

AN ORDINANCE approving (CONTRACT A) WPCP COMBINED SEWAGE PUMP STATION AND SCREENINGS BUILDING IMPROVEMENTS. RES. #2283-2010, W.O. #75449 between WEIGAND CONSTRUCTION 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 (CONTRACT A) WPCP COMBINED SEWAGE PUMP STATION AND SCREENINGS BUILDING IMPROVEMENTS. RES. #2283-2010, W.O. #75449 by and between WEIGAND CONSTRUCTION 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

Construction of wastewater pump and treatment facilities including sitework, yard piping, buried cast-in-place and precast concrete wastewater conveyance conduits, structural and architectural Work, process piping, pumps, and other equipment, plumbing Work, heating, ventilation, and air conditioning Work, electrical Work, and instrumentation and control Work. The Project includes a major upgrade and expansion of the existing combined sewage pump station (CSPS), construction of a new wastewater screen facility, and associated support facilities:

involving a total cost of TWENTY-ONE MILLION, SEVEN HUNDRED FIFTY-EIGHT THOUSAND, TWO HUNDRED SIXTEEN AND 00/100 DOLLARS - (\$21,758,216.00). A copy said Contract is on file with the Office of the City

Clerk and made available for public inspection, according to law.

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

Interoffice Memo

City Utilities Engineering

Date: September 20, 2011

To: Common Council Members

From: Andrew Schipper/City Utilities Engineering

RE: (Contract A) WPCP Combined Sewage Pump Station and Screenings Building Improvements. Res. #2283-2010, W.O. #75449

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project:

"WPCP Combined Sewage Pump station and Screenings Building Improvements" as follows: Construction of wastewater pump and treatment facilities including sitework, yard piping, buried cast-in-place and precast concrete wastewater conveyance conduits, structural and architectural Work, process piping, pumps, and other equipment, plumbing Work, heating, ventilation, and air conditioning Work, electrical Work, and instrumentation and control Work. The Project includes a major upgrade and expansion of the existing combined sewage pump station (CSPS), construction of a new wastewater screen facility, and associated support facilities.

Implications of not being approved:

Time is of the essence. The EPA Consent Decree deadline to build and bring this project into full operation is December 2013. This construction project is a key milestone for completion of Control Measure #5 of the Long Term Control Plan. Delays in construction contracts will cause schedule delays.

The Combined Sewer Pump Station (CSPS) is the city's largest flood fighting station. This project not only upgrades the city's ability to pump, store, and treat combined sewage, it also rebuilds the city's most important and largest flood fighting pump station.

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

This project was advertised to contractors on July 15, 2011 and July 22, 2011 in the Fort Wayne newspapers Journal Gazette and News-Sentinel, and on July 20, 2011 in the INK.

City utilities engineering has determined **Weigand Construction** to be the lowest, responsive, and responsible bidder of 5 bidders for this project. The low bidder was based upon the combined sum of the base bid price plus alternates for Contract A (Water Pollution Control Plant Combined Sewage Pump Station and Screening Building Improvements) and Contract B (CS Pond No. 1 – First Flush & Bleedback Facilities). Weigand's construction bid was \$23,495,926.00 when evaluating contracts A and B together. Weigand's bid was 1.0% below the engineer's estimate of \$23,735,000.00. The second lowest bidder was \$729,074.00 above Weigand's bid. The Contract for resolution # 2283-2010 (contract A) was awarded to **Weigand Construction** for \$21,758,216.00.

The cost of said project funded by: SRF Sewer Bond.

Council Introduction Date: 9/27/2011

CC: BOW
Matthew Wirtz
Diane Brown
Chrono

AGREEMENT

Resolution Number: 2283-2010

Work Order: 75449

THIS AGREEMENT is by and between CITY OF FORT WAYNE (hereinafter called Owner)
and WEIGAND CONSTRUCTION CO., INC. (hereinafter called Contractor).

