

BILL NO. S-15-10-03

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONSTRUCTION
CONTRACT - WATER POLLUTION CONTROL
PLANT EFFLUENT AERATION IMPROVEMENTS
- RES. #76062, W.O. #76062 - \$3,828,000.00
between OTTENWELLER CONTRACTING, 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 CONSTRUCTION CONTRACT - WATER
POLLUTION CONTROL PLANT EFFLUENT AERATION IMPROVEMENTS -
RES. #76062, W.O. #76062 - \$3,828,000.00 by and between
OTTENWELLER CONTRACTING, 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
Water Pollution Control Plant Effluent Aeration
Improvements according to the attached Agreement and
marked Exhibit A:

involving a total cost of THREE MILLION, EIGHT HUNDRED TWENTY-
EIGHT THOUSAND AND 00/100 DOLLARS - (\$3,828,000.00). 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

PROJECT:		WPCP Effluent Aeration Improvements							
Revision:		76062							
Work Order #:		76062							
Designer:		Arcadis							
Project Manager:		Chris Rasmussen							
Manager:		Zach Schongren							
Bid Date: (Quote Date)		September 16, 2016							
Funding:		2014 B SRF Reuse Bond							

BASE BID SCHEDULE - OPTION A				ENGINEER'S ESTIMATE		Ottensmeyer Contracting		Kokosing Construction, Inc.	
Item	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	All Work Except For Items No. 2 through No. 4 below and Alternates	1	LS	\$2,795,600.00	\$2,795,600.00	\$2,391,600.00	\$2,391,600.00	\$3,229,200.00	\$3,229,200.00
2	System Supplier	1	LS	\$259,600.00	\$259,600.00	\$259,600.00	\$259,600.00	\$259,600.00	\$259,600.00
3	Contingency Allowance	1	LS	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00
4	Additional Helical Pipe Length	500	FT	\$30.00	\$40,000.00	\$52.00	\$26,000.00	\$25.00	\$27,500.00
TOTAL BASE BID OPTION A (complete total of all items and elements above)					\$3,000,000.00		\$2,828,000.00		\$4,249,000.00

BASE BID SCHEDULE - OPTION B				ENGINEER'S ESTIMATE		Ottensmeyer Contracting		Kokosing Construction, Inc.	
Item	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	All Work Except For Items No. 2 through No. 4 below and Alternates	1	LS	\$2,795,600.00	\$2,795,600.00	\$2,391,600.00	\$2,391,600.00	\$3,229,200.00	\$3,229,200.00
2	System Supplier	1	LS	\$259,600.00	\$259,600.00	\$259,600.00	\$259,600.00	\$259,600.00	\$259,600.00
3	Contingency Allowance	1	LS	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00
4	Additional Helical Pipe Length	500	FT	\$30.00	\$40,000.00	\$52.00	\$26,000.00	\$25.00	\$27,500.00
TOTAL BASE BID OPTION B (complete total of all items and elements above)					\$3,700,000.00		\$3,592,000.00		\$4,149,200.00

