

BILL NO. S-13-05-33

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONTRACT FOR WPCP EFFLUENT PUMP STATION AND POND IMPROVEMENTS - RES. #75824, W.O. #75824 between WALSH CONSTRUCTION COMPANY II LLC 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 FOR WPCP EFFLUENT PUMP STATION AND POND IMPROVEMENTS - RES. #75824, W.O. #75824 by and between WALSH CONSTRUCTION COMPANY II LLC 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 WPCP EFFLUENT PUMP STATION AND POND IMPROVEMENTS: As part of the overall Effluent Pump Station and Pond Improvements project, there are four (4) project elements, all interrelated. All elements will be combined together and will be constructed as a single project by a single general contractor. ELEMENT A – EFFLUENT PUMP STATION AND POND 3 IMPROVEMENTS; ELEMENT B – CS PONDS SWEETWATER IMPROVEMENTS; ELEMENT C – CS PONDS 1 AND 2 OUTFALL IMPROVEMENTS; ELEMENT D – ST. JOE INTERCEPTOR CONTROL STRUCTURE:

involving a total cost of ELEVEN MILLION, SIX HUNDRED FIFTY-SIX THOUSAND AND 00/100 DOLLARS - (\$11,656,000.00). 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

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

Water Pollution Control Plant Effluent Pump Station and Pond Improvements
Including Project Elements A, B, C, and D

Work Order: 75824

THIS AGREEMENT is by and between the Board of Public Works of the City of Fort Wayne, Indiana (hereinafter called Owner) and **Walsh Construction Company II, LLC**, (hereinafter called Contractor).

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

ARTICLE 1 – WORK

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

As part of the overall Effluent Pump Station and Pond Improvements project, there are four project elements, all interrelated. All elements will be combined together and will be constructed as a single project by a single general contractor.

Element A - Effluent Pump Station and Pond 3 Improvements

The Effluent Pump Station includes construction of a new Effluent Pump Station between Ponds 2 & Pond 3 at the ponds site (on north side of Maumee River). The pump station will be rated for a firm capacity of 85-mgd when river level is at the 25 year flood stage.

Features include, but are not limited to:

- Relocation of an existing 24-inch water main east of Pond 2.
- Construction of an Effluent Pump Station Bypass consisting of two diversion chambers on the existing 72-inch Plant Effluent pipe and a connecting 60-inch bypass pipe.
- Construction of an Effluent Pump Station including installation of axial flow submersible propeller pumps, piping, wet well isolation gate, discharge flap valves, formed suction inlets, and appurtenances.
- Construction of an Effluent Flow Meter Chamber including installation of a new magnetic type flow meter, piping and appurtenances.
- Construction of a Pond 3 Junction Chamber including isolation gates and appurtenances.
- Construction of an 84-inch diameter Pond 3 Pipe between the Pond 3 Junction Chamber and the Static Aerator Structure.
- Construction of a Static Aerator Junction Chamber connecting the new 84- inch Pond 3 Pipe to the existing structure.
- Construction of a Dechlorination Chamber on the new 84-inch Pond 3 Pipe.
- Modifications to the existing dechlorination facilities including valves, piping, diffusers, and instruments to allow sodium bisulfite to be fed based on effluent flow rate and effluent flow/oxidation reduction potential...

- Modifications and improvements to the existing Chlorine Contact Tank.
- Construction of a new Effluent Pump Station Electrical Building to house electrical equipment, effluent pump variable speed drives, controls and appurtenances.
- Heating, ventilating and air conditioning work for the Effluent Pump Station Electrical Building.
- Electrical work including installation of new primary power transformer, switchgear, motor control center, standby generator, and automatic transfer switch.
- Instrumentation and controls.
- Miscellaneous sitework.

Element B - CS Ponds Sweetwater Improvements

Construction of a sweetwater pumping station that will pump water into Pond 1 and the First Flush Facility as needed to control odor and manage water quality of stored combined sewage. This element includes but is not limited to a duplex pumping station with approximately 5 MGD capacity, force main discharge piping, associated valves and modulating electric actuators, electrical, instrumentation and controls and new stone access area. The wet well and valve vault may be constructed using cast-in-place or precast concrete.

