

BILL NO. S-15-04-08

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving RECKEWEG AREA
STORM SEWER FACILITIES, CONTRACT 2014-
ST-0053 between KAM CONSTRUCTION, 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 RECKEWEG AREA STORM SEWER
FACILITIES, CONTRACT 2014-ST-0053 by and between KAM
CONSTRUCTION, 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
construction of approximately 1,300 lineal feet of 12-42 inch
diameter stormwater pipe and related facilities to serve the
proposed Reckeweg Senior Apartment project and other
future development in the same area:

involving a total cost of ONE HUNDRED FIFTY THOUSAND AND 00/100
DOLLARS - (\$150,000.00). A copy of 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

**CONTRACT AND INVESTOR AGREEMENT
FOR CONSTRUCTION AND TRANSFER OF
RECKEWEG AREA STORM SEWER FACILITIES**

**CONTRACT NO. 2014-ST-0053
WORK ORDER NO. _____**

THIS CONTRACT AND INVESTOR AGREEMENT ("Agreement") is entered into by and between **Kam Construction, Inc. ("Investor")**, and the City of Fort Wayne, Indiana, an Indiana municipal corporation, by and through its **Board of Stormwater Management ("City")**, to wit:

WITNESSETH:

WHEREAS, growth patterns and development trends indicate that substantial community growth can be anticipated in the Reckeweg Road area between Illinois Road and West Jefferson Boulevard; and

WHEREAS, for orderly growth to occur, urban services such as storm sewer facilities must be present to accommodate that growth; and

WHEREAS, the most logical way from an engineering and fiscal perspective to provide storm sewer service to the anticipated growth area would be to expand upon the City's existing storm sewer system to accommodate the area where new land development is anticipated to occur; and

WHEREAS, Investor agrees to facilitate construction of and transfer to City a new storm sewer system that will serve an area greater than the area Investor is developing, and City desires to acquire same under certain terms and conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. **FACILITY CONSTRUCTION.** Investor shall cause the following storm sewer system to be constructed for transfer to the City of Fort Wayne:
 - A. **Calculated Quantities.** 195 linear feet 42-Inch HDPE, 405 linear feet 30-Inch HDPE, 155 linear feet 24-Inch HDPE, 380 linear feet 18-Inch HDPE, 4 linear feet 12-Inch HDPE, 15 linear feet 24-Inch RCP, 107 linear feet 15-Inch RCP, and 39 linear feet 12-Inch RCP; together with 7 manholes, 6 inlets, and 2 end

sections; and together with all necessary site clearing and restoration, traffic control, erosion control and all other necessary and customary appurtenances (collectively, "Project").

B. Itemized Project Installation.

1. On-Site Main #1. Beginning at a metal end section located 400± feet north and 205± feet east of the intersection of Dresden Lane and Glendale Drive North. Thence northwesterly 85 lineal feet of 18-Inch diameter HDPE to structure #22. Thence northerly 95 lineal feet of 18-Inch diameter HDPE to structure #23. Thence easterly 200 lineal feet of 18-Inch diameter HDPE to structure #24. Thence northerly 4 lineal feet of 12-Inch diameter HDPE to structure #24A.
2. Off-Site Main ST-1. Beginning at a gabion retaining wall/headwall with Reno mattress located 8± feet west and 5± feet south of the northwest corner of Lot #85 Westmoor Extended (1606 Edenton Drive). Thence easterly 195 lineal feet of 42-Inch diameter HDPE to structure Str-1. Thence easterly 285 lineal feet of 30-Inch diameter HDPE to structure Str-2. Thence northerly 120 lineal feet of 30-Inch diameter HDPE to structure Str-3. Thence easterly 155 lineal feet of 24-Inch diameter HDPE to structure Str-4.
3. Off-Site Main ST-2. Beginning at Str-3 within North Glendale Drive located 29± feet west of the northwest corner of Lot #164 Westmoor Extended (1523 North Glendale Drive). Thence northerly 107 lineal feet of 15-Inch diameter RCP to structure STR-5. Thence westerly 25 lineal feet of 12-Inch diameter RCP to structure STR-6.
4. Off-Site Main ST-3. Beginning at Str-1 located 26± feet east and (1±) foot south of the intersection of Edenton Drive & Dresden Lane. Thence southeasterly 15 lineal feet of 24-Inch diameter RCP to structure STR-8.
5. Off-Site Main ST-3. Beginning at Str-1 located 26± feet east and (1±) foot south of the intersection of Edenton Drive & Dresden Lane. Thence northerly 14 lineal feet of 12-Inch diameter RCP to Str-7.

