

BILL NO. S-11-09-08

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving STREET LIGHT
SYSTEM MAINTENANCE CONTRACT between
SHAMBAUGH & SON, L.P. and the City of Fort
Wayne, Indiana, in connection with the Board of
Public Works.

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

SECTION 1. That the STREET LIGHT SYSTEM
MAINTENANCE CONTRACT by and between SHAMBAUGH & SON, L.P.
and the City of Fort Wayne, Indiana, in connection with the Board of Public
Works, is hereby ratified, and affirmed and approved in all respects,
respectfully for:

All labor, insurance, material, equipment, tools, power,
transportation, miscellaneous equipment, etc., necessary for
maintenance of street lighting facilities. This is a four (4) year
Contract with an Optional Extension for a fifth (5th) year:

involving a total cost of:

\$868,133.00 - 2012

\$889,836.33 – 2013

\$914,306.83 – 2014

\$939,450.27 – 2015

\$967,633.78 – 2016 – Optional Extension

A copy said Contract is on file with the Office of the City Clerk and made
available for public inspection, according to law.

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

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

STREET LIGHT SYSTEM MAINTENANCE

CONTRACT/RESOLUTION NUMBER 98-6-15-11-1

July 27, 2011

Base Proposal

FINAL PRICE

BASE WORK FORCE			SHAMBAUGH & SONS		SHAMBAUGH & SON L.P.		AMERICAN LIGHTING		MIDWESTERN ELE	
DESCRIPTION	QTY	UNIT	U/P	EXT	U/P	EXT	U/P	EXT	U/P	EXT
Maintenance Unit Normal	4000	hour	\$ 204.06	\$ 816,240.00	\$ 204.06	\$ 816,240.00	\$ 214.38	\$ 857,520.00	\$ 233.50	\$ 934,000.00
Maintenance Unit OT/Sun/Holiday	20	hour	\$ 367.38	\$ 7,347.60	\$ 367.38	\$ 7,347.60	\$ 339.76	\$ 6,795.20	\$ 362.00	\$ 7,240.00
Maintenance Unit O T/Sat/Wkday	20	hour	\$ 289.72	\$ 5,794.40	\$ 289.72	\$ 5,794.40	\$ 277.85	\$ 5,557.00	\$ 291.30	\$ 5,826.00
Emergency Call Out w/Pickup	25	hour	\$ 163.74	\$ 4,093.50	\$ 163.74	\$ 4,093.50	\$ 141.34	\$ 3,533.50	\$ 150.00	\$ 3,750.00
Truck / Sundays-Holidays										
Emergency Call Out w/Pickup	50	hour	\$ 126.53	\$ 6,326.50	\$ 126.53	\$ 6,326.50	\$ 114.20	\$ 5,710.00	\$ 150.00	\$ 7,500.00
Truck / Sat & Weekdays										
TOTAL BASE BID-2012				\$ 839,802.00		\$ 839,802.00		\$ 879,115.70		\$ 958,316.00
ESCALATION YEAR 2013			2.50%	\$ 860,797.05	2.50%	\$ 860,797.05	3.00%	\$ 905,489.17	3.25%	\$ 989,461.27
ESCALATION YEAR 2014			3.00%	\$ 886,620.96		\$ 886,620.96	3.00%	\$ 932,653.85	3.25%	\$ 1,021,618.76
ESCALATION YEAR 2015			4.00%	\$ 922,085.80		\$ 922,085.80	3.00%	\$ 960,633.46	3.25%	\$ 1,054,821.37
4 YEAR TOTAL:				\$ 3,509,305.81		\$ 3,509,305.81		\$ 3,677,892.18		\$ 4,024,217.40
ESCALATION YEAR 2016			4.00%	\$ 958,969.23		\$ 958,969.23	3.00%	\$ 989,452.47	4.50%	\$ 1,102,288.33
Additional Maintenance Services:										
Partial Maint Unit Normal		hour	\$ 147.04		\$ 147.04		\$ 166.23		\$ 187.00	
Partial Maint Unit OT/Sun/Holiday		hour	\$ 247.61		\$ 247.61		\$ 260.14		\$ 277.00	
Partial Maint Unit OT/Sat/Wkdays		hour	\$ 195.98		\$ 195.98		\$ 213.99		\$ 230.00	
Labor Only per hour:										
Work Foreman/Journeyman/		hour	\$ 72.35		\$ 72.35		\$ 71.92		\$ 66.75	
Lineman										
Journeyman/Lineman		hour	\$ 66.32		\$ 66.32		\$ 71.92		\$ 62.30	
Heavy Equip Operator/Truck Driver		hour	\$ 62.91		\$ 62.91		\$ 55.41		\$ 49.70	
Groundman		hour	\$ 43.00		\$ 43.00		\$ 48.14		\$ 42.50	
Additional Equipment Only / hour:										
Line Truck		hour	\$ 50.00				\$ 40.00		\$ 32.00	
2" Water Pump		hour	\$ 7.00		\$ 7.00		\$ 5.00		\$ 5.00	
Pole Trailer		hour	\$ 7.50		\$ 7.50		\$ 7.50		\$ 8.00	
Trenching Machine		hour	\$ 42.00				\$ 35.00		\$ 25.00	

CONTRACT / RESOLUTION NUMBER 98-6-15-11-1

FOR

STREET LIGHT SYSTEM MAINTENANCE

FOR

THE CITY OF FORT WAYNE, INDIANA

WITH

SHAMBAUGH & SON, L.P.

COPY

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STREET LIGHT SYSTEM MAINTENANCE CONTRACT

Contract 98-6-15-11-1

THIS CONTRACT is made and entered into this 31st day of August, 2011, by and between Shambaugh & Son, L.P., hereinafter referred to as the **CONTRACTOR**, and the **CITY OF FORT WAYNE, INDIANA**, a political subdivision of the State of Indiana, acting by and through the **MAYOR** and the **Board of Public Works**, hereinafter referred to as the **CITY**;

This Contract, although executed on behalf of the **CITY** by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the **CITY** unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana. This Contract is also contingent upon the Common Council appropriating the necessary funds for this Contract in each annual budget of the City. In the event that Common Council fails to appropriate all the necessary funds for this Contract, the Contract shall, at the City's option, become null and void. Should Common Council fail to approve the Contract within ninety (90) days after the date of the proposal opening, then the contractor shall not be bound to the Contract unless he/she/it elects to be so bound.