Features include but are not limited to:

- Site Clearing
- Excavation
- PLE Line Extension
- Precast or Cast-in-Place Wet Well and Value Vault
- Duplex pumps and accessories
- Force Main Piping
- Plug Valves
- Electric Modulating Actuators
- Hatches with Fall Protection
- Compacted Backfill
- Surface Restoration
- Stone Access Area
- Electrical
- Instrumentation and Controls
- Pond Bank Erosion
- All other incidentals necessary to complete the work

Element C - CS Ponds 1 and 2 Outfall Improvements

Improvements to Ponds 1 & 2 outfalls include structural modifications for increased discharge capacity, installation of new discharge control gates, electrically-operated gate actuators, flow measurement improvements, and other associated items. The work will require isolating the work areas from all water levels in the ponds.

Features include but are not limited to:

Outfall 002 Structure:

- Remove existing gate actuators for the 120" by 96" cast iron gates and a 24" by 24" gate.
- Install new actuators for those gates.
- Replace electrical conductors from panel to actuators.
- Install new flow meters through top of inlet culverts.
- Install new conduits and cabling from flow meters to existing control panel.
- Install new flow transmitters in control panel and interface with SCADA.

- Interface gate actuator controls with SCADA
- All other incidentals necessary to complete the work

Outfall 003 Structure:

- Hydraulically isolate outfall structure from Pond 1 with cofferdam.
- Remove designated walls in outfall structures.
- Demolish and dispose of concrete wall debris.
- Strip and stockpile the existing riprap from the pond slopes.
- Excavate and remove existing inlet culverts.
- Remove existing gate actuators from structure.
- Remove existing grating and handrailing from structure.
- Install new 24" low-level PVC inlet pipe, headwall, and SST sluice gate.
- Reconstruct walls in former inlet culvert locations.
- Install new 120" by 72" SST sluice gates.
- Replace earth fill in front of structure where the inlet culverts were removed.
- Place geotextile and replace riprap on pond slopes.
- Install new grating and handrails on outfall structure.
- Install electrical conduit to new actuators and replace conductors from actuators to existing panel.
- Interface gate actuator controls with SCADA.
- Install flow meters in outlet culverts and run PVC conduit to existing control panel.
- Install flow transmitters in control panel and interface with SCADA.
- Remove cofferdam.
- All other incidentals necessary to complete the work

Element D – St. Joe Interceptor Control Structure

The St. Joe Interceptor Control Structure includes construction of structures over the existing 84 inch St. Joe interceptor and twin parallel 96 inch pipes. Associated work includes sitework, concrete structures, flow control gates, electrical and instrumentation and control Work.

Features include, but are not limited to:

- Construction of new St. Joe Diversion Chamber over the existing 68-inch by 106-inch horizontal elliptical concrete pipe.
- Provision of two motorized downward acting rectangular weir gates.
- Construction of new buried structure over the existing twin 96-inch concrete pipes that convey flow to CSPS.
- Modifications to existing buried piping.
- Provision of power from existing CSPS Electrical Building to St. Joe Diversion Chamber.
- Provision of level sensing instrumentation equipment and related conduit to CSPS Electrical Building.

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 Water Pollution Control Plant Effluent Pump Station and Pond Improvements

ARTICLE 3 – ENGINEER AND DESIGNER

- 3.01 The firm of CH2MHILL, who is hereinafter called Engineer, 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, during the construction phase, per GC-1.01A19.
- 3.02 The person or entity who has designed each Project element, who is hereinafter called Design Engineer (aka Designer); will consult with, advise, and assist the Engineer in connection with the completion of the Work in accordance with the Contract Documents, during the construction phase, per SC-GC-1.01A53.