ALTERNATES SCHEDULE									
ALTERNATES SCHEDULE (ALL ALTERNATES MUST BE BID)									
ITEM #	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ALTERNATE PRICE	Unit Price	Extension	Unit Price	Extension
Alternate 1 - Electric Actuators for Gates-- ADD OR DEDUCT (Circle One)									
1-2	Electric Actuators for Gates Supplied by Rotork Controls in lieu of Limitorque (SG-1 to SG-4)	1	LS	-	-	\$ (500.00)	\$ (500.00)	\$ 5,000.00	\$ 5,000.00
Alternate 2 - Electric Actuators for Valves-- ADD OR DEDUCT (Circle One)									
2-2	Electric Actuators for Valves Supplied by Limitorque in lieu of Rotork (BU-2)	1	LS	-	-	\$ 300.00	\$ 300.00	\$ (1,000.00)	\$ (1,000.00)
Alternate 3 - Aeration Diffusers and Blower System - ADD OR DEDUCT (Circle One)									
3-2	Streamline Diffusers Supplied by EDI and (2) 125 h.p. Blowers Supplied by Excelcor in lieu of base system	1	LS	-	-	\$ (70,000.00)	\$ (70,000.00)	\$ (75,000.00)	\$ (75,000.00)
3-3	Streamline Diffusers Supplied by EDI and (2) 125 h.p. Blowers Supplied by Universal in lieu of base system	1	LS	-	-	\$ (65,000.00)	\$ (65,000.00)	\$ (68,000.00)	\$ (68,000.00)
3-4	9" Diffuser Disks and (2) 150 h.p. Blowers Supplied by Aerzen in lieu of base system	1	LS	-	-	\$ (10,000.00)	\$ (10,000.00)	\$ 35,400.00	\$ 35,400.00
3-5	9" Diffuser Disks and (2) 150 h.p. Blowers Supplied by Excelcor in lieu of base system	1	LS	-	-	\$ 34,000.00	\$ 34,000.00	\$ (7,500.00)	\$ (7,500.00)
3-6	9" Diffuser Disks and (2) 150 h.p. Blowers Supplied by Universal in lieu of base system	1	LS	-	-	\$ 26,000.00	\$ 26,000.00	\$ (7,500.00)	\$ (7,500.00)
3-7	Additional 125 h.p. Blower Supplied by Aerzen and Associated Piping (Added to 3-1)	1	LS	-	-	\$ 149,000.00	\$ 149,000.00	\$ 193,000.00	\$ 193,000.00
3-8	Additional 125 h.p. Blower Supplied by Excelcor and Associated Piping (Added to 3-2)	1	LS	-	-	\$ 134,000.00	\$ 134,000.00	\$ 174,000.00	\$ 174,000.00
3-9	Additional 125 h.p. Blower Supplied by Universal and Associated Piping (Added to 3-3)	1	LS	-	-	\$ 124,000.00	\$ 124,000.00	\$ 174,000.00	\$ 174,000.00
3-10	Additional 150 h.p. Blower Supplied by Aerzen and Associated Piping (Added to 3-4)	1	LS	-	-	\$ 152,000.00	\$ 152,000.00	\$ 198,800.00	\$ 198,800.00
3-11	Additional 150 h.p. Blower Supplied by Excelcor and Associated Piping (Added to 3-5)	1	LS	-	-	\$ 159,000.00	\$ 159,000.00	\$ 145,000.00	\$ 145,000.00
3-12	Additional 150 h.p. Blower Supplied by Universal and Associated Piping (Added to 3-6)	1	LS	-	-	\$ 139,000.00	\$ 139,000.00	\$ 169,200.00	\$ 169,200.00
Alternate 4 - Replace Pond 1 Influent Isolation Gate--ADD OR DEDUCT (Circle one)									
4-2	Replace existing Pond 1 Influent Isolation Gate and replace existing Actuator with Rotork Actuator in lieu of Limitorque	1	LS	-	-	\$ (1,000.00)	\$ (1,000.00)	\$ (5,000.00)	\$ (5,000.00)
Alternate 5 - Replace Pond 2 Influent Isolation Gate--ADD OR DEDUCT (Circle one)									
5-2	Replace existing Pond 2 Influent Isolation Gate and replace existing Actuator with Rotork Actuator in lieu of Limitorque	1	LS	-	-	\$ (1,000.00)	\$ (1,000.00)	\$ (5,000.00)	\$ (5,000.00)

Addendum No. 1									
Addendum No. 2									
Bidder's Bond									
Form 661									
Asset-Cashflow Affidavit									
Cert in Lieu of Financial Statement									
MSB/VBE Declaration Form									
Vendor Disclosure Statement Form									
DES Form EPA 610-3									
DES Form EPA 610-4									
Emulsion Drug Testing Program									
Reviewed By:	<i>Chris Rasmussen</i>	<i>Zach Schongren</i>	<i>Chris Rasmussen</i>						

CITY OF FORT WAYNE, INDIANA

Ottenweller Contracting, LLC.
(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

- 1. FINANCIAL INTERESTS;**
- 2. POTENTIAL CONFLICTS OF INTEREST;**
- 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 \$50,000 or more. Vendors shall disclose their 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 for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the 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) ☒

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:

Name: _____ %

Name: _____ %

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 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

- c. 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 _____

If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact below (attach additional pages as necessary).

WO #66314 - Caustic Feed System 03/05/15, Chris Ravenscroft

WO #75727 - CSO Regulator Modification Pkq 04/01/15, Andi Adams

b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes X No

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).

WO #76002 - Upper Ely Gate Improvements, Eric Rupert

c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

Yes No X

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms:

Name / Position / Payment Terms:

Name / Position / Payment Terms:

d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.).