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

I SCOPE OF SERVICES

1. General

1.1 Objective

CONTRACTOR shall furnish all labor, insurance, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary to install, remove, maintain, replace, transfer or any other services necessary to maintain the City street light system, as defined in section 1.3 Overview of the City Street Light System, in good working order from January 1, 2012 through December 31, 2015, according to all provisions of **RESOLUTION/CONTRACT NO 98-6-15-11-1**, and to do everything required by this Contract and the other documents constituting a part hereof.

1.2 Definitions

Where the following terms occur herein, the intent and meaning shall be as follows:

1.2a Contractor

Shall mean Shambaugh & Son, L.P., 4711 Speedway Drive, Fort Wayne, Indiana 46825.

1.2b City

Shall mean the City of Fort Wayne, Indiana, 200 East Berry Street, Fort Wayne, Indiana 46802.

1.2c Surety

Shall mean the party who is bound with and for the Contractor to ensure the payment of all obligations and lawful debts pertaining to and for this contract.

1.2d Notice

Any written notice to be given hereunder by either party to the other party shall be effected by certified mail, return receipt requested. Notice to the Contractor shall be sufficient if made or addressed to Shambaugh & Son, L.P., 4711 Speedway Drive, Fort Wayne, Indiana 46825. Notice to the City shall be sufficient if made or addressed to City of Fort Wayne, Division of Public Works, 200 East Berry Street, Suite 240, Fort Wayne, Indiana, 46802.

1.2e Contract Documents

The Contract documents are comprised of this Contract, including all exhibits and attachments thereto, the Contractor's proposal and bid sheets, the Certificate of Liability Insurance, the Corporate Guarantee in place of the Performance Bond and the Payment Bond, the City of Fort Wayne Drug and Alcohol Testing Procedures and the Certificate of Non-Segregated Facilities and Affirmative Action Plan. In the event of any conflict between the terms of any of these documents, the Contract shall govern.

1.2f Street Light Operations (SLO)

Shall mean the employees in Traffic Operations, Street Lighting Division under the City of Fort Wayne Board of Public Works responsible for all street light system maintenance and for providing the daily assignments to the Contractor for carrying out the services in this Contract.

1.2g Street Light Operations Supervisor

Shall mean the Supervisor of the Street Light Warehouse designated by the City with the authority to direct the Contractor in its performance of this Contract.

1.2h Contract Administrator

Shall mean the City's director of Traffic Operations designated to act on behalf of the City in all matters relating to this Contract.

1.2j Normal Working Hours

Shall mean eight (8) hours per day on Monday through Friday unless designated as a holiday. Each day begins at 7:00 AM and ends at 3:30 PM with an unpaid ½ hour for lunch. The City reserves the right to adjust these hours at its discretion.

1.3 Overview of the City Street Light System

The Contractor will be responsible for the maintenance and repair of approximately 33,759 city street lights. The majority (97%) are high-pressure sodium lamps with metal halide and incandescent lamps combined for 3%. Lamp pole materials in the City include wood, aluminum, concrete, and fiberglass, along with a small percentage of cast iron and cast aluminum. Pole heights range from 50 feet on major thoroughfares to 12 feet for ornamental lights in neighborhoods. Approximately 60% of the system uses underground wire with 40% overhead. Some alley lighting is provided by the City. In some locations, maintenance and repair work is required near primary circuits.

The Contractor's equipment and the daily staging area will be located at the Street Light Operations Warehouse, 335 East Murray Street in the City of Fort Wayne. All materials required for street light maintenance and repair are supplied by the City and are dispersed from the warehouse.

1.4 Responsibilities of the Contractor

Services provided under this Contract include preventive maintenance, remedial repairs, repairs caused by accidents and vandalism, repairs required because of damage to lighting equipment, including dig ups caused by other contractors and City Utilities crews, installation of new lighting equipment for small projects (approximately 1-15 poles) and assisting other contractors on larger projects that have been bid out.

The Contractor will respond to emergency call-outs both during normal working hours and beyond normal working hours including weekends and holidays.

The Contractor will maintain all equipment required by the Contract in good working condition with safety being of primary concern. This equipment will be located at the Street Light Operations Warehouse so as to be immediately available to perform all contracted services as directed by the City. Other supplementary equipment not located at the warehouse will be made available by the Contractor by rental or other temporary means within 24 hours of notification by the City. (Weekends and holidays excluded)

The Contractor will perform all services directed by the City through the issuance of a Job Ticket by the Street Light Warehouse Supervisor or a designated representative. When the assigned job is completed, the Contractor will record the required information on the job ticket and return it to the Street Light Warehouse Supervisor.

The Contractor's crew foremen will be required to maintain a daily log on a format approved by the City, of work performed including the nature of the problem, the corrective action, the date, the labor time for each crew member, the equipment used, and the material used.

In order to promote cooperative relationships with area vendors, the Contractor will establish and maintain procedures for paying these vendors within 45 days after receipt of acceptable invoices. The Contractor will have a corporate guarantee. This contract requirement will not create or transfer any liability for these payments to the City.

1.5 Contractor as Independent Contractor

It is expressly agreed and understood that the Contractor is in all respects an Independent Contractor and that the Contractor is in no respect an agent, servant or employee of the City of Fort Wayne.

1.6 Invoicing and Payments

The Contractor will invoice the City on the basis of work performed and accepted under the Contract for periods of one week using a format approved by the City. If the Contractor is in compliance with the provisions of the contract, the Board of Public Works will make payment for such work performed and completed within 45 days of receipt of any invoice. All foremen logs for each respective week will be included with each invoice. Failure to provide all information listed above may cause the City to withhold payment of the affected invoice.

2. Contract Sum

The City shall pay Contractor for the performance of the Contract the amount of \$868,133.00 through 2012; \$889,836.33 through 2013; \$914,306.83 through 2014; \$939,450.27 through 2015 with an optional extension of \$967,633.78 through 2016. (This contract amount is an annual estimate which includes normal maintenance units for the year, plus projected overtime, plus projected costs for rental of specialty equipment listed in the proposal.) In the event the amount of work is increased or decreased by the City, the contract sum shall be increased or decreased according to the hourly rates set forth in the Contractor's Proposal.