ARTICLE 4 – CONTRACT TIMES

- 4.01 Time of the Essence
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract. The Water Pollution Control Plan Effluent Pump Station and Pond Improvements project is required to be completed in a timely manner to meet the City's Consent Decree deadlines.
 - B. Project Element A – Contractor will be released to begin procurement of all equipment, materials and other long lead items for Project Element A, at issuance of Notice to Proceed (NTP). Contractor will be released to begin Project Element A on-site Work on the day indicated on the Notice to Proceed (NTP), per GC 2.03A.
 - C. Project Elements B, C, and D – Contractor will be released to begin procurement of all equipment, materials and other long lead items at issuance of Notice to Proceed (NTP). Contractor will be issued a Project Element Notice of Release (Exhibit A) for each Project Element and will be released to begin on-site Work for Project Elements B, C, and D on or before October 1, 2013.
- 4.02 Days to Achieve Substantial Completion and Final Payment
- A. Project Element A:
 - 1. Work shall be substantially completed within **625 days** plus Owner 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.
 - 2. Work shall be ready for final payment within **685 days** plus Owner Float time authorized by the Owner, if any, after the date when the Contract Times commence to run as provided in accordance with Paragraph 14.07 of the General Conditions.
 - 3. Contractor's Bid must include all costs associated with 30 days of Owner-Controlled Float. Owner-Controlled Float Time shall be in accordance with Division 01 General Requirements.

B. Project Elements B, C, and D:

1. Work shall be substantially completed within **335 days** plus Owner Float time authorized by the Owner, if any, after the date established by the Project Element Notice of Release, in accordance with Paragraph 4.01C above.
2. Work shall be ready for final payment within **395 days** plus Owner Float time authorized by the Owner, if any, after the date established by the Project Element Notice of Release, in accordance with Paragraph 4.01C above.
3. Contractor's Bid must include all costs associated with 30 days of Owner-Controlled Float. Owner-Controlled Float Time shall be in accordance with Division 01 General Requirements.

C. Definitions of Substantial Completion for all Element **Work shall consist of the completion of systems demonstrations, delivery of all guarantees, and approval of all operation and maintenance data, certificates of installation services, certificates of instructional services, and record documents, and as specified in Division 1 General Requirements for each Project Element.**

4.03 Liquidated Damages

Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02A and 4.02B 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), and not including any damages, liquidated or otherwise, for failure to comply with any other requirements in the Contract Documents.

- A. Contractor shall pay Owner the following amounts for each day that expires after the time specified in Paragraph 4.02A.1 for Substantial Completion of the Work, until all Project Element Work (inclusive of Elements A, B, C, and D) is substantially complete.
1. \$1,000 for each day that expires from the 1st day to the 30th day, until all Project Element Work (inclusive of Elements A, B, C, and D) is substantially complete;
 2. \$7,500 for each day that expires from the 31st day to the 90th day, until all Project Element Work (inclusive of Elements A, B, C, and D) is substantially complete;
 3. \$20,000 for each day that expires beyond the 91st day, until all Project Element Work (inclusive of Elements A, B, C, and D) is substantially complete.
- B. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times specified or any proper extension thereof granted by Owner, Contractor shall pay Owner the following amounts for each day that expires after

the time specified in Paragraph 4.02A.2 for completion and readiness for final payment until all Project Element Work (inclusive of Elements A, B, C, and D) is completed and ready for final payment.

1. \$1,000 for each day that expires after the date specified in Paragraph 4.02A.2 for completion and readiness for final payment until all Project Element Work (inclusive of Elements A, B, C, and D) is completed and ready for final payment.
- C. The liquidated damages set forth herein shall not be accumulative. If Substantial Completion of the Work is not met within the time specified for final completion of all Work, the liquidated damages shall continue to be at the rate or rates specified for default on Substantial Completion until Substantial Completion is attained. If the Work is not then finally completed, the rate or rates specified for default on final completion shall apply until final completion is attained.
- D. In case of joint responsibility for delay in the completion of the Work, where two or more separate contracts are in force at the same time and cover work at the same site, liquidated damages assessed against any one Contractor will be based upon the individual responsibility of that Contractor for the delay as determined by, and in the judgment of, Engineer.
- E. Owner shall have the right to deduct the liquidated damages from any money in its hands, otherwise due, or to become due, to Contractor, or to initiate applicable dispute resolution procedures and to recover liquidated damages for nonperformance of this Contract within the time stipulated. If any such money is insufficient to fully satisfy the liquidated damages to which the Owner is entitled, then Contractor shall pay to Owner that portion of the liquidated damages which remain after the unpaid balance of the Contract Price has been fully applied.
- F. Contractor acknowledges that it has received all necessary information required to perform, coordinate, sequence and schedule its obligations and duties to perform the Work under the Contract Documents and that the completion dates and times for the Contractor's performance, as set forth in the Contract Documents, are reasonable.