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

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work of this Contract is generally described as follows:

Construction of wastewater pump and treatment facilities including sitework, yard piping, buried cast-in-place and precast concrete wastewater conveyance conduits, structural and architectural Work, process piping, pumps, and other equipment, plumbing Work, heating, ventilation, and air conditioning Work, electrical Work, and instrumentation and control Work. The Project includes a major upgrade and expansion of the existing combined sewage pump station (CSPS), construction of a new wastewater screen facility, and associated support facilities. Major features of the project include the following:

1. Demolition and removal of existing building, structures, equipment, and other facilities.
2. Removal and off-Site disposal of sludge, grit, and debris from existing pump station wet well.
3. Modifications to existing pump station wet well.
4. Removal and replacement of existing fabricated steel coarse bar rack.
5. Rehabilitation of two existing vertical mixed flow pumps, each with a rated capacity of 160 mgd. Replacement of existing wound rotor motor for one of the pumps with new 1,500 horsepower induction motor. Rehabilitation, conversion to induction type, and reuse of the other existing wound rotor motor.
6. Provision of two new vertical mixed flow pumps, each with a rated capacity of 95 mgd and each provided with a 1,000 horsepower induction motor.
7. Provisions for two future vertical mixed flow pumps, each with a rated capacity of up to 160 mgd and each provided with an induction motor up to 1,500 horsepower.
8. Provision of two new submersible pumps each with a capacity of 10 mgd and each provided with a 140 horsepower submersible motor.
9. Construction of a new CSPS building over the existing CSPS wet well to house pumps and associated equipment. Building construction includes cast-in-place concrete foundation and floor slab, split-face masonry block walls, and precast concrete roof.
10. Construction of a new electrical building with 4,160V switchgear, variable frequency drives, motor control centers, programmable logic controller (PLC), and other electrical and instrumentation and control equipment. Building construction includes cast-in-place concrete slab on grade, split-face masonry block walls, and precast concrete roof.
11. Buried and exposed ductile iron piping. Nominal diameter: 60", 54", 48", 20" and smaller.
12. Modification and expansion of the existing concrete CSPS Pump Discharge Structure.
13. Construction of a new CSPS Screen Facility. New facility construction will include cast-in-place concrete conduits and foundation, split-face masonry block walls, and precast concrete roof. New facility is designed for five, mechanically cleaned screens and associated equipment. Three screens will be provided in this Project; two additional screens will be provided in the future.

14. Provision of new electrical power distribution system including 4,160V switchgear, 4,160V-480V step down transformers, 480V motor control centers, 4,160V and 480V Allen Bradley variable frequency drives, and other electrical equipment.
15. Provision of instrumentation equipment and new process control network equipment including Allen Bradley PLC equipment.

ARTICLE 2 – THE PROJECT

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

CITY OF FORT WAYNE
CONTRACT A
WATER POLLUTION CONTROL PLANT
COMBINED SEWAGE PUMP STATION AND
SCREENINGS BUILDING IMPROVEMENTS
FORT WAYNE, INDIANA

ARTICLE 3 – ENGINEER AND DESIGNER

- 3.01 The Engineer will act as Owner's representative, will assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. The Engineer will be named at a later date. The Project has been designed by Donohue & Associates, Inc., who is hereinafter called Designer. Donohue & Associates, Inc. will consult with, advise, and assist the Engineer in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 Time of Essence

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

4.02 Days to Achieve Substantial Completion and Final Payment

- A. The Work will be substantially completed within 668 days, plus float time authorized by the Owner, if any, after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions. Owner-Controlled Float Time shall be in accordance with paragraph 2.08.D. of the Supplementary Conditions.
- B. Work shall be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before December 31, 2013.

4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner the following amounts:

1. \$3,500 for each day that expires from the 1st day to the 30th day after the time specified in Paragraph 4.02.A until the Work is substantially complete;

2. \$4,500 for each day that expires from the 31st day to the 60th day after the time specified in Paragraph 4.02.A until the Work is substantially complete;
3. \$7,500 for each day that expires beyond 60 days after the time specified in Paragraph 4.02.A until the Work is substantially complete.
4. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$7,500 for each day that expires after the time specified in Paragraph 4.02.B for completion and readiness for final payment until the Work is completed and ready for final payment.