3. Term of Contract

The term of the Contract will be for a period of four (4) years. The City may extend the Contract, at its option, for one (1) year period or fraction thereof by written notice to the Contractor at least ninety (90) days before the contract is scheduled to expire. The City makes no guarantees regarding the potential extension of this Contract. Should the Contract be extended, Contractor agrees to be bound by the rate increases submitted in the Proposal.

3.1 Start Date of the Term

The start date of the Contract will be January 1, 2012. A notice to proceed will be issued to the Contractor by the City immediately following Contract approval by the City of Fort Wayne Common Council.

4. Entire Agreement / No Waiver

The Contract documents contain the entire agreement between the City of Fort Wayne and the Contractor and shall supercede all prior oral and written statements or written statements of understanding of any kind made by the parties or their representative(s). Amendments to this Contract must be in writing and duly executed by the parties in accordance with City rule and regulations and other applicable laws and ordinances.

4.1 No Waiver

The failure of the City of Fort Wayne to insist in any one or more instances upon the performance of any terms, covenant or conditions of the Contract, or to exercise any right thereunder, shall not be construed as a waiver or relinquishment of any other term, covenant, default or condition or the exercise of any other rights under the Contract.

5. Contract Management

The City's Director of Traffic Operations will be designated as the Contract Administrator on behalf of the City in all matters relating to this Contract. The Contractor's work assignments and daily supervision will be under the jurisdiction of the City's Supervisor of Street Light Warehouse (SLO). The SLO Supervisor will decide any and all questions which may arise as to the quality, quantity, character and classification of services performed by the Contractor and will work closely with the Contractor on the execution of the Contract.

5.1 Dispute Resolution

In the event of any performance or contractual dispute between the City's SLO Supervisor and the Contractor that cannot be resolved after a reasonable discussion period, the issue(s) in dispute will be referred in writing to the City's Contract Administrator. After careful review of the disputed issues, the Contract Administrator will render a written decision. If either or both parties do not agree with the decision of the Contract Administrator either party may appeal the decision in writing to the Chairman of the Board of Public Works within ten (10) working days after receipt of the decision of the Contract Administrator. During this process, both parties will operate in accordance with the decision of the Contract Administrator. After careful review of the disputed issues(s), the Chairman of the Board of Public Works will render a written decision within fifteen (15) days from receipt of the appeal. The decision of the Chair of the Board of Public Works will be final.

6. Services to be Performed

The Contractor will be expected to perform all services listed below and such other related services that may be required to assure the effective and efficient operation of the City's street light system.

6.1 System Maintenance

- Install, repair and maintain wood, aluminum, steel, concrete and fiberglass standards and poles either direct buried or foundation mounted.
- Install and / or construct pole foundations, both manufactured foundations and concrete foundations constructed on site.
- Provide transportation of all materials to and from job site.
- Install, repair and maintain all underground and overhead supply conductors which includes making necessary attachments, by a journeyman lineman, to Indiana & Michigan Power secondary lines and other power companies that will permit attachment by City Contractor. These secondary lines do not exceed 600 volts AC. Journeyman Lineman will also be called upon to work in the proximity to primary live distribution conductors in accordance with the standards specified in Section I, Item 5.
- Install, repair and maintain all lighting fixtures used throughout the City's street light systems along with all associated components required for proper operation of the systems.
- Provide electrical service work for municipal facilities.

6.2 Emergencies

The Emergency Call Out unit will be used to respond to emergency situations that occur during normal working hours and to emergency call-outs that occur outside of during normal working hours including weekends and holidays.

6.3 Restoration

Restore any right-of-way areas that are damaged during maintenance or construction work. This includes grassy areas and concrete and asphalt paving surfaces.

7. Performance Standards and Quality of Workmanship

All work performed by the Contractor in providing the services specified in this Contract shall meet or exceed the applicable specifications of Section 807 "Highway Illumination" of the 2012 edition of the Indiana Department of Transportation Standard Specifications for Road and Bridge construction.

The Contractor shall also adhere to the requirements of the 2011 edition of the National Electrical Safety Code published by The National Fire Protective Association (NFPA), the Occupational Safety and Health Standards for the Construction Industry, amended as

of April, 2006, published by the United States Department of Labor and as directed by ABP in order to conform to the City's Light lease agreement.

The Contractor will be solely responsible for ensuring adherence to the above requirements. Any waiver of or deviation from any part of these standards must have specific written approval from the SLO Supervisor.

8. Street Light Operations Warehouse Facility

8.1 Equipment

All vehicles and equipment required for immediate availability will be located at and dispatched from the SLO warehouse. The City will provide a fenced and locked parking area inside the complex but assumes no responsibility or liability for the Contractor's vehicles and equipment.

At the discretion of the SLO Supervisor, during periods of extreme cold weather, Contractor vehicles designated for possible use in emergency situations may be parked inside the warehouse.

8.2 Personnel Reporting

All Contractor personnel assigned to perform the services specified in this Contract will report to the SLO warehouse by their designated work start time each work day.

8.3 Personal Vehicles

The City will provide parking spaces for the personal vehicles of Contractor personnel at the SLO warehouse on the outside of the fenced complex. Parking of personal vehicles will not be permitted inside the fenced complex. The City assumes no responsibility or liability for any damage or loss related to these vehicles.

8.4 Other Facility Usage

Other facilities provided for use by Contractor personnel at the SLO warehouse include:

- Restroom and showers
- Personal lockers
- Telephones for Contractor related business
- Fax machine for Contractor related business
- Ice machine for coolers

Since there is a cost to the City for providing electricity, water, waste disposal, janitorial service and phone service, a monthly reimbursement from the Contractor will be deducted from the invoices submitted for the first full week of each month. This will include the actual phone and fax charges related to the Contractor from the previous

month plus a fixed monthly charge of \$665.00 for the other services and facilities provided by the City.

8.5 Parts and Materials

All parts and materials required to perform the services specified in this Contract will be furnished by the City and will be distributed to the Contractor from the SLO warehouse. The Contractor will be required to provide material usage records in a manner acceptable to the SLO Supervisor.