4.05 Incentives.

- A. The Owner shall pay Contractor an incentive payment for early completion of Project Element A - Effluent Pump Station and Pond 3 Improvements. Owner shall pay Contractor \$1,000 per day for every day the Work is substantially complete prior to the date established, per 4.02A.1; up to a maximum of \$30,000.
- B. The Owner shall pay Contractor an incentive payment for early completion of Project Elements B, C, and D. Owner shall pay Contractor \$1,000 per day for every day the Work is substantially complete prior to the date established, per 4.02B.1; up to a maximum of \$30,000.

ARTICLE 5 – CONTRACT PRICE

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

A. Not Used

B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

UNIT PRICE WORK

See Attachment A (Contractor's Bid Schedule) of the Bid Form 00 41 00-4 to 00 41 00-5

Eleven Million, Six Hundred Fifty Six Thousand Dollars, and Zero Cents

(11,656,000.00)

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

C. Only Base Bid Alternates (1-2, 2-1, 3-1, and 4-2) were selected. No other alternates were selected or included in the Contract.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

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

6.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment within 30 days of receipt during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

- a. 95% of Work completed (with the balance being retainage). and
 - b. 95% of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 % of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200% of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.
- C. If the contract is in excess of \$200,000, the contract will be subject to the standard Board of Public Works escrow agreement unless written notice is received from Contractor prior to execution of the Agreement stating that an Escrow Account is not desired. If an Escrow Account is not desired, then the Board of Public Works, in accordance with IC 36-1-12-14, shall hold the retainage and will not pay interest on the amounts of retainage that it holds

6.03 Final Payment

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

ARTICLE 7 – INTEREST

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

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

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

reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."

- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. In connection with the performance of Work under this Contract, Contractor agrees to comply with Anti-Discrimination Under Indiana Code Chapter 5-16-6-1 and be bound by Chapter 93.036, of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. Contractor shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of the construction or upon request of the Office of Compliance.

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 00-15, inclusive);
 - 2. Escrow Account Agreement (pages 00 54 43-1 to 00 54 43-3, inclusive);
 - 3. E-Verify Affidavit; (page 00 54 53-1, inclusive)

4. Performance Bond Form (pages 00 61 13.13-1 to 00 61 13.13-2, inclusive);
 5. Payment Bond Form (pages 00 61 13.16-1 to 00 61 13.16-2, inclusive);
 6. Guaranty Bond Form (pages 00 61 31-1 to 00 61 31-2, inclusive);
 7. General Conditions (pages 00 72 00-1 to 00 72 00-63, inclusive);
 8. Supplementary Conditions (pages 00 73 00-1 to 00 73 00-27, inclusive);
 9. Exhibit A to this Agreement – Project Element Notice of Release
 10. Specifications as listed in the Table of Contents of each Element's Project Manual (Inclusive of Element A, Element B, Element C, and Element D)
 11. Drawings consisting of Project Elements A, B, C, and D inclusive, with each Element's drawing cover sheet bearing the following general title: Water Pollution Control Plant Effluent Pump Station and Pond Improvements.
 12. Addenda (numbers 1 to 6, inclusive);
 13. Attachments to this Agreement (enumerated as follows);
 - a. Contractor's Bid Schedule; (00 41 00-4 to 00 41 00-5)
 - b. Documentation submitted by Contractor prior to Notice of Award;
 14. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed;
 - b. Work Change Directives;
 - c. Change Orders;
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

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

10.02 Assignment of Contract

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

10.03 Successors and Assigns

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

10.04 Severability

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

10.05 Contractor's Certifications

- C. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 Emerging Business Enterprise (EBE) Participation

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

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

If the Contract Price is in excess of \$200,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the Contractor are not to exceed 95% of the total Contract Price until the Owner has verified that the Contractor has made good faith efforts to attain the 10% EBE goal stipulated in here within. Payment of the final 5% of the total Contract Price will be dependent upon acceptance of the Work, in accordance with Paragraph 14.07 of the General Conditions, and good faith efforts to comply with these EBE participation requirements; subject to reduction in the event of non-compliance as provided in paragraph 10.06.E.

