

BILL NO. S-14-11-07

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONSTRUCTION CONTRACT - WPCP CHEMICALLY ENHANCED PRIMARY TREATMENT IMPROVEMENTS - RES. #0002-2013, W.O. #75722 between KOKOSING CONSTRUCTION CO., INC. 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 CONSTRUCTION CONTRACT - WPCP CHEMICALLY ENHANCED PRIMARY TREATMENT IMPROVEMENTS - RES. #0002-2013, W.O. #75722 by and between KOKOSING CONSTRUCTION CO., INC. 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 for "Water Pollution Control Plant Chemically Enhanced Primary Treatment Improvements" as follows:
- Removal of existing chemical feed pumping equipment and associated piping and valve system for the phosphorus removal facilities. Replacement with new chemical feed pumping equipment and associated piping and valve system, and associated electrical and instrumentation and control systems.
- Removal of existing phosphorus removal facility programmable logic controller (PLC) equipment and replacement with new PLC equipment.
- New process analytical instrumentation and associated wiring and conduit.
- Piping, valves, and plumbing accessories for some of

- 1 the process analytical instrumentation.
- 2 • New precast, prefabricated concrete building for some
- 3 of the process analytical instrumentation.

4 involving a total cost of NINE HUNDRED EIGHTY-ONE THOUSAND, TWO

5 HUNDRED SEVENTY-SIX AND 29/100 DOLLARS - (\$981,276.29). A copy of

6 said Contract is on file with the Office of the City Clerk and made available for

7 public inspection, according to law.

8

9 **SECTION 2.** That this Ordinance shall be in full force and effect

10 from and after its passage and any and all necessary approval by the Mayor.

11

12

13 _____

14 Council Member

15 APPROVED AS TO FORM AND LEGALITY

16

17 _____

18 Carol Helton, City Attorney

19

20

21

22

23

24

25

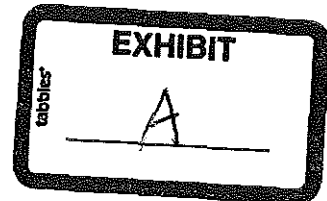
26

27

28

29

30



CITY OF FORT WAYNE, INDIANA

Kokosing Construction Co., Inc.
(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

- 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) N/A

Name: N/A

Name: N/A

Address: N/A

Address: N/A

- 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, including contractual employment for services.

Yes ☐ No ☒

- 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 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 X No _____
- 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).
 Fort Wayne Primary/Secondary Treatment & Digester Upgrade
 Resolution 75865 Work Orders 75865
 Contact - Donnie Ginn 513-984-6630 Contract Date - March 6, 2013
- 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:

- 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;
- 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;
- 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;
- 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
6235 Westerville Rd., Suite 200
Kokosing Construction Co., Inc. Westerville, OH 43081
(Name of Vendor)
Address
614 212-5700
Telephone
jwr@kokosing.biz
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) Daniel B. Walker Title President, HID
Signature Daniel B. Walker Date October 8, 2014

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

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

Resolution 0002-2013

Work Order 75722

THIS AGREEMENT is by and between the Board of Public Works of the City of Fort Wayne, Indiana (hereinafter called Owner) and **Kokosing Construction Company, 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 is generally described as follows:

- Removal of existing chemical feed pumping equipment and associated piping and valve system for the phosphorus removal facilities. Replacement with new chemical feed pumping equipment and associated piping and valve system, and associated electrical and instrumentation and control systems.
- Removal of existing phosphorus removal facility programmable logic controller (PLC) equipment and replacement with new PLC equipment.
- New process analytical instrumentation and associated wiring and conduit.
- Piping, valves, and plumbing accessories for some of the process analytical instrumentation.
- New precast, prefabricated concrete building for some of the process analytical instrumentation.

