.00	\$41,000.00	\$41,000.00	\$41,000.00	\$28,360.00	\$28,360.00	\$54,000.00	\$54,000.00	\$54,000.00	\$60,000.00	\$60,000.00	\$60,000.00	\$60,000.00		
109-																					
26	04299 FORCE ACCOUNT WORK/WORK ALLOWANCE	100000	DOL	\$1.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$1.00	\$100,000.00	\$1.00	\$100,000.00	\$1.00	\$100,000.00	\$1.00	\$100,000.00	\$1.00	\$100,000.00	

**Bid Tabulation**

Pettit-Rudisill Neighborhood Concrete Street Repairs Ph. IV



## Notice of Award

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Project: Pettit-Rudisill Neighborhood Concrete Street Repairs PH IV

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Owner: City of Fort Wayne Board of Works

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Resolution/Work Order #0723C

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Bidder: Malott Contracting Inc

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Bidder's Address: PO Box 292

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Kendallville, IN 46755

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You are notified that your Bid dated 2/15/2024 for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for Pettit-Rudisill Neighborhood Concrete Street Repairs PH IV

The removal and replacement of the existing concrete street of Holton Avenue from Capitol Avenue to Senate Avenue and Reed Street from Capitol Avenue to McKinnie Avenue. This project will also include sidewalk repairs, curb ramps, drive approaches, subsurface drainage installation, sewer casting adjustments and restoration of disturbed areas.

The Contract Price of your Contract is \$1,064,892.10.

1 copy of the proposed Construction Contract (except Drawings) accompany this Notice of Award.

You must comply with the following conditions precedent within [10] days of the date you receive this Notice of Award.

1. Deliver to the Owner [1] fully executed counterparts of the Construction Contract.
2. Deliver with the executed Agreement the following documents:
  - a. Performance Bond
  - b. Payment Bond
  - c. Certificate of Insurance
  - d. Executed E-Verify Affidavit.
  - e. Executed Drug Policy Acknowledgement Form.
3. Deliver evidence of successful Bidder's Affirmative Action Plan; OR, executed City of Fort Wayne Affirmative Action Program document to City of Fort Wayne Vendor Compliance, [Jessica.Bucher@cityoffortwayne.org](mailto:Jessica.Bucher@cityoffortwayne.org).



## Notice of Award

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited. Contractor will be allowed an additional 11 calendar days to submit Bonds.

Within thirty days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement.

**CITY OF FORT WAYNE  
BOARD OF PUBLIC WORKS**

Handwritten signature of Shan Gunawardena in blue ink.

Shan Gunawardena, Chair

Handwritten signature of Kumar Menon in blue ink.

Kumar Menon, Member

Handwritten signature of Chris Guerrero in blue ink.

Chris Guerrero, Member

**ATTEST:**

Handwritten signature of Michelle Fulk-Vondran in blue ink.

Michelle Fulk-Vondran, Clerk

Date: 2.20.24

cc: Project Manager

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

Resolution/Work Order #0723C

This Agreement is by and between the City of Fort Wayne – Board of Public Works (“Owner”) and Malott Contracting 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 removal and replacement of the existing concrete street of Holton Avenue from Capitol Avenue to Senate Avenue and Reed Street from Capitol Avenue to McKinnie Avenue. This project will also include sidewalk repairs, curb ramps, drive approaches, subsurface drainage installation, sewer casting adjustments and restoration of disturbed areas.**

## ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **Pettit-Rudisill Neighborhood Concrete Street Repairs Ph IV**

## ARTICLE 3—ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by **TRANSPORTATION ENGINEERING.**

## ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

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

4.02 *Contract Times: Dates*

A. The Work will be substantially complete on or before **6/28/2024**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **7/12/2024.**

4.03 *Milestones*

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

1. Milestone 1 **Type II-A curb will be pinned to the concrete street after the street has been poured**
2. Milestone 2 **[N/A]**
3. Milestone 3 **[N/A]**

4.05 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion:* Contractor shall pay Owner up to **\$1000** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner up to **\$1000** for each day that expires after such time until the Work is completed and ready for final payment.
3. *Milestones:* Contractor shall pay Owner up to **\$1000** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.05.A.1 will apply, rather than the Milestone rate.
4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.

B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

## ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.
- B. Total of all unit prices **\$1,064,892.10**.

## ARTICLE 6—PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

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

### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment no more often than every 30 days during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
  - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
    - a. **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).

### 6.03 *Final Payment*

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

## ARTICLE 7—CONTRACT DOCUMENTS

### 7.01 *Contents*

- A. The Contract Documents consist of all of the following:
  - 1. This Agreement.