II. ADDITIONAL REQUIREMENTS OF THE CONTRACTOR

1. Insurance

Prior to the execution of the contract the Contractor will be required to obtain at its expense, comprehensive automobile, property and liability insurance naming the Contractor and the City as co-insured for personal injury, property damage and/or liability arising from the services performed under the contract. The City's Risk Management Department will review and approve insurance certificates. Prior to execution of a contract, the Contractor shall furnish the City with certificates of insurance. Certificates shall be provided annually throughout the term of the Contract. Certificate of Insurance should show the City as additional insured and should contain a non-cancellation provision. City shall approve insurance Company (Companies).

Coverage will include:

Comprehensive Public Liability and Property Damage Insurance in the amount of \$1,000,000 for each individual claim and \$2,000,000 aggregate claims. Some street lighting facilities are on joint poles with I&M, Frontier and Comcast Cablevision therefore, to protect I&M, Frontier and Comcast Cablevision as an owner and / or lessee against any damage and injury claims that might arise out of the Contractor's operation, the successful Contractor before starting work, will supply evidence of insurance coverage by furnishing I&M, Frontier and Comcast Cablevision two copies of a Certificate of Liability and Property Damage Insurance. This will apply to all other future companies with poles shared with City street lighting facilities.

Workers' Compensation insurance covering all of the Contractor's employees assigned to perform the services specified in this proposal in compliance with the Indiana Workman's Compensation Act.

Comprehensive Automobile Liability Insurance to cover all vehicles assigned to perform the services specified in this proposal. Public Liability limits shall not be less than \$500,000 each person and \$1,000,000 each occurrence. Property damage limits shall not be less than \$500,000 each occurrence.

2. Performance Bond

Prior to execution of the contract, the Contractor shall furnish a corporate surety bond as security for performance of the Contract, equal to 50% of the total annual Base bid for the accepted proposal. The bond shall be duly executed by an incorporated surety company authorized to do business in the State of Indiana. Any changes or cancellation of the bond must be served by notice in writing to the City at least thirty (30) days prior to changes or cancellation. Failure to maintain bonding will result in termination of the contract. The Contractor may propose an alternate form of corporate guarantee in lieu of a surety bond in its proposal. This alternate form must clearly indicate how it is legally binding and protective of the performance guaranteed to the City under the contract.

3. Payment Bond

Prior to execution of the contract, the Contractor shall furnish a payment bond as security for payment of vendors, equal to 25% of the total annual Base bid for the accepted proposal. The bond shall be duly executed by an incorporated surety company authorized to do business in the State of Indiana. Any changes or cancellation of the bond must be served by notice in writing to the City at least thirty (30) days prior to changes or cancellation. Failure to maintain bonding on an annual basis will result in termination of the contract. The contractor may propose an alternate form of corporate guarantee in lieu of a surety bond in its proposal. This alternate form must clearly indicate how it is legally binding and protective of the performance guaranteed to the City under the contract.

4. Licenses, Taxes and Compliance with the Law

The Contractor will be responsible for all licenses, taxes and other requirements necessary to perform the services specified in this Contract. The Contractor will be responsible for complying with all state, federal or local laws, regulations and ordinances relevant to the scope of services.

5. Certificate of Non-Segregated Facility and Affirmative Action Plan

CONTRACTOR is required to submit the following form annually to the Office of Contract Compliance, 200 East Berry Street, Suite 240, Fort Wayne, Indiana 46802:

- ❖ Certificate of Non-Segregated Facilities
- ❖ Affirmative Action Plan

Prior to beginning work on this Contract, the Contractor must obtain from and return this form to the Office of Contract Compliance noted above. Once received, this form will be kept on record for a period of one (1) year. This form must be on record prior to beginning work on this Contract.

6. City of Fort Wayne Drug and Alcohol Testing Procedures

The City of Fort Wayne has in place an Alcohol and Drug Policy that also applies to any contractors doing business with the City. A copy of this policy is available for inspection in the office of Risk Management, 200 East Berry, Suite 470. The Contractor will be furnished a copy of said policy and, as a condition of being awarded any contract, the Contractor shall execute an acknowledgment of receipt of said policy and agree to be bound by those provisions of the policy that may be applicable. A copy of this form will be retained by the Risk Management Department of the City of Fort Wayne.

III. GENERAL PROVISIONS

1. Hours of Work

The normal working hours for the employees under this contract shall be five (5) days per week, eight (8) hours per day, unless there is inclement weather or a holiday. The work day shall start and end at the Street Light Operations Warehouse, 335 E. Murray Street. The crews will return to the Street Light Operations Warehouse within thirty (30) minutes after shift completion.

2. Inspection

The Board of Works, the City Engineers, officials of the Office of Compliance of the City of Fort Wayne, and any other City officials designated by the Board shall have access to the work sites and Contractor's records at all reasonable times for inspection of the work performed under and in compliance with the Contract.

Any inspection or failure to inspect by the Board or City does not relieve the Contractor of the obligation to comply with all provisions of the Contract.

3. Warranty

The Contractor fully warrants his work for one (1) year after the job completion date noted on the job ticket, and shall remedy at the Contractor's own expense any defects or problems occurring during that one-year period due to workmanship.

4. Cancellation and Performance

The Board of Works reserves the right to cancel this Contract for lack of performance, lack of cooperation, substandard workmanship, non-payment of creditors and failure to maintain required corporate guarantees, insurance and / or licenses.

5. Termination for Convenience

The Board of Works can terminate the Contract for the convenience of the Board at any time by providing written notice to the Contractor. If the Contract is terminated by the Board pursuant to this clause, the Contractor will be paid only for work performed up to the termination, and pursuant to this clause, all work including any finished or unfinished documents, data, studies, and reports prepared by the Contractor pursuant to the Contract shall become the property of the Board of Works of the City of Fort Wayne.

6. Termination for Default

If the Contractor fails to fulfill its obligations under the Contract in a timely and proper manner, the Board of Works shall have the right to terminate the Contract for default by written notice. If the Contract is terminated pursuant to this clause, all work including finished or unfinished documents, data studies, surveys, and reports prepared by the Contractor shall become the Board's property. Termination pursuant to this clause is not the Board's exclusive remedy and will not prejudice the right of the Board to take any other legal action against the Contractor.