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:

**WATER POLLUTION CONTROL PLANT
CHEMICALLY ENHANCED PRIMARY TREATMENT IMPROVEMENTS**

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Donohue & Associates, Inc., which is to act as Owner's representative, 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. Owner will confirm to Contractor prior to issuance of Notice to Proceed as to who will serve as Engineer.

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.

4.02 Days to Achieve Substantial Completion and Final Payment

- A. The Work will be substantially completed within 280 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 308 days after the date when the Contract Times commence to run.
- B. Substantial Completion for this Work is defined in the General Conditions and in Paragraph 14.04A.1 in the Supplementary Conditions.

4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial 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 \$1,000 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. 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 \$650 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

4.04 Liquidated Damages

ARTICLE 5 – 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 TIME SPECIFIED IN PARAGRAPH 4.02 ABOVE. ACCORDINGLY, OWNER SHALL PAY CONTRACTOR AN INCENTIVE PAYMENT FOR EARLY SUBSTANTIAL COMPLETION OF THE WORK. OWNER SHALL PAY CONTRACTOR \$1,000 PER DAY FOR EVERY DAY THE WORK IS SUBSTANTIALLY COMPLETE PRIOR TO THE SUBSTANTIAL COMPLETION DATE ESTABLISHED IN PARAGRAPH 4.02 OF THIS AGREEMENT; UP TO A MAXIMUM OF \$30,000.

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. Owner accepts/rejects the following alternates as described in Section 01 23 00 and indicated in the Bid Form:

- | | |
|-----------|--|
| 1. Reject | Alternate 1: Watson-Marlow Chemical Pumping Equipment with DuCoNite Coating |
| 2. Reject | Alternate 2: Verderflex Chemical Pumping Equipment |
| 3. Reject | Alternate 3: Prominent Chemical Pumping Equipment |
| 4. Accept | Alternate 4: Field Service Program for Hach TSS and Ammonium Probe Instrumentation |
| 5. Accept | Alternate 5: Field Service Program for Hach Phosphate and Ammonium Analyzer Instrumentation |
| 6. Reject | Alternate 6: Alternate YSI TSS and Ammonium Probe Instrumentation |
| 7. Reject | Alternate 7: Field Service Program for Alternate YSI TSS and Ammonium Probe Instrumentation |
| 8. Reject | Alternate 8: Alternate Chemsan Phosphate and Ammonia Analyzer Instrumentation |
| 9. Reject | Alternate 9: Field Service Program for Alternate Chemsan Phosphate and Ammonium Analyzer Instrumentation |

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 00-3 to 00 41 00-5

Nine Hundred Eighty-One Thousand, Two Hundred Seventy-Six Dollars and Twenty-Nine Cents

(\$981,276.29)

C. Not Used.

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 00-12, 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 00-41, inclusive);
 - 8. Supplementary Conditions (pages 00 73 00-1 to 00 73 00-23, inclusive);
 - 9. Specifications as listed in the Table of Contents of the Project Manual
 - 10. Drawings consisting of a cover sheet and sheets numbered 2 through 56, inclusive, with each sheet bearing the following general title: Water Pollution Control Plant, Chemically Enhanced Primary Treatment Improvements;
 - 11. Addenda (numbers 1 to 4, inclusive);
 - 12. Attachments to this Agreement (enumerated as follows):
 - a. Contractor's Bid Schedule and prices for Alternates (page 00 41 00-3 to 00 41 00-5);

- b. Documentation submitted by Contractor prior to Notice of Award;
- 13. 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 (pages _____ to _____, inclusive).
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders
 - e. 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 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.
- B. In accordance with Section 40 75 00, if Owner accepts any one of Alternates 4, 5, 7, or 9, then a Supplier's agreement for service after Substantial Completion will be assigned by the Contractor to the Supplier concurrent with Substantial Completion. At that time the agreement for the Supplier's service will be between the Supplier and the Owner.

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

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 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 (Contract #75722 / Resolution Number 0002-2013). 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:

OWNER:

KOKOSING CONSTRUCTION CO. INC.