4.04 Incentive Payment For Early Completion

- A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will benefit if the Work is substantially completed earlier than the times specified in Paragraph 4.02.A above. Accordingly, Owner and Contractor agree that as incentive for early completion, Owner shall pay Contractor a bonus of \$3,500 for each day that the Work is substantially completed before the time specified in paragraph 4.02.A above. The total bonus payment for early completion will be limited to not more than \$105,000.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner accepts/rejects the following alternates as described in Section 01 23 00 and indicated on the Bid Form:
 - A. Accept / Reject Alternate 1: Aggregate Pavement South of CSPA Storage Building
 - B. Accept / Reject Alternate 2: Reclaimed Crushed Concrete
- 5.02 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated the following Contract Price Schedule:

CONTRACT PRICE SCHEDULE						
No.	Section	Item	Qty	Unit	Unit Price	Estimated Price
1	All Sections	All Work Except For Items No. 2 through No. 14	1	LS	\$ 14,329,194.00 per LS	\$ 14,329,194.00
2	01 74 20	CSPA Residual Sludge Removal and Disposal	600	CY	\$ 132.99 per CY	\$ 79,794.00
3	31 23 00	Additional Unsuitable Material Excavation, Disposal and Backfill	1,000	CY	\$ 52.66 per CY	\$ 52,660.00
CONTINUED ON NEXT PAGE						

CONTRACT PRICE SCHEDULE

No.	Section	Item	Qty	Unit	Unit Price	Estimated Price
4	40 61 13	Process Instrumentation and Control System	1	LS	\$ <u>715,951.00</u> per LS	\$ <u>715,951.00</u>
5	43 21 50	Belzona Coating on Diffusers of CS Pumps No. 7 and 8	1	LS	\$ <u>23,000.00</u> per LS	\$ <u>23,000.00</u>
6	31 23 00	Riprap	1,000	SY	\$ <u>50.56</u> per SY	\$ <u>50,560.00</u>
7	Agreement 26 05 84 26 05 85 26 05 86 26 19 23 43 21 50 43 21 51	Contract Assignment: WPCP CSPS Vertical Pump, Motor, and VFD Equipment Procurement	1	LS	\$ <u>3,670,000.00</u> per LS	\$ <u>3,670,000.00</u>
8	Agreement 43 21 40.01 26 29 23.01	Contract Assignment: WPCP CSPS Submersible Pumping Equipment Procurement	1	LS	\$ <u>360,741.00</u> per LS	\$ <u>360,741.00</u>
9	Agreement 26 13 00	Contract Assignment: WPCP CSPS Medium-Voltage Switchgear Equipment Procurement	1	LS	\$ <u>678,248.00</u> per LS	\$ <u>678,248.00</u>
10	Agreement 46 21 13	Contract Assignment: WPCP CSPS Screening Equipment Procurement	1	LS	\$ <u>709,998.00</u> per LS	\$ <u>709,998.00</u>
11	Agreement 43 26 16 43 26 35	Contract Assignment: WPCP CSPS Gate Equipment Procurement	1	LS	\$ <u>208,070.00</u> per LS	\$ <u>208,070.00</u>
12	01 21 00 and General Conditions 11.02	CS Pump Discharge Conduit Repair Allowance	1	LS	\$ <u>20,000.00</u> per LS	\$ <u>20,000.00</u>

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CONTRACT PRICE SCHEDULE						
No.	Section	Item	Qty	Unit	Unit Price	Estimated Price
13	01 21 00 and General Conditions 11.02	Natural Gas Utility Service Allowance	1	LS	\$ <u>60,000.00</u> per LS	\$ <u>60,000.00</u>
14	01 21 00 and General Conditions 11.02	Contingency Allowance	1	LS	\$ <u>800,000.00</u> per LS	\$ <u>800,000.00</u>
CONTRACT PRICE (Sum of Estimated Price for Each Item)						\$ <u>21,758,216.00</u> (figures)
						_____ Dollars
						(words)
Qty = Estimated Quantity Estimated Price (for each Item) = Qty x Unit Price (for each item) LS = Lump Sum CY = Cubic Yards						