C. A map of the Project is attached hereto as Exhibit A.

D. Investor shall construct the Project in accordance with plans and specifications prepared by Sauer Land Surveying, Inc., which have been approved by City and Investor, and in accordance with the City's and other applicable standards and requirements.

2. ADMINISTRATION, ENGINEERING, AND EASEMENTS. City shall facilitate and pay all costs for City-related administration of the Project. Investor shall pay all expenses associated with engineering for the Project, except as provided in Section 4(D)(2) herein. On land owned by Investor, Investor shall grant Project-required easements to City at no cost to City. On all other land, City shall prepare, acquire and pay all costs associated with acquisition of Project-required easements.
3. COST OF CONSTRUCTION. Investor or Investor's contractor(s) shall furnish and pay for all material, contractual labor, equipment, permits, fees, charges and/or licenses required for complete construction of the Project ("Construction Costs"), and shall hold City harmless from any liability for claims for the Construction Costs.

4. REIMBURSABLE EXPENSES. The difference between the cost of constructing the system minimally required to serve Investor's development ("Base System"), and the cost of constructing a system with greater capacity to provide for future development ("Oversize System"), shall be determined as follows:
- A. Bidding. Investor shall prepare one bid package with itemized bid sheet for the Base System and a separate bid package with itemized bid sheet for the Oversize System. Following City's approval of the bid packages, Investor will invite bids, and shall receive competitive bids accompanied by properly executed non-collusion affidavits from at least three qualified, City-approved contractors. Bid opening will be witnessed by City. Bids that are incomplete or not properly executed shall be excluded from consideration.
 - B. Accepted Bid. The difference between the bid price for the Base System and the Oversize System shall be calculated for each acceptable bid. The acceptable bid with the lowest difference in bid price shall be the "Accepted Bid," and shall be the basis for calculating the Reimbursable Cost, as that term is defined herein.
 - C. Reimbursable Cost. The final cost of construction, including additions, deductions and/or change orders if any, and the actual cost difference between the cost of constructing the Base System and the Oversize System ("Reimbursable Cost"), shall be based on unit bid prices in the Accepted Bid and the quantities of materials actually used and the amount of work actually completed to construct the Project.
 - D. Reimbursement Cap. Based on cost estimates by qualified engineers, the estimated amount of Reimbursable Cost, and therefore the total amount that will be reimbursed by City shall not exceed One Hundred and Fifty Thousand Dollars (\$150,000) ("Reimbursement Cap") and shall include the following:
 - 1. The Reimbursable Cost shall be included in the Reimbursement Cap.
 - 2. Unforeseen additional engineering services required to complete construction of the Project shall be approved, completed and paid for by City, and shall not be included in the Reimbursement Cap.
5. TERMINATION OF AGREEMENT. In the event the Reimbursable Cost of the Project exceeds the Reimbursement Cap, Investor may either:
- A. Terminate this Agreement by written notice to City; or
 - B. Submit an addendum to City requesting an increase in the Reimbursement Cap or a reduction in the scope of work of the Project. In no event shall Investor be expected to pay Project costs that exceed the Reimbursement Cap.
6. CONTRACTOR SELECTION. Regardless the bids received, Investor may contract for construction of the Project with any City-approved contractor. Contractor selection shall not be a factor in calculation of the Reimbursable Cost or any other cost of the project.
7. PAYMENTS TO INVESTOR. City shall reimburse Investor for the Reimbursable Cost according to the following payment schedule:

- A. Materials Payment. Investor may request payment for materials purchased by Investor or its contractor(s) and delivered to the site prior to the start of site work. The value of such materials shall be based on the amount of each material delivered and Accepted Bid unit prices. Payment will be made within fifteen (15) business days following City's receipt of an acceptable invoice and supporting documentation.
 - B. Progress Payments. Investor may, not more than twice monthly, request payment for construction work completed to date. The value of such work shall be based on the amount of work actually completed and Accepted Bid unit prices, less five percent (5%) retainage. Payment will be made within fifteen (15) business days following City's receipt of an acceptable invoice and supporting documentation.
 - C. Final Payment. The unpaid balance of funds due under the Reimbursement Cap, including retainage and any other amounts due pursuant to this Agreement, shall be paid within thirty (30) calendar days of the Acceptance Date, as that term is defined herein.
8. TIMELY COMPLETION OF WORK. If Investor does not initiate work on the Project within twelve (12) months following the date of approval of this Agreement, said Agreement shall be null and void.
9. TRANSFER OF OWNERSHIP. The anticipated Acceptance Date, as that term is defined herein, is on or before December 31, 2015. Acceptance of the work shall proceed as follows:
- A. Upon Investor's completion of work on the Project and following City's final inspection and approval of the work, Investor or its contractor(s) shall file a completion affidavit in the form provided by City, a maintenance bond, record ("as-built") drawings, and other documents as may be required, with City's Board of Stormwater Management, requesting that City accept the work. The maintenance bond shall be in the minimum amount of twenty-five percent (25%) of the actual cost of construction including change orders for the Project, and shall run for a minimum period of one (1) year following the date of acceptance of the Project by City. City shall take action as necessary to accept the work, which action City will not unreasonably withhold or delay.
 - B. From and after the date on which ownership of the Project is formally accepted by City ("Acceptance Date"), City shall own, operate and maintain the Project as part of City's public stormwater system; provided however, that any items not completed as of the date of Substantial Completion shall be the responsibility of Investor to complete.
10. COMPLIANCE WITH LAW. All actions associated with and in support of this Agreement will be done in compliance with federal, state, and local laws and regulations.
11. INDEMNIFICATION. To the extent permitted by law, City agrees to indemnify, defend, and hold harmless Investor, its agents, officers, and employees from all claims and suits by reason of injury or death to persons or damage to tangible property, including costs, attorney's fees, and other expenses caused by any negligent act or negligent omission by City and/or its contractors and/or its subcontractors, if any, arising out of the construction or construction management, except for financial claims as described in Section 3.
12. JURISDICTION. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Indiana, and proper venue for any dispute arising under this Agreement shall be in any federal or state court of competent jurisdiction located in Allen County, Indiana.

13. MODIFICATION. Any amendment to this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing and executed by each party or an authorized representative of each party.
14. WAIVER. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
15. SAVINGS CLAUSE. The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision; provided, however, that if in the reasonable opinion of City, the Agreement fails of its essential purpose as a result of the severed provision(s), the City shall have the right to terminate the Agreement.
16. ATTORNEY FEES. In the event that any action is filed in relation to compliance with this Agreement, or any form of alternative dispute resolution is pursued, the unsuccessful party shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorneys' fees, court costs, and costs of litigation.
17. HEADINGS. The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.
18. NOTICES. Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth below, or at any subsequent address either party may designate to the other in writing:

City's Address:

City of Fort Wayne
Board of Stormwater Management
200 East Berry Street, Suite 240
Fort Wayne, Indiana 46802

Investor's Address:

Kam Construction, Inc.
P.O. Box 80130
Fort Wayne, Indiana 46898-0130

19. UNFORESEEN PROBLEMS. Neither party to this Agreement shall be liable to the other for any loss, cost or damage arising out of, or resulting from, any failure to perform in accordance with the terms of this Agreement where such failure shall be beyond the reasonable control of such party, which, as employed herein, shall be deemed to mean, but not limited to, acts of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, blockages, insurrections, riots, governmental actions, explosions, fire, floods, or any other cause not within the reasonable control of either party.
20. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement and understanding between the parties, and supersedes all prior discussions or agreements (written or oral) between them. Neither party shall be bound by any conditions, definitions, warranties, understandings or representations other than as

expressly provided herein, or as duly set forth on or subsequent to the date hereof in writing and signed by a proper and duly authorized officer or representative of the party to be bound thereby.

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

The undersigned, on behalf of Investor, being first duly sworn, deposes and states that Investor does not knowingly employ an unauthorized alien.

22. EFFECTIVE DATE. This Agreement shall effective upon its approval by the Common Council of the City of Fort Wayne pursuant to City of Fort Wayne Code of Ordinances § 37.18(A)(1). City shall notify Investor in writing within two (2) days following Common Council approval.
23. FUTURE SEWER FACILITY EXTENSIONS. City may approve the extension of additional storm sewer mains from the Project without incurring any financial obligations to Investor under this Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have caused it to be executed at Fort Wayne, Indiana, on the _____ day of _____, 2015.