2. Bonds:
    - a. Performance bond (together with power of attorney).
    - b. Payment bond (together with power of attorney).
  3. General Conditions.
  4. Supplementary Conditions.
  5. Specifications as listed in the table of contents of the project manual (copy of list attached).
  6. Drawings (not attached but incorporated by reference) consisting of **7** sheets with each sheet bearing the following general title: **Pettit-Rudisill Neighborhood Concrete Street Repairs Ph IV**
  7. Addenda (numbers **[N/A]** to **[N/A]**, inclusive).
  8. Exhibits to this Agreement (enumerated as follows):
    - a. Drug Policy Acknowledgement Form (Project Bids under \$150,000.00) or Written copy of Contractors Drug Policy (Project Bids over \$150,000.00)
    - b. E-Verify Affidavit
    - c. Escrow account agreement
  9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
    - d. Field Orders.
    - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

### 8.01 *Contractor's Representations*

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

9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

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

8.03 *Standard General Conditions*

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

## ARTICLE 9—MISCELLANEOUS

### 9.01 Terms

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

### 9.02 Severability

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

### 9.03 Emerging Business Enterprise(EBE) Participation

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

**ACKNOWLEDGMENT**

STATE OF INDIANA)  
                                  SS: )  
COUNTY OF ALLEN)

**BEFORE ME**, a Notary Public, in and for said County and State, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared the within named \_\_\_\_\_ who being by me first duly sworn upon his oath says that he is the \_\_\_\_\_ of \_\_\_\_\_ and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of \_\_\_\_\_ for the uses and purposes therein set forth.

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

\_\_\_\_\_  
**Notary Public**  
\_\_\_\_\_  
**Printed Name of Notary**

**My Commission Expires:**

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

**ACKNOWLEDGMENT**

STATE OF INDIANA )  
                                  SS: )  
COUNTY OF ALLEN )

**BEFORE ME**, a Notary Public, in and for said County and State, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared the within named **Thomas C. Henry, Shan Gunawardena, Kumar Menon, Chris Guerrero, and Michelle Fulk-Vondran**, by me personally known, who being by me duly sworn said that they are respectively the **Mayor** of the **City of Fort Wayne**, and **Chairman, Members, and Clerk** of the **Board of Public Works** of the **City of Fort Wayne, Indiana**, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said **City** for the uses and purposes therein set forth.

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

\_\_\_\_\_  
**Notary Public**  
\_\_\_\_\_  
**Printed Name of Notary**

**My Commission Expires:**

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

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement (Contract/Resolution Number **0723C**).