As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

The price for each of the procurement contracts to be assigned is the same as the contract price for the procurement contract minus the first progress payment for shop drawings, which will be made by the Owner to the procurement contract "seller" before the procurement contract is assigned.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer each month during performance of the Work as provided in paragraphs 6.02.A.1 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) and in accordance with Section 01 29 73.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, in accordance with Paragraph 14.02 of the General Conditions:
 - a. 95% of Work completed (with the balance being retainage); and
 - b. 95% of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 2. Procurement Contracts: Prior to the assignment of the procurement contracts identified in paragraph 10.06 of this Agreement, the Owner will make the first progress payment, for Shop Drawings, to the "seller" of the Goods and Special Services for each procurement contract. Contractor shall make all subsequent payments to the "seller" of the Goods and Special Services for each procurement contract. Payments shall be made in accordance with the requirements of each procurement contract. Payment by Owner to Contractor for these subsequent payments will be made without retainage.
- B. Upon Substantial Completion, Owner may pay an amount sufficient to increase total payments to Contractor to 100% of the Work completed, less such amounts as Engineer shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 200% of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.
- C. MBE/WBE Good Faith Deposit.
1. The Board will retain 5% of the total owing to insure Contractor's compliance with the MBE/WBE Rider attached to this Agreement. Payment to the Contractor is not to exceed 95% of the total contract amount until the Owner has verified the Contractor has made good faith efforts to attain the MBE/WBE goal stipulated in the MBE/WBE Rider attached hereto.
- D. Escrow Agreement.
1. If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement unless written notice is received from Contractor prior to execution of the Agreement stating that an Escrow Account is not desired. If an Escrow Account is not desired, then the Board of Public Works, in accordance with IC 36-1-12-14, shall hold the retainage and will not pay interest on the amounts of retainage that it holds.

6.03 Final Payment

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

ARTICLE 7 – INTEREST

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

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.
- E. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by Contractor, and safety precautions and programs incident thereto.
- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- K. In connection with the performance of Work under this Contract, Contractor agrees to comply with Anti-Discrimination Under Indiana Code Chapter 5-16-6-1 and be bound by Chapter 93.036 of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful Bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of the construction or upon request of the Office of Compliance.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 00 52 00-1 to 00 52 00-12, inclusive);
2. MBE/WBE Rider (pages 00 54 34-1 to 00 54 34-2, inclusive);
3. Performance Bond (pages 00 61 13.13-1 to 00 61 13.13-2, inclusive);
4. Payment Bond (pages 00 61 13.16-1 to 00 61 13.16-2, inclusive);
5. Guaranty Bond (pages 00 61 31-1 to 00 61 31-2, inclusive);
6. Other Contracting Forms as listed in the Table of Contents of the Project Manual.
7. General Conditions (pages 00 72 00-1 to 00 72 00-41, inclusive);
8. Supplementary Conditions (pages 00 73 11-1 to 00 73 11-19, inclusive);
9. Specifications as listed in the Table of Contents of the Project Manual;
10. Drawings, not attached hereto, consisting of a cover sheet and sheets numbered 1 through 205, inclusive, with each sheet bearing the following general title: WATER POLLUTION CONTROL PLANT, COMBINED SEWAGE PUMP STATION AND SCREENINGS BUILDING IMPROVEMENTS, CONTRACT A.
11. Addenda (numbers 1 to 7, inclusive);
12. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibit A: "Material and Equipment Schedule" from Contractor's Bid (page A5-00400-11);
 - b. Exhibit B: Donohue & Associates letter dated August 4, 2011 regarding Water Pollution Control Plant, Combined Sewage Pump Station and Screenings Building Improvements, Contract A, CSPS System Integration and Programming Quotation.
 - c. Exhibit C: August 31, 2011 letter from Weigand Construction Co., Inc. regarding their proposed subcontractor list;
13. Procurement contracts to be assigned to the Contractor:
 - a. Agreement Between Buyer and Seller Dated August 31, 2011 for Water Pollution Control Plant, **CSPS Vertical Pump, Motor, and VFD Equipment Procurement** contract.
 - b. Agreement Between Buyer and Seller Dated August 31, 2011 Water Pollution Control Plant, **CSPS Submersible Pumping Equipment Procurement** contract.
 - c. Agreement Between Buyer and Seller Dated August 31, 2011 Water Pollution Control Plant, **CSPS Medium-Voltage Switchgear Equipment Procurement** contract.
 - d. Agreement Between Buyer and Seller Dated August 31, 2011 Water Pollution Control Plant, **CSPS Screening Equipment Procurement** contract.