CITY

INVESTOR

**CITY OF FORT WAYNE, INDIANA
BOARD OF STORMWATER MANAGEMENT**

KAM CONSTRUCTION, INC.

By: _____
Robert P. Kennedy, Chair

By: _____
Kamran H. Mirza, President

By: _____
Mike Avila, Member

By: _____
Kumar Menon, Member

Attest: _____
Lyndsey Richards, Clerk

[Continued on following page]

**ACKNOWLEDGEMENT
INVESTOR**

STATE OF INDIANA)
) SS
COUNTY OF ALLEN)

BEFORE ME, a Notary Public in and for said State and County, personally appeared the within named **Kam Construction, Inc.**, "Investor" herein, by Kamran H. Mirza, President, and acknowledged the execution of the foregoing Agreement as and for his voluntary act and deed.

WITNESS my hand and notarial seal this _____ day of _____, 20 ____.

My Commission Expires: _____

Notary Public Signature

Resident of _____ County

Printed Name

**ACKNOWLEDGEMENT
CITY**

STATE OF INDIANA)
) SS
COUNTY OF ALLEN)

BEFORE ME, a Notary Public in and for said State and County, personally appeared the within named **City of Fort Wayne, Indiana, Board of Stormwater Management**, "City" herein, by Robert P. Kennedy, Mike Avila and Matthew Wirtz as Members of the Board, and Lyndsey Richards, Clerk of the Board, and acknowledged the execution of the foregoing Agreement as and for their voluntary act and deed.

WITNESS my hand and notarial seal this _____ day of _____, 20 ____.