CITY OF FORT WAYNE

BY: _____
(Name)

BY: _____
THOMAS C. HENRY, MAYOR

TITLE: _____

DATE: _____
(Date signed by Contractor)

Address for giving notices:

BOARD OF PUBLIC WORKS

BY: _____
ROBERT P. KENNEDY, CHAIR

BY: _____
MIKE AVILA, MEMBER

BY: _____
KUMAR MENON, MEMBER

ATTEST: _____
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

PROJECT		WPCP Chemically Enhanced Primary Treatment Improvements (CSCM2 WPP C&I) Pilot							
Resolution:		0602-2013							
Work Order:		75723							
Designer:		Zach Schaefer							
Construction Manager:		Zach Schaefer							
Manager:		Mike Kieker							
Bid Date: (Quote Date)		October 8, 2014							
Funding:		2011 Sewer Revenue Bond							

BID		ENGINEERING ESTIMATE				Existing Construction		Project Design & Pilot	
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	All Work Except for Items No. 2 through No. 3	1	LS	\$362,250.00	\$ 362,250.00	\$ 314,710.44	\$ 314,710.44	\$ 709,710.44	\$ 709,710.44
2	Process Instrumentation & Control System	1	LS	\$330,289.56	\$ 330,289.56	\$ 330,289.56	\$ 330,289.56	\$ 330,289.56	\$ 330,289.56
3	Configur. Allowance	1	LS	\$80,000.00	\$ 80,000.00	\$ 80,000.00	\$ 80,000.00	\$ 80,000.00	\$ 80,000.00
TOTAL BASE BID					\$ 772,539.56		\$ 725,000.00		\$ 1,137,829.56

BID SCHEDULE - ADD 1%									
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	Add Watson-Marlow Chemical Pumping Equipment with DuPont Conditioning	1	LS	\$35,000.00	\$35,000.00	\$ 31,000.00	\$ 31,000.00	\$ 31,000.00	\$ 31,000.00
TOTAL ADD 1% BID					\$35,000.00		\$ 31,000.00		\$ 31,000.00

BID SCHEDULE - DEDUCT 2%									
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
2	Verdette Chemical Pumping Equipment	1	LS	\$14,000.00	\$14,000.00	\$ 13,760.00	\$ 13,760.00	\$ 13,760.00	\$ 13,760.00
TOTAL DEDUCT 2% BID					\$14,000.00		\$ 13,760.00		\$ 13,760.00

BID SCHEDULE - DEDUCT 1%									
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
3	Reduct Prominent Chemical Pumping Equipment	1	LS	\$13,800.00	\$13,800.00	\$ 13,662.00	\$ 13,662.00	\$ 13,662.00	\$ 13,662.00
TOTAL DEDUCT 1% BID					\$13,800.00		\$ 13,662.00		\$ 13,662.00

BID SCHEDULE - ADD 0.5%									
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
4	Field Service Program for Hach TTS and Ammonium Probe Instrumentation	1	LS	\$49,494.74	\$49,494.74	\$ 49,494.74	\$ 49,494.74	\$ 49,494.74	\$ 49,494.74
TOTAL ADD 0.5% BID					\$49,494.74		\$ 49,494.74		\$ 49,494.74

BID SCHEDULE - ADD 0.5%									
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
5	Field Service Program for Hach Phosphate and Ammonium Analyzer Instrumentation	1	LS	\$6,781.55	\$6,781.55	\$ 6,781.55	\$ 6,781.55	\$ 6,781.55	\$ 6,781.55
TOTAL ADD 0.5% BID					\$6,781.55		\$ 6,781.55		\$ 6,781.55

BID SCHEDULE - ADD 50%									
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
6a	Alternate YSI TSS and Ammonium Probe Instrumentation Process Instrumentation and Control System Supplier's Price	1	LS	\$35,000.00	\$35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00
6b	Bidder's Total Price including Process Instrumentation and Control System Supplier's Price	1	LS	\$22,500.00	\$22,500.00	\$ 31,000.00	\$ 31,000.00	\$ 65,000.00	\$ 65,000.00
TOTAL ADD 50% BID					\$35,000.00		\$ 31,000.00		\$ 65,000.00