7. Changes

The Board may, at any time, by written change order, make changes to the general scope of the Contract. If any such change results in an increase or decrease in the cost of performance, time of performance, or any other material provision under the Contract, a claim by the Contractor for adjustment under this clause shall be submitted to the Board in writing within thirty (30) days after the issuance of the change order. All such change orders and resultant compensation shall be incorporated as written modifications to the Contract. Any dispute as to an equitable adjustment shall be pursued according to the Dispute Resolution clause 5.1 in this Contract, provided, however, that the Contractor will proceed with the work as changed, even if there is a dispute.

8. Assignability

The Contractor shall not assign or transfer any interest in the Contract without the prior written consent of the Board of Works.

9. Sub-Contracting

None of the services covered by the Contract shall be sub-contracted or contracted out without the prior written consent of the Contract Administrator. No subcontracts will be awarded to contractors who have been debarred or suspended from doing work for the City of Fort Wayne or federally assisted contracts.

10. Permits

Any permits or fees including those required for street light poles and street cuts will be provided by the City of Fort Wayne for this Contract.

11. Contractor's Protection of Work

The Contractor shall take all reasonable precaution for the safety of the employees on the job and shall comply with all applicable safety laws, building codes, and ordinances. The Contractor shall properly and fully guard all excavations and dangerous places and will use all due and proper precaution to prevent injury to any and all persons and property.

The Contractor shall supply and use portable mounted flasher arrow boards and advance warnings signs for work within the public right-of-way and as otherwise necessary. The Contractor shall be responsible for their proper use and installation as per the latest edition of the Indiana Uniform Manual on Traffic Devices.

The Contractor shall equip all vehicles assigned to perform the services specified in this proposal with arrow boards or flashing amber lights when arrow boards cannot be mounted.

12. Hold Harmless

Contractor shall indemnify, defend and hold harmless the City of Fort Wayne, its agents, servants, employees, departments, Boards and Commissions from and against any and all claims and damages of every kind, for injury to or death of any person or persons and for damage to or loss of property, arising out of or resulting from the acts or omissions of Contractor, its agents, servants, or employees in its performance of this Contract which shall include the payment of legal fees. The City of Fort Wayne shall indemnify, defend and hold harmless the Contractor, its agents, servants, and employees, from and against any and all claims and damages of every kind, for injury to or death of any person or persons and for damage to or loss of property, arising out of or resulting from the acts or omissions of the City of Fort Wayne, its agents, servants or employees in its performance of the Contract during the term hereof.

13. Public Safety

If at any time, in the opinion of the SLO Supervisor or the designated representative, the work is not properly lighted, barricaded and in all respects safe to public travel, or to persons on or about the work on public or private property, the SLO Supervisor or the designated representative shall have the right to order such safeguards to be erected and such precautions be taken as deemed advisable. The Contractor shall promptly comply with such orders. If under such circumstances the Contractor does not or cannot immediately put the same into proper and approved condition or if the Contractor or his representative are not upon the ground so that he can be immediately notified of the insufficiency of safety precautions, then the SLO Supervisor or the designated

representative may put the work into such a condition that it shall be in all respects safe. The Contractor shall pay all expenses of such labor and materials as may have been used for this purpose by him or by the SLO Supervisor or the designated representative. Such action of the SLO Supervisor or the designated representative, or his failure to take such action, shall in no way relieve the Contractor of the entire responsibility for any cost, loss, or damage by any party sustained on account of the insufficiency of safety precautions taken by him or by the SLO Supervisor or the designated representative acting under authority of this section. The Contractor shall at all times remove any materials damaged due to accident from the work site.

14. Lead-Base Paint

The Contractor will not apply any lead base paint and will take all necessary steps to reduce the hazard from lead base paint already on surfaces. Lead base paint is defined as paint containing more than six-one-hundredths of one percent of lead by weight in the total non-volatile content of liquid paint, or in the dried film of paint already applied, and shall include cracking, scaling, peeling, chipping, or loose paint. Any surfaces to be painted shall be treated as necessary. Treatment involves washing, sanding, scraping, wire brushing, or otherwise cleaning so as to remove cracking, scaling, peeling, chipping, or loose paint back to sound surfaces and repainting with two (2) coats of suitable non-lead paint. If paint film integrity cannot be maintained the surface must be covered.

15. Contractor's Clean-Up

During any work and after completion, the Contractor shall clean up and remove all waste materials from the work site and will leave the premises in a clean and sightly condition.

Materials shall be neatly, safely and compactly piled up along the sides of the roadway on which the improvement is located or adjacent thereto, as the SLO Supervisor may direct, in such a manner as to cause the least inconvenience and damage to the property and to the general public, and not within fifteen (15) feet of any fire hydrant. Private drives and street crossings shall be kept open. Shade trees and other improvements shall be protected from damage. Injury to lawns, trees, sidewalks, street or other improvements shall be made good by the Contractor to the satisfaction of the SLO Supervisor or the designated representative. The Contractor shall at all times keep the work site clean and free of debris.

16. Severability

If any term or portion of this Contract is found to be illegal and/or unenforceable, such term or portion shall be deemed stricken and the remainder of the Agreement shall remain in full force and effect.

17. Choice of Law / Venue

The Contract Documents shall be interpreted in accordance with Indiana law. The parties will submit to jurisdiction and venue in Allen County, Indiana.

18. Anti-Discrimination under Indiana Code 5-16-6-1

The Contractor agrees as follows:

a. That in the hiring of employees for the performance of work under the Contract or any approved subcontract hereunder, no contractor or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of disability, race, religion, color, sex, national origin or ancestry, discriminate against any resident of the State of Indiana who is qualified and available to perform the work to which the employment relates;

b. That no Contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, religion, color, sex, national origin or ancestry;

c. That there may be deducted from the amount payable to the Contractor by the City of Fort Wayne under the contract a penalty of five dollars (\$5.00) per person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the Contract; and,

d. That the Contract may be cancelled or terminated by the City of Fort Wayne and all money due or to become due hereunder may be forfeited for a second or subsequent violation of the terms or conditions of this clause.