My Commission Expires: _____

Notary Public Signature

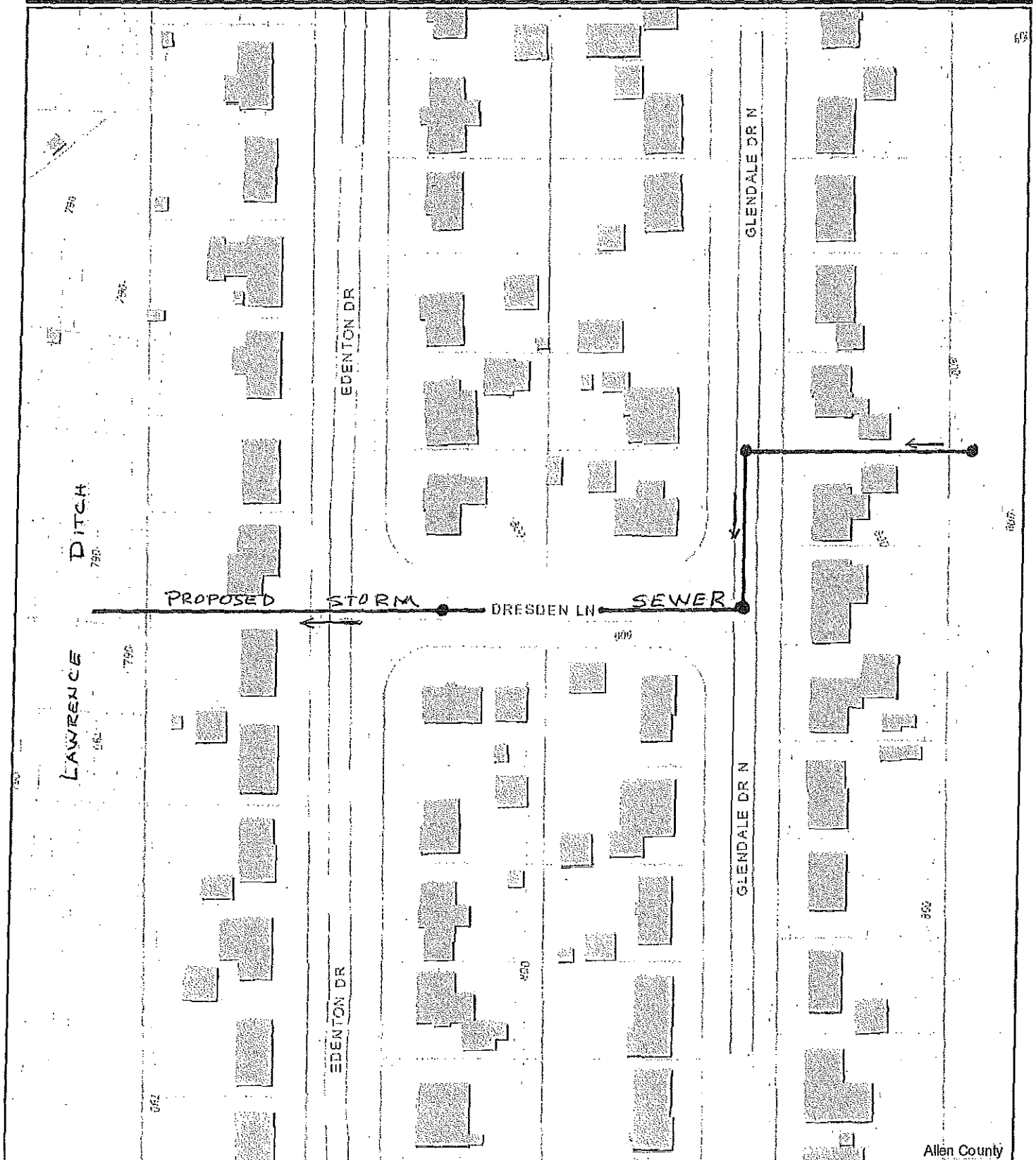
Resident of _____ County

Printed Name

*I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Craig Berndt
This instrument prepared by Craig Berndt, Fort Wayne City Utilities,
Development Services, 200 East Berry Street, Suite 140, Fort Wayne, Indiana 46802
April 15, 2015.*



EXHIBIT A



Allen County

Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 2004 Board of Commissioners of the County of Allen
North American Datum 1983
State Plane Coordinate System, Indiana East



Date: 4/15/2015 1" = 102'

**CONTRACT AND INVESTOR AGREEMENT
FOR CONSTRUCTION AND TRANSFER OF
RECKEWEG AREA STORM SEWER FACILITIES**

**CONTRACT NO. 2014-ST-0053
WORK ORDER NO. _____**

THIS CONTRACT AND INVESTOR AGREEMENT ("Agreement") is entered into by and between **Kam Construction, Inc.** ("Investor"), and the City of Fort Wayne, Indiana, an Indiana municipal corporation, by and through its **Board of Stormwater Management** ("City"), to wit:

WITNESSETH:

WHEREAS, growth patterns and development trends indicate that substantial community growth can be anticipated in the Reckeweg Road area between Illinois Road and West Jefferson Boulevard; and

WHEREAS, for orderly growth to occur, urban services such as storm sewer facilities must be present to accommodate that growth; and

WHEREAS, the most logical way from an engineering and fiscal perspective to provide storm sewer service to the anticipated growth area would be to expand upon the City's existing storm sewer system to accommodate the area where new land development is anticipated to occur; and

WHEREAS, Investor agrees to facilitate construction of and transfer to City a new storm sewer system that will serve an area greater than the area Investor is developing, and City desires to acquire same under certain terms and conditions hereinafter set forth;

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B. Itemized Project Installation.

1. On-Site Main #1. Beginning at a metal end section located 400± feet north and 205± feet east of the intersection of Dresden Lane and Glendale Drive North. Thence northwesterly 85 lineal feet of 18-Inch diameter HDPE to structure #22. Thence northerly 95 lineal feet of 18-Inch diameter HDPE to structure #23. Thence easterly 200 lineal feet of 18-Inch diameter HDPE to structure #24. Thence northerly 4 lineal feet of 12-Inch diameter HDPE to structure #24A.
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3. Off-Site Main ST-2. Beginning at Str-3 within North Glendale Drive located 29± feet west of the northwest corner of Lot #164 Westmoor Extended (1523 North Glendale Drive). Thence northerly 107 lineal feet of 15-Inch diameter RCP to structure STR-5. Thence westerly 25 lineal feet of 12-Inch diameter RCP to structure STR-6.
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5. Off-Site Main ST-3. Beginning at Str-1 located 26± feet east and (1±) foot south of the intersection of Edenton Drive & Dresden Lane. Thence northerly 14 lineal feet of 12-Inch diameter RCP to Str-7.

C. A map of the Project is attached hereto as Exhibit A.

D. Investor shall construct the Project in accordance with plans and specifications prepared by Sauer Land Surveying, Inc., which have been approved by City and Investor, and in accordance with the City's and other applicable standards and requirements.