- e. Agreement Between Buyer and Seller Dated August 31, 2011 Water Pollution Control Plant, **CSPS Gate Equipment Procurement** contract.

14. Wage Rates;

15. Documents in the Appendices as listed in the Table of Contents of the Project Manual;

16. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- a. Notice to Proceed;
- b. Written Amendments;
- c. Change Orders;
- d. Work Change Directives;
- e. Field Orders;
- f. Engineer's written interpretations and clarifications.

B. The documents listed in paragraph 9.01.A. are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 Assignment of Contract

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

10.03 Successors and Assigns

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

10.04 Severability

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

provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 Other Provisions

- A. This Agreement, although executed on behalf of the Owner by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the Owner unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fails to approve the Contract within 85 days after the date of the bid opening, then the Contractor shall not be bound to the Contract unless he/she/it elects to be so bound.

10.06 Assignment of Procurement Contracts

- A. The contract between Owner as "buyer" and ITT WATER & WASTEWATER USA, INC. as "seller" for procurement of goods and special services ("procurement contract") for the Water Pollution Control Plant, **CSPS Vertical Pump, Motor, and VFD Equipment Procurement** is hereby assigned to Contractor by Owner, and Contractor accepts such assignment. The form documenting the assignment (Exhibit A-1) is attached to the procurement contract, which is enclosed with this Agreement.
- B. The contract between Owner as "buyer" and ITT WATER & WASTEWATER USA, INC. as "seller" for procurement of goods and special services ("procurement contract") for the Water Pollution Control Plant, **CSPS Submersible Pumping Equipment Procurement** is hereby assigned to Contractor by Owner, and Contractor accepts such assignment. The form documenting the assignment (Exhibit A-1) is attached to the procurement contract, which is enclosed with this Agreement.
- C. The contract between Owner as "buyer" and ALL-PHASE ELECTRIC SUPPLY as "seller" for procurement of goods and special services ("procurement contract") for the Water Pollution Control Plant, **CSPS Medium-Voltage Switchgear Equipment Procurement** is hereby assigned to Contractor by Owner, and Contractor accepts such assignment. The form documenting the assignment (Exhibit A-1) is attached to the procurement contract, which is enclosed with this Agreement.
- D. The contract between Owner as "buyer" and DUPERON CORPORATION as "seller" for procurement of goods and special services ("procurement contract") for the Water Pollution Control Plant, **CSPS Screening Equipment Procurement** is hereby assigned to Contractor by Owner, and Contractor accepts such assignment. The form documenting the assignment (Exhibit A-1) is attached to the procurement contract, which is enclosed with this Agreement.
- E. The contract between Owner as "buyer" and FONTAINE USA INC. as "seller" for procurement of goods and special services ("procurement contract") for the Water Pollution Control Plant, **CSPS Gate Equipment Procurement** is hereby assigned to Contractor by Owner, and Contractor accepts such assignment. The form documenting the assignment (Exhibit A-1) is attached to the procurement contract, which is enclosed with this Agreement.
- F. These assignments will occur on the Effective Date of the Agreement and will relieve the Owner as "buyer" from all further obligations and liabilities under the procurement contracts. Contractor will assume full responsibility for the performance of each "seller" as a Subcontractor. Notwithstanding this assignment, all performance guarantees and warranties required by the "procurement contract" will continue to run for the benefit of the Owner and, in addition, for the benefit of the Contractor. Except as noted in each agreement between the "buyer" and "seller", all rights, duties and obligations of Engineer to "buyer" and "seller" under each "procurement contract" will cease.
- G. Owner will provide Contractor with a conformed copy of each assigned contract after the assignments are completed.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement (Contract/Resolution Number 2283-2010) in triplicate. One counterpart each has been delivered to Owner, Contractor, and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor.