BID SCHEDULE - ADD 50%									
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
7	Field Service Program for Alternate YSI TSS and Ammonium Probe Instrumentation	1	LS	\$9,200.00	\$9,200.00	\$ 9,200.00	\$ 9,200.00	\$ 9,200.00	\$ 9,200.00
TOTAL ADD 50% BID					\$9,200.00		\$ 9,200.00		\$ 9,200.00

BID SCHEDULE - ADD 50%									
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
8	Alternate Chemicon Phosphate and Ammonia Analyzer Instrumentation Process Instrumentation and Control System Supplier's Price	1	LS	\$2,000.00	\$2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00
8a	Bidder's Total Price including Process Instrumentation and Control System Supplier's Price	1	LS	\$2,000.00	\$2,000.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00
TOTAL ADD 50% BID					\$2,000.00		\$ 2,500.00		\$ 2,500.00

BID SCHEDULE - DEDUCT 20%									
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
9	Field Service Program for Alternate Chemicon Phosphate and Ammonium Analyzer Instrumentation	1	LS	\$500.00	\$500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
TOTAL DEDUCT 20% BID					\$500.00		\$ 500.00		\$ 500.00

BID Evaluation = (Base + 4.4%)						\$ 991,276.29	\$ 1,176,326.29
Addendum No. 1							
Addendum No. 2							
Addendum No. 3							
Addendum No. 4							
Bidder's Bond							
Form 96							
How Collision Affidavit							
Cert in Lieu Financial Statement							
PDE Declaration Form							
Vendor Disclosure Statement Form							

Approved by: *Jacq. H. Schaefer* 10-23-14

Interoffice Memo

Date: 11/3/2014
To: Common Council Members
From: Michael Kiester, Manager, City Utilities Engineering / ESS
RE: WPCP Chemically Enhanced Primary Treatment Improvements
Res. #0002-2013, W.O. #75722

[Handwritten signature]
11-7-2014

Council District #City-Wide

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project: "Water Pollution Control Plant Chemically Enhanced Primary Treatment Improvements" as follows:

- Removal of existing chemical feed pumping equipment and associated piping and valve system for the phosphorus removal facilities. Replacement with new chemical feed pumping equipment and associated piping and valve system, and associated electrical and instrumentation and control systems.
- Removal of existing phosphorus removal facility programmable logic controller (PLC) equipment and replacement with new PLC equipment.
- New process analytical instrumentation and associated wiring and conduit.
- Piping, valves, and plumbing accessories for some of the process analytical instrumentation.
- New precast, prefabricated concrete building for some of the process analytical instrumentation..

Implications of not being approved: The Water Pollution Control Plant is currently rated at a treatment capacity of 70 million gallons per day. By the end of 2015 the plant will be operating at a peak capacity of between 85 and 100 million gallons per day. This project provides necessary monitoring equipment and other tools needed to effectively treat these higher flows. If not approved, the plant will risk upsets in the process as well as increase the potential for permit violations. This project will provide the tools that are necessary for rapid response to changes in flow conditions and provide effective wastewater treatment.

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

This project was advertised to contractors on 08/22/2014, 08/29/2014 in the Journal Gazette and the News Sentinel and 08/27/2014 in Frost Illustrated, Inc.

The contract for Resolution # 0002-2013 awarded to Kokosing Construction for \$981,276.29 was the lowest most responsive bidder of 2 bidders and 16% above the Engineer's estimate of \$828,815.85. The second lowest bidder was \$195,000.00 above Kokosing Construction's bid.

The cost of said project funded by the Sewer Utility.

Council Introduction Date: November 18, 2014

CC: BOW
Matthew Wirtz
Diane Brown
Construction Manager
Chrono
File