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

**CONTRACTOR**

**OWNER**

**Malott Contracting Inc.**

**CITY OF FORT WAYNE**

BY: \_\_\_\_\_  
**Print Name** \_\_\_\_\_

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

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

**BOARD OF PUBLIC WORKS**

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

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

Address for giving notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

BY: \_\_\_\_\_  
**CHRIS GUERRERO, MEMBER**

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

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

**0723C - Pettit-Rudisill Neighborhood Concrete Street Repairs Ph IV (#8944581)**

Owner: Public Works

Solicitor: Fort Wayne IN, City of

02/15/2024 02:00 PM EST

Section Title	Item	Item Code	Item Description	UoFM	Quantity	Unit Price	Extension
Pettit-Rudisill Neighborhood Concrete Street Repairs Ph. IV							
	1	110-01001	MOBILIZATION AND DEMOBILIZATION	LS	1	\$25,450.00	\$25,450.00
	2	201-02255	TREE 18 IN., REMOVE (INCLUDES STUMP GRINDING)	EACH	5	\$1,397.00	\$6,985.00
	3	201-02260	TREE 30 IN., REMOVE (INCLUDES STUMP GRINDING)	EACH	10	\$1,474.00	\$14,740.00
	4	201-02265	TREE 48 IN., REMOVE (INCLUDES STUMP GRINDING)	EACH	1	\$1,595.00	\$1,595.00
	5	202-02240	PAVEMENT REMOVAL (INCLUDE INTEGRAL CURB AND ANY SUB-GRADE/ SUB-BASE REQUIRED TO ACHIEVE PROPOSED SUB-BASE DEPTH AND A	SYS	7775.000000	\$12.76	\$99,209.00
	6	202-93615	CONCRETE; REMOVE	SYS	1500.000000	\$14.08	\$21,120.00
	7	203-02000	EXCAVATION, COMMON	CYS	386	\$31.35	\$12,101.10
	8	205-06933	TEMPORARY INLET PROTECTION	EACH	14	\$88.00	\$1,232.00
	9	214-11796	GEOGRID, TYPE IB (INCLUDES EXCAVATION, TX160) (UNDISTRIBUTED)	SYS	2750.000000	\$13.31	\$36,602.50
	10	301-FWR03	COMPACTED AGGREGATE NO. 53	TON	3375.000000	\$32.10	\$108,337.50
	11	304-07490	HMA PATCHING, TYPE B	TON	30	\$291.50	\$8,745.00
	12	502-06457	PCCP, 7 IN.	SYS	7775.000000	\$43.00	\$334,325.00
	13	604-06070	SIDEWALK, CONCRETE	SYS	1175.000000	\$55.00	\$64,625.00
	14	604-08086	CURB RAMP, CONCRETE	SYS	75	\$120.00	\$9,000.00
	15	604-FWR01	DETECTABLE WARNING SURFACES	EACH	10	\$285.00	\$2,850.00
	16	605-06120	CURB, CONCRETE (TYPE II-A, PIN-ON CURB AFTER PAVEMENT HAS BEEN POURED)	LFT	4050.000000	\$14.50	\$58,725.00
	17	610-07713	PCCP FOR APPROACHES, 8 IN.	SYS	50	\$80.00	\$4,000.00
	18	610-08446	PCCP FOR APPROACHES, 6 IN. (RESIDENTIAL) (UNDISTRIBUTED, APPROACHES NOT SHOWN ON THE PLANS SHALL BE APPROVED BY PM)	SYS	625	\$68.00	\$42,500.00
	19	621-FWR01	HYDROSEED, WITH HYDROSTICK TACKIFIER OR EQUIVALENT POLYMER FOR EROSION CONTROL AND STRAW MULCH	SYS	2700.000000	\$5.50	\$14,850.00
	20	623-FWR19	TOPSOIL	TON	275	\$55.00	\$15,125.00
	21	715-FWR	PIPE, TYPE 4, CIRCULAR, 6 IN. W/AGGREGATE FOR UNDERDRAIN	LFT	4600.000000	\$9.90	\$45,540.00
	22	715-94530	ADJUST WATER VALVE TO GRADE (CURB BOX AND VALVE BOX) (UNDISTRIBUTED)	EACH	20	\$198.00	\$3,960.00
	23	720-44000	CASTING, ADJUST TO GRADE (UNDISTRIBUTED)	EACH	17	\$205.00	\$3,485.00
	24	720-FWR31	CASTING, 24" SOLID SANITARY MANHOLE, FURNISH AND ADJUST TO GRADE	EACH	2	\$715.00	\$1,430.00
	25	801-FWR01	MAINTENANCE OF TRAFFIC	LS	1	\$28,360.00	\$28,360.00
Allowance							
	31	109-04299	FORCE ACCOUNT WORK/WORK ALLOWANCE	DOL	100000.0000	\$1.00	\$100,000.00
<b>Base Bid Total:</b>							<b>\$1,064,892.10</b>

## Drug Policy Acknowledgement Form

Contractor acknowledges the City of Fort Wayne has in place a Drug and Alcohol Policy that applies to any Contractor doing business with the City. A copy of this policy is available for inspection on the City of Fort Wayne website at: <http://www.cityoffortwayne.org/purchasing-home.html>. As a condition of being awarded any contract, the successful bidder shall sign this Drug Policy Acknowledgement and agree to be bound by those provisions of the policy that may be applicable. A copy of this form will be retained by the City of Fort Wayne.

The undersigned, on behalf of the Contractor deposes and states that the Contractor acknowledges the City of Fort Wayne's Alcohol and Drug Policy.

---

Name of Company

By: \_\_\_\_\_

Name and Title

## E-Verify Affidavit

Pursuant to Indiana Code 22-5-1.7, Contractor agrees and shall enroll in and verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program. E-Verify means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208). Division C, Title IV, s.403(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603). Contractor is not required to verify the work eligibility status of all newly hired employees of Contractor through the E-verify program if the E-Verify program no longer exists.

The undersigned, on behalf of the Contractor, being first duly sworn, deposes and states that the Contractor does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with the City, the undersigned Contractor will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

\_\_\_\_\_  
Name of Company

By: \_\_\_\_\_

\_\_\_\_\_  
Title

### ACKNOWLEDGEMENT

STATE OF INDIANA     )  
                                  ) SS  
COUNTY OF ALLEN    )

Before me, a Notary Public, in and for said State and County, personally appeared the within named Company by Name, Title, who being first duly sworn upon his/her oath states that he/she is a duly authorized agent of the Contractor, and as such duly authorized to execute the foregoing Declaration, and acknowledged the same as his/her voluntary act and deed.

**WITNESS** my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

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

\_\_\_\_\_  
Printed Name

# COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Public Works is providing this information to Council as an overview of this award.