- A. **Request for Waiver** – If, at the time final payment application is made, Contractor has not attained the ten percent (10%) EBE goal, Contractor shall file with the final payment application a “Request for Waiver.” Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the ten percent (10%) EBE goal.
- B. **Determination of Waiver Requests** – The 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.
- C. **Good Faith Efforts.** – In determining whether or not the Contractor used “good faith” efforts, the following shall be considered:
 1. Whether the contract can be subdivided as determined by the Engineer and Administrator of Contract Compliance;

2. Availability of certified EBE businesses to participate as subcontractors;
 3. Non-competitive price quotes received from EBE firms. The Board of Public Works' determination for granting a reduction or waiver of the goal because of higher quotes from EBE firms will be based on factors that include, but are not limited to the following:
 - a. The Engineer's estimate for the work under a specific contract;
 - b. The Contractor's own estimate for the work under the subcontract;
 - c. An average of the valid prices quoted for the subcontract;
 - d. Demonstrated increase in other contract costs as a result of sub-contracting to EBE firm(s).
 4. Documented measures taken by the Contractor to comply with the EBE participation goal;
 5. EBE subcontractor failed to fulfill their obligation in regard to the time delivery of goods and/or services. Also in regards to the quality of the goods and/or services set forth in the bid specifications.
 6. Such other matters as the Board of Public Works deems relevant.
- D. **Consequences of Noncompliance** – In the event the Board of Public Works approves a recommendation that Contractor failed to make good faith efforts at compliance, the Contract Price shall be reduced by the amount calculated as the difference between the EBE participation goal of 10% and the actual participation level met by the Contractor, but in no case shall it be reduced by more than 5%. Said amount shall be added to the City of Fort Wayne EBE Bond Guarantee Fund and Contractor agrees to accept the reduced amount as full payment under the terms of his/her Contract.
- E. **Waiver Approved** – In the event the Board of Public Works determines that a good faith effort to comply with these EBE participation requirements has been made, the Contract Price shall not be reduced, and the balance owing to the Contractor shall be paid in full.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement (**Work Order Number 75824**). One counterpart has been delivered to Owner, and one counterpart delivered to Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

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

CONTRACTOR:

WALSH CONSTRUCTION COMPANY II, LLC.

BY: _____
(Name)

TITLE: _____

DATE: _____
(Date signed by Contractor)

Address for giving notices:

OWNER:

CITY OF FORT WAYNE

BY: _____
THOMAS C. HENRY, MAYOR

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

BY: _____
ROBERT P. KENNEDY, CHAIR

BY: _____
MIKE AVILA, MEMBER

BY: _____
KUMAR MENON, MEMBER

ATTEST: _____
VICTORIA EDWARDS, CLERK

DATE: _____
(Date signed by Board)

ACKNOWLEDGMENT (CONTRACTOR)

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 _____ who under penalty of perjury says that he is the _____ of _____ and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of _____ for the uses and purposes therein set forth.

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

Notary Public

Printed Name of Notary

My Commission Expires:

Resident of _____ County

ACKNOWLEDGMENT (OWNER)

STATE OF INDIANA)

SS:)

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this _____ day of _____, _____, personally appeared the within named Thomas C. Henry, Robert Kennedy, Mike Avila, Kumar Menon and Victoria Edwards, 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

CITY OF FORT WAYNE, INDIANA

Walsh Construction Company II, LLC

(Vendor Name)

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 Sections 1 and 2 below.

Section 1. Disclosure of Financial Interest in Vendor SEE ATTACHED ADDENDUM

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

(I) Equity ownership exceeding 5% ☐

(II) Distributable income share exceeding 5% ☐

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

Name: _____ Name: _____

Address: _____ Address: _____

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

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

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

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

- a. City employment, currently or in the previous 3 years,

Section 1. Disclosure of Financial Interest in Vendor

Addendum

Walsh Construction Company II, LLC is a for profit *limited liability company* that was organized in the State of Illinois.