19. Anti-Discrimination under the code of the City of Fort Wayne, Ordinance NO. G-21-78

In the performance of work under the Contract or any approved subcontract hereunder the Contractor, subcontractor, and any person acting on behalf of such contractor or sub-contractor will not discriminate against any person who is qualified and available to perform the work to which the employment relates.

The Contractor, subcontractor, or any person acting on behalf of such contractor or subcontractor will not obstruct the enforcement of this provision.

The Contractor, subcontractor, or any person acting on behalf of such contractor or subcontractor will not retaliate against any person because of good faith, reasonable actions taken to overcome, alleviate, or report discrimination.

Enforcement of this section shall be through order of the City of Fort Wayne in the following manner:

a. Whenever any member of the Division of the City of Fort Wayne awarding this Contract, or whenever a Compliance Officer of the City of Fort Wayne has reason to believe that any of the provisions of this clause and of Ordinance No. G-21-78 have been violated, the matter may be referred to the Metropolitan Human Relations Commission for investigation and initiation of discrimination charges against the Contractor or subcontractor. Cases over which the Metropolitan Human Relations Commission has no jurisdiction shall be investigated by the Compliance Officer for the City.

b. A final order of the Metropolitan Human Relations Commission shall be forwarded to the Compliance Officer for the City of Fort Wayne and to the Division awarding the Contract which may invoke one of the remedies set forth in subsection (c) of this clause. If it is a matter over which the Metropolitan Human Relations Commission does not have jurisdiction, the Division awarding the Contract shall conduct a hearing to determine whether there has been a breach of Ordinance No. G-21-78.

c. If the Division awarding the Contract determines that the Contractor, subcontractor, or any person acting on behalf of such contractor or subcontractor has violated a provision or provisions of Ordinance No. G-21-78, the Division awarding the Contract may:

(1) Deduct from the amount payable to the contractor by the City of Fort Wayne under this Contract the sum of not less than ten dollars (\$ 10.00) per day, nor more than one thousand dollars (\$ 1,000.00) per day per violation. Each day that the violation(s) exists shall be deemed a separate offense.

(2) The Division of the City awarding this Contract may cancel or terminate this Contract, and all money due or to become due under the Contract may be forfeited for a second or any subsequent violation of Ordinance No. G-21-78.

IV. SPECIAL PROVISIONS

1. Contractor Personnel

All Contractor personnel required to perform the services specified in this Contract shall be certified to meet the following qualifications of their respective classifications and each will be equipped with a hard hat and a safety vest or safety suspenders.

1.1 Journeyman / Lineman

Must have five or more year's experience in the trade, as a Journeyman Lineman, have passed a Journeyman Lineman examination given by a duly constituted Outside Union of the IBEW or have been certified by any Outside Joint Apprenticeship and Training Committee or an equivalent verifiable certificate of qualifications acceptable to the City.

1.2 Heavy Equipment Operator / Truck Driver

Must have at least three years experience in the trade, as Heavy Equipment Operator/Truck Driver, and have passed an examination pertaining to this classification given by a duly constituted Outside Union of the IBEW or an equivalent verifiable certificate of qualifications acceptable to the City.

1.3 Groundman

Must have experience in the trade, have the necessary verifiable qualifications pertaining to this classification and have been employed in the normal construction labor market for a period of at least one year in the last four years.

2. Contractor Work Force Units

2.1 (2) Two Maintenance Units each of which will consist of:

- (1) One Working Foreman Journeyman / Lineman
 - (1) One Heavy Equipment Operator / Truck Driver
 - (1) One Groundman
 - (1) One ¾ Ton Pick Up Truck
 - (1) One 50' Working Height Bucket Truck with Insulated Boom Bucket
- NOTE: One Maintenance Unit must be equipped with a 60' Working Height two man Bucket Truck.
- All tools and equipment shown in this base proposal

2.1a Partial Maintenance Unit

A Partial Maintenance Unit may be permitted at the discretion of the Supervisor of Street Light Warehouse or designated representative. A partial Unit is one where the assigned Groundman is temporarily not available or where the assigned Heavy Equipment Operator is temporarily not available and the Contractor chooses to substitute a Groundman who is qualified to temporarily perform the duties of the Heavy Equipment Operator. The Contractor will be solely responsible for insuring the qualifications of the Groundman. During these occurrences the City will recognize that the qualified Groundman is performing the duties of a Heavy Equipment Operator.

2.2 (1) One Emergency Call Out Unit which will consist of:

- The Journeyman / Lineman assigned to Call out
- A Pick Up Truck from one of the Maintenance Units
- or
- A Maintenance Unit Bucket Truck

The term Emergency Call Out applies only to emergency situations that occur outside of normal working hours including weekends and holidays.

The Contractor will provide for (2) two employees to be designated as "On Call" at ALL times outside of normal working hours including weekends and holidays. At least (1) one employee must be a Journeyman / Lineman. Both designated employees will be available for immediate call-out duties when contacted by a City Call-out person. Designated phone numbers will be provided to the City Call-out persons for each Contractor employee when that employee is on call.

3. Detailed Specifications for Maintenance Units

These specifications are intended to cover the duties and responsibilities of the Contractor and City for performing the necessary maintenance of the City Street Light System.

3.1 The Contractor shall be required to furnish two (2) Maintenance Units as described under Work Force Units #2.1 and #2.1a on page 20 of this contract.

3.2 Maintenance orders will be issued by the SLO Supervisor to maintain and repair facilities of the street light system. The City of Fort Wayne will furnish all materials required to perform maintenance and repair work. The Working Foreman shall provide daily written reports as to the work performed on each order and cause of damage such as faulted cable, accident, tree damage, windstorm, etc.

3.3 The Units doing maintenance of the street light system shall be expected to perform maintenance on all City Street Light Systems including the present series street light system. Since these series systems are located adjacent to the primary wires, (4000 volts) this will require proper safety equipment. The units will also be expected to change and maintain the series street lighting regulators which are part of the street light system. The Units will also perform maintenance of municipally owned distribution systems (up to 12 KV behind Indiana & Michigan Power metering points and other power utilities as may be required).