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

Owner:

CITY OF FORT WAYNE

By: _____
(signature)

THOMAS HENRY, MAYOR
(typed name and title)

Contractor:

WEIGAND CONSTRUCTION, INC.

By: _____
(signature)

LAWRENCE M. WEIGAND, President
(typed name and title)

BOARD OF PUBLIC WORKS

BY: _____
REGINA A. KOSTOFF, CHAIR

BY: _____
JOHN SUAREZ, MEMBER

BY: _____
KUMAR MENON, MEMBER

Attest _____
VICTORIA GUERRERO, CLERK

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)

Address for giving notices:

Address for giving notices:

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

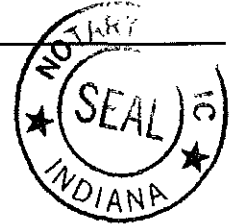
ACKNOWLEDGMENT (CONTRACTOR)

STATE OF INDIANA)
SS:)
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 19 day of September, 2011, personally appeared the within named Laurence M. Weigand who under penalty of perjury says that he is the President of Weigand Construction and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of Weigand Construction for the uses and purposes therein set forth.

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

Jessica R. Warner
Notary Public
Jessica L. Warner
Printed Name of Notary



My Commission Expires: 9/10/18

Resident of Allen County

ACKNOWLEDGMENT (OWNER)

STATE OF INDIANA)
SS:)
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this _____ day of _____, _____, personally appeared the within named Thomas C. Henry, Regina A. Kostoff, John Suarez, Kumar Menon and Victoria Guerrero, 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

MBE/WBE RIDER
FOR FEDERALLY-FUNDED PROJECTS THROUGH THE CITY OF FORT WAYNE

THIS AGREEMENT made and entered into by and between the **CITY OF FORT WAYNE**, hereinafter referred to as **Owner** and _____, hereinafter referred to as **Contractor**,

WITNESSETH:

WHEREAS, the **CONTRACTOR** is the apparent low bidder on construction project commonly referred to as the **Combined Sewage Pump Station and Screenings Building Improvements**, which project was bid under **RESOLUTION NUMBER 2283-2010**; and

WHEREAS, **CONTRACTOR** agrees that the goal for qualified Minority-owned Business Enterprises or Women-owned Business Enterprises, hereinafter sometimes referred to as "M.B.E.'S/W.B.E.'s" as subcontractors on this project is **12% (6% MBE, 6% WBE)** of the contract amount; and

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

1. **Conditional Award** - Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, **OWNER** awards the construction contract to the **CONTRACTOR**.
2. **MBE/WBE Retainage requirements** - If the **CONTRACTOR** is in compliance with the provisions of the construction contract to which this Rider is attached, the **OWNER** will make payments for such work performed and completed. However, in any such case, the **OWNER** will retain five percent (5%) of the total amount owing to insure satisfactory completion of the contract and to insure **CONTRACTOR'S** compliance with this MBE/WBE Rider. 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 **12% (6% MBE, 6% WBE)** of the contract amount to Minority/Women business enterprises, the **CONTRACTOR** will be paid in full. In the event there is a determination that good faith compliance with this MBE/WBE Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this MBE/WBE Rider will be made.

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

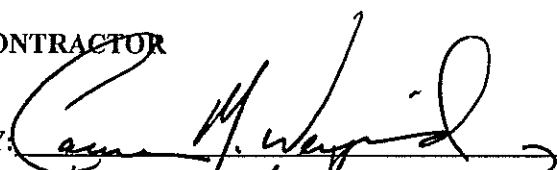
3. **Request for Waiver** - If, at the time final payment application is made, **CONTRACTOR** has not attained the **12% MBE/WBE goal (6% MBE, 6% WBE)**, **CONTRACTOR** shall file with the final payment application a "Request for Waiver." Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the **12% goal (6% MBE, 6% WBE)**.