2. ADMINISTRATION, ENGINEERING, AND EASEMENTS. City shall facilitate and pay all costs for City-related administration of the Project. Investor shall pay all expenses associated with engineering for the Project, except as provided in Section 4(D)(2) herein. On land owned by Investor, Investor shall grant Project-required easements to City at no cost to City. On all other land, City shall prepare, acquire and pay all costs associated with acquisition of Project-required easements.
3. COST OF CONSTRUCTION. Investor or Investor's contractor(s) shall furnish and pay for all material, contractual labor, equipment, permits, fees, charges and/or licenses required for complete construction of the Project ("Construction Costs"), and shall hold City harmless from any liability for claims for the Construction Costs.

4. REIMBURSABLE EXPENSES. The difference between the cost of constructing the system minimally required to serve Investor's development ("Base System"), and the cost of constructing a system with greater capacity to provide for future development ("Oversize System"), shall be determined as follows:
- A. Bidding. Investor shall prepare one bid package with itemized bid sheet for the Base System and a separate bid package with itemized bid sheet for the Oversize System. Following City's approval of the bid packages, Investor will invite bids, and shall receive competitive bids accompanied by properly executed non-collusion affidavits from at least three qualified, City-approved contractors. Bid opening will be witnessed by City. Bids that are incomplete or not properly executed shall be excluded from consideration.
 - B. Accepted Bid. The difference between the bid price for the Base System and the Oversize System shall be calculated for each acceptable bid. The acceptable bid with the lowest difference in bid price shall be the "Accepted Bid," and shall be the basis for calculating the Reimbursable Cost, as that term is defined herein.
 - C. Reimbursable Cost. The final cost of construction, including additions, deductions and/or change orders if any, and the actual cost difference between the cost of constructing the Base System and the Oversize System ("Reimbursable Cost"), shall be based on unit bid prices in the Accepted Bid and the quantities of materials actually used and the amount of work actually completed to construct the Project.
 - D. Reimbursement Cap. Based on cost estimates by qualified engineers, the estimated amount of Reimbursable Cost, and therefore the total amount that will be reimbursed by City shall not exceed One Hundred and Fifty Thousand Dollars (\$150,000) ("Reimbursement Cap") and shall include the following:
 - 1. The Reimbursable Cost shall be included in the Reimbursement Cap.
 - 2. Unforeseen additional engineering services required to complete construction of the Project shall be approved, completed and paid for by City, and shall not be included in the Reimbursement Cap.
5. TERMINATION OF AGREEMENT. In the event the Reimbursable Cost of the Project exceeds the Reimbursement Cap, Investor may either:
- A. Terminate this Agreement by written notice to City; or
 - B. Submit an addendum to City requesting an increase in the Reimbursement Cap or a reduction in the scope of work of the Project. In no event shall Investor be expected to pay Project costs that exceed the Reimbursement Cap.
6. CONTRACTOR SELECTION. Regardless the bids received, Investor may contract for construction of the Project with any City-approved contractor. Contractor selection shall not be a factor in calculation of the Reimbursable Cost or any other cost of the project.
7. PAYMENTS TO INVESTOR. City shall reimburse Investor for the Reimbursable Cost according to the following payment schedule:

- A. Materials Payment. Investor may request payment for materials purchased by Investor or its contractor(s) and delivered to the site prior to the start of site work. The value of such materials shall be based on the amount of each material delivered and Accepted Bid unit prices. Payment will be made within fifteen (15) business days following City's receipt of an acceptable invoice and supporting documentation.
 - B. Progress Payments. Investor may, not more than twice monthly, request payment for construction work completed to date. The value of such work shall be based on the amount of work actually completed and Accepted Bid unit prices, less five percent (5%) retainage. Payment will be made within fifteen (15) business days following City's receipt of an acceptable invoice and supporting documentation.
 - C. Final Payment. The unpaid balance of funds due under the Reimbursement Cap, including retainage and any other amounts due pursuant to this Agreement, shall be paid within thirty (30) calendar days of the Acceptance Date, as that term is defined herein.
8. TIMELY COMPLETION OF WORK. If Investor does not initiate work on the Project within twelve (12) months following the date of approval of this Agreement, said Agreement shall be null and void.
9. TRANSFER OF OWNERSHIP. The anticipated Acceptance Date, as that term is defined herein, is on or before December 31, 2015. Acceptance of the work shall proceed as follows:
- A. Upon Investor's completion of work on the Project and following City's final inspection and approval of the work, Investor or its contractor(s) shall file a completion affidavit in the form provided by City, a maintenance bond, record ("as-built") drawings, and other documents as may be required, with City's Board of Stormwater Management, requesting that City accept the work. The maintenance bond shall be in the minimum amount of twenty-five percent (25%) of the actual cost of construction including change orders for the Project, and shall run for a minimum period of one (1) year following the date of acceptance of the Project by City. City shall take action as necessary to accept the work, which action City will not unreasonably withhold or delay.
 - B. From and after the date on which ownership of the Project is formally accepted by City ("Acceptance Date"), City shall own, operate and maintain the Project as part of City's public stormwater system; provided however, that any items not completed as of the date of Substantial Completion shall be the responsibility of Investor to complete.
10. COMPLIANCE WITH LAW. All actions associated with and in support of this Agreement will be done in compliance with federal, state, and local laws and regulations.
11. INDEMNIFICATION. To the extent permitted by law, City agrees to indemnify, defend, and hold harmless Investor, its agents, officers, and employees from all claims and suits by reason of injury or death to persons or damage to tangible property, including costs, attorney's fees, and other expenses caused by any negligent act or negligent omission by City and/or its contractors and/or its subcontractors, if any, arising out of the construction or construction management, except for financial claims as described in Section 3.
12. JURISDICTION. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Indiana, and proper venue for any dispute arising under this Agreement shall be in any federal or state court of competent jurisdiction located in Allen County, Indiana.

13. MODIFICATION. Any amendment to this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing and executed by each party or an authorized representative of each party.
14. WAIVER. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
15. SAVINGS CLAUSE. The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision; provided, however, that if in the reasonable opinion of City, the Agreement fails of its essential purpose as a result of the severed provision(s), the City shall have the right to terminate the Agreement.
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17. HEADINGS. The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.
18. NOTICES. Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth below, or at any subsequent address either party may designate to the other in writing:

City's Address:

City of Fort Wayne
Board of Stormwater Management
200 East Berry Street, Suite 240
Fort Wayne, Indiana 46802

Investor's Address:

Kam Construction, Inc.
P.O. Box 80130
Fort Wayne, Indiana 46898-0130

19. UNFORESEEN PROBLEMS. Neither party to this Agreement shall be liable to the other for any loss, cost or damage arising out of, or resulting from, any failure to perform in accordance with the terms of this Agreement where such failure shall be beyond the reasonable control of such party, which, as employed herein, shall be deemed to mean, but not limited to, acts of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, blockages, insurrections, riots, governmental actions, explosions, fire, floods, or any other cause not within the reasonable control of either party.
20. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement and understanding between the parties, and supersedes all prior discussions or agreements (written or oral) between them. Neither party shall be bound by any conditions, definitions, warranties, understandings or representations other than as

expressly provided herein, or as duly set forth on or subsequent to the date hereof in writing and signed by a proper and duly authorized officer or representative of the party to be bound thereby.

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

The undersigned, on behalf of Investor, being first duly sworn, deposes and states that Investor does not knowingly employ an unauthorized alien.

22. EFFECTIVE DATE. This Agreement shall effective upon its approval by the Common Council of the City of Fort Wayne pursuant to City of Fort Wayne Code of Ordinances § 37.18(A)(1). City shall notify Investor in writing within two (2) days following Common Council approval.
23. FUTURE SEWER FACILITY EXTENSIONS. City may approve the extension of additional storm sewer mains from the Project without incurring any financial obligations to Investor under this Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have caused it to be executed at Fort Wayne, Indiana, on the _____ day of _____, 2015.

CITY

INVESTOR

**CITY OF FORT WAYNE, INDIANA
BOARD OF STORMWATER MANAGEMENT**

KAM CONSTRUCTION, INC.

By: _____
Robert P. Kennedy, Chair

By: _____
Kamran H. Mirza, President

By: _____
Mike Avila, Member

By: _____
Kumar Menon, Member

Attest: _____
Lyndsey Richards, Clerk

[Continued on following page]

**ACKNOWLEDGEMENT
INVESTOR**

STATE OF INDIANA)
) SS
COUNTY OF ALLEN)

BEFORE ME, a Notary Public in and for said State and County, personally appeared the within named **Kam Construction, Inc.**, "Investor" herein, by Kamran H. Mirza, President, and acknowledged the execution of the foregoing Agreement as and for his voluntary act and deed.