3.4 The Maintenance Units shall be used on an hourly basis to perform the maintenance requirements. Anticipated operating time for the Units will be 8 hours per day, 5 days per week for normal work, but with the capability of working overtime in emergency situations. The Units may also be required to install miscellaneous capital improvement street lighting facilities.

3.5 At least one truck on each Unit shall be radio equipped. The radio would be furnished, installed and maintained by the City of Fort Wayne.

3.6 The definition of Holidays in the Contract shall be those "Closing Days" as observed by the City of Fort Wayne. List of holidays for 2012 is included as Appendix A of this Contract.

3.7 The Units will work under the direction of the City of Fort Wayne SLO Supervisor or the designated representative.

3.8 Contractor will be paid for Maintenance Units on an hourly rate basis. When workers are paid by the Contractor due to inclement weather, the Contractor will be paid for labor only. Two (2) hour report time will be paid on days workers report for work but do not work. Workers can be directed to perform miscellaneous work inside until such time the SLO Supervisor can determine that the weather is too inclement to perform outside maintenance work. This does not apply in case of an emergency. When no work is available the SLO Supervisor will advise the workers the preceding afternoon not to report the next morning.

3.9 Tools Required for each Maintenance Unit

- 1 - 120-240 test light
- 1 - clip on amp meter 6A to 100A scale
- 1 - Simpson 260 VOM or equivalent
- 3 ea - 2' #10 copper wire flexible jumper and 2' #10
jumper w/clips
- 1 - pipe cutter ½" - 2"
- 2 ea. - 14" pipe wrenches
- 1 - 16" crescent wrench
- 1 - sledge hammer
- 1 - hydraulic tree trimmers w/extensions 15'
- 1 - hydraulic ground tamper for poles
- 1 - wood handle pick
- 1 - frost bar
- 1 - ¾ ton chain hoist
- 2 - 15' chains
- 1 - ½" 24V cordless drill w/wood & steel bits and sockets ¼" to ¾"
- 1 - skil drill w/concrete drill from ¼" to 1 1/4" for anchor bolts
- 1 - 25' safety yellow outdoor approved extension cord

- 1 - set of socket wrenches $\frac{1}{4}$ " to $1 \frac{7}{8}$ "
- 1 - set of end wrenches $\frac{1}{4}$ " to $1 \frac{7}{8}$ "
- 1 - 36' extension ladder
- 1 - axe
- 1 - pr. tree trimmers w/extension to reach 25' (wooden lineman)
- 1 - set of blocks and 5 grips for copper and aluminum wire size #8 to #2 stranded
- 1 - 36" x 36" blanket 15KV tested
- 1 - gloves low voltage
- 1 - hot boots
- 1 - 40' long hand line $\frac{3}{8}$ " rope
- 6 - pins
- 1 - 100' - $\frac{3}{8}$ " rope for straight line
- 1 - 125' $\frac{1}{8}$ " rope w/ throwball
- 8 - $\frac{3}{8}$ " rope slings
- 2 - 5' round nose shovels
- 2 - 5' square nose shovels
- 1 - spade
- 1 - tile scooper or shovel for cleaning trench
- 2 - flexible nylon blocks
- 15 - 30" safety cones w/2 reflective strips
- 4 - barricades type I
- 1 - 3' level
- 1 - j strap w/ smooth grip $\frac{5}{32}$ " to $\frac{5}{16}$ "

1 - 8" cold chisel

1 ea. - 1 1/2" - 1 5/8" deep well sockets - 3/4" drive w/ universal attachment and 24" extension.

1 - 5/8" steel sling 4' long

1 - wooden handle crimping tool to #2 stranded copper

1 - stake on / T & B style crimping tool for butt connectors #10 copper with assorted splicing sleeves

1 ea. - 1/2" and 3/4" drive crowsfeet - 1/2" to 1 5/8"

Special tools required for miscellaneous jobs will be provided by Street Light Operations, however, Contractor will be responsible for their replacement if special tools are lost.

4. Detailed Specifications for the Emergency Call-Out Unit

These specifications are intended to cover the duties and responsibilities of the Contractor and City to provide Emergency Call Out capabilities for the City Street Light System.

4.1 The Contractor will supply the services of an Emergency Call-Out Unit which will be available during ALL hours other than normal working hours including weekends and holidays, to handle accidents or emergencies. This unit shall be as described under Work Force Units #2.2 on page 20 of the Contract.

4.2 The Contractor shall supply the Emergency Call-Out Unit with a Fort Wayne based cellular phone(s) for emergency after hour calls. When called by the Traffic Operations Trouble Truck person the Emergency Call-Out Unit will respond to the site within one hour. The Unit shall be capable of immediate temporary repair to the street light facilities.

4.3 The Contractor shall be paid a minimum of two (2) hours on an hourly contract rate basis for each after working hours call-out for the Emergency Call-Out Unit. Multiple Emergency Call-Out calls falling within the call-out two hour period shall not be paid for on a concurrent basis.

4.4 Tools Required for the Emergency Call-Out Unit

Same tools as listed for Maintenance Unit when a Bucket Truck is required.

5. Tools Required for each Journeyman / Lineman

1 - body belt and safety harness

- 1 - pr. climbers
- 1 - nut and bolt bag
- 1 - tool pouch
- 1 - 12" crescent wrench
- 1 - 6"- 8" crescent wrench
- 1 - pr. channel locks
- 1 - 6' folding wood ruler
- 1 - 9" lineman pliers
- 1 - 2 lb. hammer
- 1 - skinning knife (0-600 volt rated)
- 1 - 6"- 8" phillips screwdriver
- 1 - 6"- 8" regular screwdriver
- 1 - crescent style pipe wrench up to 2 1/2" diameter

All Contractor employees assigned to perform the services in this contract will each be equipped with a hard hat and a safety vest or safety suspenders.

ACKNOWLEDGEMENT

I, Charlie Pavelec, BEING Vice President OF
(NAME) (TITLE)
Shambaugh & Son LP, ACKNOWLEDGE RECEIPT OF
SAID DRUG AND ALCOHOL TESTING PROCEDURES OF THE CITY OF FORT
WAYNE AND AGREE TO BE BOUND BY THOSE PROVISIONS OF THE
PROCEDURES THAT MAY BE APPLICABLE.