4. **Determination of Waiver Requests** - The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if **CONTRACTOR'S** efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.
5. **Good Faith Per Se.** - In any case, a **CONTRACTOR** shall be deemed to have made good faith efforts at compliance where MBE/WBE's have subcontracted for every sub-contract for which there are qualified MBE/WBE's available.
6. **Consequence of noncompliance** - In the event the Board of Public Works approves a recommendation that **CONTRACTOR** failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between **5%** and the percentage level met. Said amount shall be added to the City of Fort Wayne MBE/WBE Bond Guarantee Fund and **CONTRACTOR** agrees to accept the reduced amount as full payment under the terms of his/her contract.
7. **Waiver approved** - In the event the Board of Public Works determines that a good faith effort to comply with this MBE/WBE Rider has been made, the contract shall not be reduced, and the balance owing to the **CONTRACTOR** shall be paid in full.

IN WITNESS WHEREOF, the parties have executed the MBE/WBE Rider this _____ day of _____, 20__.

CONTRACTOR

BY:


LAURENCE M. WEIGAND, PRESIDENT

BOARD OF PUBLIC WORKS

Regina A. Kostoff, Chairman

John Suarez, Member

Kumar Menon, Member

ATTEST:

Victoria Guerrero, Clerk

CITY OF FORT WAYNE, INDIANA

CONTRACT A – VENDOR DISCLOSURE STATEMENT RELATING TO:

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

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

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$25,000 or more. Vendors shall disclose the financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration of an award of contract by the City. This Disclosure Statement must be completed and submitted together with Vendor's contract, bid, proposal, or offer.

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

Section 1. Disclosure of Financial Interest in Vendor

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

(i) Equity ownership exceeding 5% ☒ (X)

(ii) Distributable income share exceeding 5% ☐ ()

(iii) Not Applicable (If N/A, go to Section 3) ☐ ()

Name: LAURENCE M. WEIGAND

Name: _____

Address: 7808 HONEYWELL DRIVE
FORT WAYNE IN 46825

Address: _____

- b. For each individual listed in Section 1a., show his/her type of equity ownership: sole proprietorship ☐ stock ☒ partnership interest ☐ units (LLC) ☐ other (explain) _____

- c. For each individual listed in Section 1a., show the dollar value and percentage of ownership interest in Vendor (or its parent): dollar value: \$ _____ ownership interest: 100 %

Section 2. Disclosure of Potential Conflicts of Interest

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

- a. City employment, currently or in the previous 3 years, including contractual employment for services. Yes _____ No. X
- b. City employment of "Member of Immediate Family" (defined herein as: spouse, parent, child or sibling) including contractual employment for services in the previous 3 years. Yes _____ No. X
- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years. Yes _____ No. X
- d. Relationship to Member of Immediate Family holding appointive City office currently or in the the previous 3 years Yes _____ No X

Section 3. DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have current contracts (including leases) with the City? Yes _____ No X .
- b. If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact using space below (attach additional pages as necessary).
- c. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes _____ No. X

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

Section 4. CERTIFICATION OF DISCLOSURES

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

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

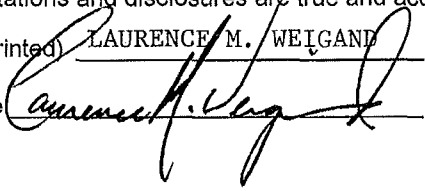
The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

WEIGAND CONSTRUCTION CO., INC.
(Name of Vendor)

7808 HONEYWELL DRIVE, FORT WAYNE IN 46825
Address
(260) 490-7449
Telephone
rlough@weigandconstruction.com
E-Mail Address

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

Name (Printed) LAURENCE M. WEIGAND Title PRESIDENT

Signature  Date 08/24/11

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