The sole *member* of Walsh Construction Company II, LLC is:

Walsh Construction Group, LLC

Walsh Construction Group, LLC is organized in Illinois and is member managed.

The *members* comprising Walsh Construction Group, LLC are:

<u>Name</u>	<u>Percentage</u>
Sean C. Walsh	10%
Daniel P. Walsh	10%
Brian R. Walsh	10%
Matthew M. Walsh IV	10%
Erin O. Gibbons	10%
Margaret H. Walsh	10%
Daniel J. Walsh Trust	20%
Matthew M. Walsh Trust	20%

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;

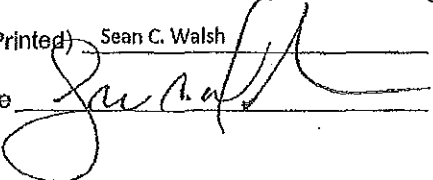
- c. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;
- d. No officer or director of Vendor (or its parent) or Individual listed in Section 1a. 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; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or Individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same elements as the offense of bid-rigging or bid-rotating
- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

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

Walsh Construction Company II, LLC
(Name of Vendor)

1260 East Summit St., Crown Point, IN 46307
Address
(219) 661-2450
Telephone
bkoester@walshgroup.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) Sean C. Walsh Title President
Signature  Date April 17, 2013

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

Interoffice Memo

City Utilities
Engineering

Date: May 7, 2013
To: Common Council Members
From: Zach Schortgen-Program Manager- City Utilities Engineering
RE: WPCP Effluent Pump Station and Pond Improvements
Res. #75824, W.O. #75824

Council District # City Wide

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project: "WPCP Effluent Pump Station and Pond Improvements" as follows: As part of the overall Effluent Pump Station and Pond Improvements project, there are four project elements, all interrelated. All elements will be combined together and will be constructed as a single project by a single general contractor.

Element A - Effluent Pump Station and Pond 3 Improvements

The Effluent Pump Station includes construction of a new Effluent Pump Station between Ponds 2 & Pond 3 at the ponds site (on north side of Maumee River). The pump station will be rated for a firm capacity of 85-mgd when river level is at the 25 year flood stage.

Element B - CS Ponds Sweetwater Improvements

Construction of a sweetwater pumping station that will pump water into Pond 1 and the First Flush Facility as needed to control odor and manage water quality of stored combined sewage. This element includes but is not limited to a duplex pumping station with approximately 5 MGD capacity, force main discharge piping, associated valves, and modulating electric actuators, electrical, instrumentation and controls and new stone access area. The wet well and valve vault may be constructed using cast-in-place or precast concrete.

Element C - CS Ponds 1 and 2 Outfall Improvements

Improvements to Ponds 1 & 2 outfalls include structural modifications for increased discharge capacity, installation of new discharge control gates, electrically-operated gate actuators, flow measurement improvements, and other associated items. The work will require isolating the work areas from all water levels in the ponds.

Element D - St. Joe Interceptor Control Structure

The St. Joe Interceptor Control Structure includes construction of structures over the existing 84 inch St. Joe interceptor and twin parallel 96 inch pipes. Associated work includes sitework, concrete structures, flow control gates, electrical and instrumentation and control Work.

Implications of not being approved: This work is an integral part of compliance with the CSO Control Measure 2 of the consent decree, which increases the overall treatment capacity of the WPCP. The CD specifies a 2015 date for achievement of full operation that will be treated by the non-approval of this project.

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

This project was advertised to contractors on March 18th, 2013 and March 25th, 2013 in the Journal Gazette and the News Sentinel; and March 20th, 2013 in Frost Illustrated, Inc.

The contract for Resolution # 75824 awarded to Walsh Construction Company II LLC. for \$11,656,000.00 was the lowest most responsive bidder of 4 bidders and 14% below the Engineer's estimate of \$13,528,760.00. The second lowest bidder was \$2,060,776.40 above Walsh Construction Company II LLC.'s bid.

The cost of said project funded by Sewer Revenue.

Council Introduction Date: May 28, 2013

CC: BOW
Matthew Wirtz
Diane Brown
Program Manager
Chrono
File