DATED THIS 11th DAY OF August, 2011.

Charlie Pavelec
(signature)

Charlie Pavelec
(printed name)

IN WITNESS WHEREOF, the parties hereto have executed Contract #98-6-15-11-1 the day and year first above written:

CONTRACTOR

Shambaugh & Son, L.P.

BY: Clemente Puel

CITY OF FORT WAYNE

BY: Tom Henry
TOM HENRY, MAYOR

BOARD OF PUBLIC WORKS

BY: Regina A. Kostoff
REGINA A. KOSTOFF, CHAIR

BY: John Suarez
JOHN SUAREZ, MEMBER

BY: Kumar Menon
KUMAR MENON, MEMBER

ATTEST: Victoria G. Guerrero
VICTORIA G. GUERRERO, CLERK

APPROVED AS TO FORM AND LEGALITY BY: _____
ASSOCIATE CITY ATTORNEY

THIS DOCUMENT PREPARED BY: DOUGLAS P. HILKEY, DIRECTOR
TRAFFIC OPERATIONS

ACKNOWLEDGEMENT

STATE OF INDIANA)

SS:

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 11th day of AUGUST, 2018, personally appeared the within named CHARLIE PAVELEC who being by me first sworn upon his oath say this he is the VP of SHAMBAUGH & SON, INC. and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of SHAMBAUGH & SON, INC. for the uses and purposes therein set forth.

AND SON, LIMITED PARTNERSHIP

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

Carol A. Cartwright
Notary Public

CAROL A. CARTWRIGHT
Printed Name of Notary

My Commission Expires: MARCH 20, 2018

Resident of ALLEN County.

ACKNOWLEDGEMENT

STATE OF INDIANA)

SS:

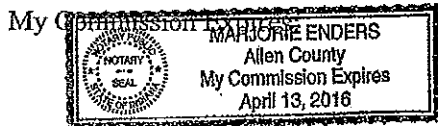
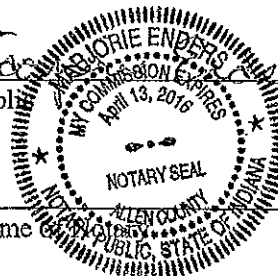
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 31st day of August 2011 personally appeared the within named **Tom Henry, Regina A. Kostoff, John Suarez, Kumar Menon and Victoria G. Guerrero,** by me personally known, who being duly sworn said that they are respectively the **Mayor of the City of Fort Wayne,** and the **Chair, Members, and Clerk of the Board of Public Works of the City of Fort Wayne, Indiana,** and that they signed said instruments 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 use and purposes therein set forth.

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

Marjorie Enders
Notary Public

Printed Name of



Resident of _____ County.

APPENDIX A

2012 HOLIDAY SCHEDULE AND CLOSING DATES

FOR ALL CIVIL CITY AND CITY UTILITIES EMPLOYEES

<u>HOLIDAY</u>	<u>DATE OBSERVED</u>
New Year's Day	Monday, January 2, 2012
Martin Luther King, Jr. Day	Monday, January 16, 2012
Memorial Day	Monday, May 28, 2012
Independence Day	Wednesday, July 4, 2012
Labor Day	Monday, September 3, 2012
Veteran's Day	Monday, November 12, 2012
Thanksgiving Day	Thursday, November 22, 2012
Day after Thanksgiving	Friday, November 23, 2012
Christmas Eve Day	Monday, December 24, 2012
Christmas	Tuesday, December 25, 2012

These are the scheduled holidays unless otherwise modified by the collective bargaining agreements.

DIGEST SHEET

Department: Traffic Engineering

Resolution Number: 98-6-15-11-1

Title of Ordinance: Street Light System Maintenance

Awarded To: Shambaugh & Son, L.P

<u>Amount of Contract:</u>	\$868,133.00	(2012)
	\$889,836.33	(2013)
	\$914,306.83	(2014)
	\$939,450.27	(2015)
	\$967,633.78	(2016 – Optional Extension)

Number of Bidders: 3 responses

Description of Project (Be Specific):

The contract requires the provision of manpower and equipment for the maintenance of street lighting facilities. The term of the contract will be for four years with an optional fifth year upon mutual agreement between City and contractor.

We received three bid proposals in response to the request for bids. The three responses were from:

Midwestern Electric
American Lighting and Signalization
Shambaugh & Son

Of the three responses, Shambaugh & Son had the lowest base bid as well as the lowest bid for each individual year. We negotiated some of the rates in the bid which included the annual escalation rates as well as the hourly rates for two of the most frequently used items on the contract – line truck and trenching machine.

The total contract amount was determined based on the anticipated usage of services as determined by prior year's utilization.

The normal maintenance unit includes two crews of three workers, each crew with a 50' bucket truck and a pick-up truck. We explored changing one of the

normal maintenance units by adding a line truck (digger derrick truck) to one of the crews to determine if prices would be competitive. This is represented in Alternate Bid #1 and is listed as a Special Maintenance Unit. However based on the bid amounts we received we determined not use Alternate #1 and instead, go with a unit price on a line truck to be utilized at an hourly rate on an as-needed basis.

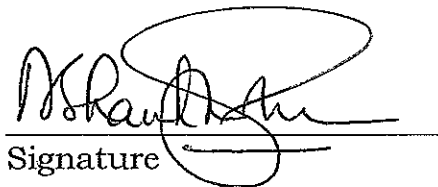
What Are The Implications If Not Approved:

City currently has almost 34,000 street lights. The contracted services include repairs to light poles that are brought down due to crashes or weather, addressing underground and overhead wiring malfunctions, repairs to facilities damaged due to other construction, routine maintenance including bulb changes on facilities that are beyond the reach of city owned equipment and connection and power management of AEP electrical lines connected to the city's street lighting system. This work also puts these crews within critical proximity of overhead primary power lines which requires the use of certified linemen. City does not have any certified linemen on staff.

If Prior Approval Is Being Requested, Justify: N/A

Additional Comments:

The negotiated amounts on this contract represent a reduction of approximately \$100,000 per year over the term of the last contract which will expire at the end of this year.


Signature

09/07/2011
Date