WITNESS my hand and notarial seal this _____ day of _____, 20 ____.

My Commission Expires: _____

Notary Public Signature

Resident of _____ County

Printed Name

**ACKNOWLEDGEMENT
CITY**

STATE OF INDIANA)
) SS
COUNTY OF ALLEN)

BEFORE ME, a Notary Public in and for said State and County, personally appeared the within named **City of Fort Wayne, Indiana, Board of Stormwater Management**, "City" herein, by Robert P. Kennedy, Mike Avila and Matthew Wirtz as Members of the Board, and Lyndsey Richards, Clerk of the Board, and acknowledged the execution of the foregoing Agreement as and for their voluntary act and deed.

WITNESS my hand and notarial seal this _____ day of _____, 20 ____.

My Commission Expires: _____

Notary Public Signature

Resident of _____ County

Printed Name

*I affirm, under penalties for perjury, that I have taken reasonable care to redact
each Social Security number in this document, unless required by law. Craig Berndt
This instrument prepared by Craig Berndt, Fort Wayne City Utilities,
Development Services, 200 East Berry Street, Suite 140, Fort Wayne, Indiana 46802
April 15, 2015.*

Interoffice Memo

Date: April 15, 2015
To: Common Council Members
From: Kumar Menon, Director of City Utilities
RE: **Reckeweg Area Storm Sewer Facilities, Contract 2014-ST-0053**

The Board of Stormwater Management has entered into an agreement with Kam Construction, Inc., for construction of approximately 1,300 lineal feet of 12-42 inch diameter stormwater pipe and related facilities. The system will serve the proposed Reckeweg Senior Apartment project on the west side of Reckeweg Rd., and other future development in the same area. An existing stormwater system that serves adjoining land has no more capacity, and the new system will improve it as well.

Kam Construction has agreed to construct the new stormwater system at the same time as it builds the apartment complex. This will reduce the City's share of the cost in that a separate contract will not be required, and we will benefit from the economies of scale by combining the two projects.

The estimated cost to the City for its share of the work is not to exceed \$150,000, which is the proposed reimbursement cap in the ordinance. Funds for project have been set aside in the Stormwater Utility's budget.

The Board of Stormwater Management and City Utilities request Council's concurrence with the Board's action so that we may proceed with this significant improvement and economic development opportunity.

Please contact Nancy Townsend at 427-2691 or at nancy.townsend@cityoffortwayne.org if you have any questions.

cc: Diane Brown
Molly McCray

DIGEST SHEET

Department: City Utilities, Utility Administration and Development Services.

Resolution Number: Board of Stormwater Management Contract 2014-ST-0053.

Title of Ordinance: Contract and Investor Agreement for Construction and Transfer of Reckeweg Area Storm Sewer Facilities.

Awarded To: Kam Construction, Inc.

Amount of Contract: Not-to-Exceed \$150,000.

Number of Bidders: In compliance with State purchasing requirements, the developer is required to obtain competitive bids and non-collusion affidavits from at least three qualified contractors.

Description of Project (Be Specific): Kam Construction, the developer of the proposed Reckeweg Senior Apartments, is required to construct an off-site 12 inch stormwater system to serve the project. City Utilities desires a larger system with additional capacity to serve the undeveloped area around the apartment site, and also correct some stormwater deficiencies in the area.

This Agreement provides for construction of 1,300 lineal feet of 12- 42 inch diameter stormwater main and related facilities, to be completed in conjunction with the apartment project. The developer will pay all costs for constructing the stormwater system on the apartment site, and will contribute an amount equal to the cost of constructing the off-site 12 inch system that would serve only the apartment site. City Utilities will pay the difference in cost between 12 inch and the 12-42 inch systems.

What Are The Implications If Not Approved: The 12-42 inch (larger) system will provide a ready stormwater conveyance system for any other development in the area, and will be a missed utility-ready opportunity if not installed. Furthermore, if the base 12 inch system is installed, future development near the apartment site will require removal and replacement of that system with a larger system in order to serve the larger area.

If Prior Approval Is Being Requested, Justify: Not Applicable.

Additional Comments: This is a cost-effective opportunity to build new capacity and correct certain deficiencies in developed and undeveloped areas in the near-Southwest area. Stormwater Utility funds are available for the project.


Nancy Townsend, Manager
Development Services
427-2691

4/20/15
Date