## Pettit-Rudisill Neighborhood Concrete Street Repairs Ph IV

### RFPs & BIDS

Bid/RFP #	0723C
Awarded To	Malott contracting Inc
Amount	\$ 1,064,892.10
Conflict of interest on file?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Number of Registrants	4
Number of Bidders	3
Required Attachments	Council Digest Supplemental, Bid Tabulation, Award, Contract

### EXTENSIONS

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

### SPECIAL PROCUREMENT

Contract #/ID <i>(State, Federal, Piggyback--Authority)</i>	0723C
Sole Source/Compatibility Justification	N/A

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

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

# COUNCIL DIGEST SHEET

**COST COMPARISON**

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

**DESCRIPTION OF PROJECT / NEED**

<i>Identify need for project &amp; describe project; attach supporting documents as necessary.</i>	Please see attached Council Digest Supplemental

**REQUEST FOR SUSPENSION OF RULES**

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

**FUNDING SOURCE**

<i>Account Information.</i>	ARPA Funds



FW PUBLIC WORKS

# Board of Public Works

*In Your Neighborhood*

## COMMON COUNCIL DIGEST SHEET – SUPPLEMENTAL

### Pettit-Rudisill Neighborhood Concrete Street Repairs Ph IV

#### Action Requested:

Requesting an Ordinance approving the **Pettit-Rudisill Neighborhood Concrete Street Repairs Ph IV** project pursuant to the Board of Public Works Resolution #0723C and an award to **Malott Contracting Inc** in the amount of **\$ 1,064,892.10**.

Note: Malott Contracting was the lowest, most responsive bidder among 3 bidders. Malott Contracting's bid was under the Engineer's Estimate for this project.

#### Description and Scope of the Work:

The removal and replacement of the existing concrete street of Holton Avenue from Capitol Avenue to Senate Avenue and Reed Street from Capitol Avenue to McKinnie Avenue. This project will also include sidewalk repairs, curb ramps, drive approaches, subsurface drainage installation, sewer casting adjustments and restoration of disturbed areas.

**BILL NO. S-24-02-26**

**REPORT OF COMMITTEE ON PUBLIC WORKS**

**March 5, 2024**

***Geoff Paddock Chair***

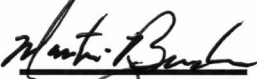





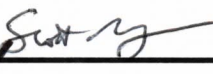
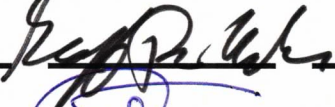

***Nathan Hartman Co-Chair***

***All Council Members***

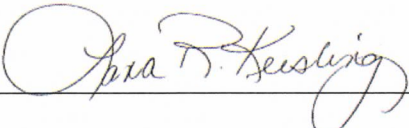
An Ordinance approving Construction Contract – Pettit-Rudisill Neighborhood Concrete Street Repairs PH IV - Work Order #0723C – between Malott Contracting Inc. and the City of Fort Wayne, Indiana, by and through its Board of Public Works

*Involving a total cost of \$1,064,892.10*

**COMMITTEE ON PUBLIC WORKS 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>
BENDER			
CHAMBERS			
ENSLEY			
FREISTROFFER			
HARTMAN			
JEHL			
MYERS			
PADDOCK			
TUCKER			

**LANA R. KEESLING  
CITY CLERK**



Public Hearing Date: N/A

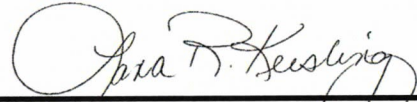
Read the first time in full and on motion by Councilperson Paddock.

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

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

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
BENDER	<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"/>
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"/>
HARTMAN	<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"/>
MYERS	<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: March 12, 2024




LANA R. KEESLING, CITY CLERK

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

Special Resolution No. S-24-02-26 on the 12th day of March, 2024

ATTEST:

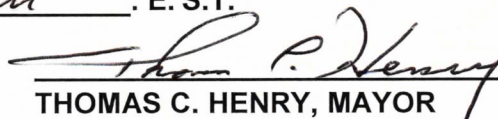
  
LANA R. KEESLING  
CITY CLERK

  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th of March 2024, at the hour of 11:50 o'clock A.M. E.S.T.

  
LANA R. KEESLING, CITY CLERK

Approved and signed by me this 17<sup>th</sup> day of MARCH 2024, at the hour of 9:00 o'clock AM E. S.T.

  
THOMAS C. HENRY, MAYOR

FORT WAYNE, INDIANA  
**RECEIVED**  
MAR 14 2024  
LANA R. KEESLING  
CITY CLERK