Company / Name / Payment Terms: _____

Company / Name / Payment Terms: _____

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

Ottenweller Contracting, LLC.
(Name of Vendor)

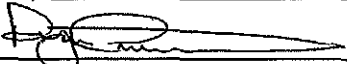
3010 Independence Dr., FW, IN 46808

Address
(260) 484-9183

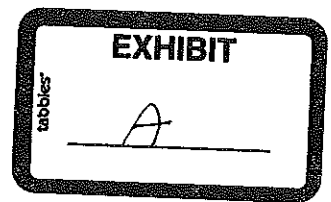
Telephone
ryan.ottenweller@ottenweller.com
E-Mail Address

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) Ryan Ottenweller Title President

Signature  Date 9/16/2015

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 76062

Work Order 76062

THIS AGREEMENT is by and between the Board of Public Works of the City of Fort Wayne, Indiana (hereinafter called Owner) and Ottenweller Contracting (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:

- Modifications and improvements to the existing East and West Contact Tanks including installation of helical anchors, isolation gates, walkways, and railing.
- Installation of fine bubble diffused aeration equipment, piping, valves and appurtenances at the East and West Contact Tanks.
- Construction of a new Contact Tank Building to house electrical equipment, blowers and variable speed drives, controls, and appurtenances.
- Installation of new blowers, variable speed drives, piping, valves, and appurtenances.
- Heating, ventilating and air conditioning work for the new Contact Tank Building.
- Electrical work including installation of new primary power transformer, switchgear, motor control center and appurtenances.
- Instrumentation and controls.
- Miscellaneous sitework.

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 Effluent Aeration Improvements

ARTICLE 3 – ENGINEER AND DESIGNER

- 3.01 The firm of Arcadis U.S. Inc. 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 firm of Arcadis, 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.

4.02 Days to Achieve Substantial Completion and Final Payment

- A. The Work, except Work listed in 4.03 below, will be substantially completed within **320 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.
- B. Work, except Work listed in 4.03 below, shall be ready for final payment in accordance with Paragraph 14.07 of the General Conditions within **350 days plus Owner Float time authorized by the Owner**, if any, after the date when the Contract Times commence to run.
- C. 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.
- D. Definition of Substantial Completion for this 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, and record documents, and as specified in Division 1 General Requirements.

4.03 Days to Achieve Substantial Completion and Final Payment for Pond 1 (Alternate 4-1) and Pond 2 (Alternate 5-1) Influent Isolation Gate Replacement if Owner accepts Base Bid Option A.

- A. The Pond 1 and Pond 2 Influent Isolation Gate Replacement Work will be substantially completed within 60 days after November 7th 2016. Work cannot start prior to October 31st 2016.
- B. Pond 1 and Pond 2 Influent Isolation Gate Replacement Work shall be ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 90 days after November 7th.
- C. Definition of Substantial Completion for this Pond 1 and Pond 2 Influent Isolation Gate Replacement Work shall include installation of the gates, actuators, electrical power and appurtenances, successful completion of gate leakage testing, removal of temporary bulkheads and dewatering equipment, beneficial use of the gates by the Owner, and control of the gates from the Owners SCADA system.

4.04 Internal Completion Milestones

- A. Fiber shutdown time constraint: 14 calendar days as specified in Specification Section 01 14 16 Coordination with Owner's Operations (Shutdown E).
- B. Power shutdown time constraint: 7 calendar days as specified in Specification Section 01 14 16 Coordination with Owner's Operations (Shutdown B).

4.05 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 and 4.03A for Substantial Completion of the Work.
 - 1. \$2,000 for each day that expires from the 1st day to the 30th day, until all Project Work is substantially complete;
 - 2. \$4,000 for each day that expires from the 31st day to the 90th day, until all Project Work is substantially complete;
 - 3. \$8,000 for each day that expires beyond the 91st day, until all Project Work 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 4.02B and 4.03B for completion and readiness for final payment until all Project Work is completed and ready for final payment.
 - 1. \$1,000 for each day that expires after the date specified in Paragraph 4.02B, for completion and readiness for final payment until all Project Work is completed and ready for final payment.
- C. Contractor shall pay Owner \$3,000 for each day that expires after the fiber shutdown time constraint specified in Paragraph 4.04A until Work is substantially complete.
- D. Contractor shall pay Owner \$3,000 for each day that expires after the power shutdown time constraint specified in Paragraph 4.04B until Work is substantially complete.
- E. 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.
- F. 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.
- G. 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.
- H. 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.

4.06 Incentives.

- A. The Owner shall pay Contractor an incentive payment for early completion of fiber shutdown Work. Owner shall pay Contractor \$2,000 per day for every day the Work is substantially complete prior to the date established, per 4.04A.; up to a maximum of \$6,000.
- B. The Owner shall pay Contractor an incentive payment for early completion of power shutdown Work. Owner shall pay Contractor \$3,000 per day for every day the Work is substantially complete prior to the date established, per 4.04B.; up to a maximum of \$6,000.

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 as indicated in this Paragraph 5.01.B:

UNIT PRICE WORK

See Article 5 (itemized Bid Schedule) of the Bid Form 00 41 00-4 to 00 41 00-5

Three Million, Eight Hundred Twenty-Eight Thousand Dollars and Zero Cents

(\$3,828,000.00)

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. 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. Engineer will process Applications for Payment 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 45 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, 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 of Work, 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. MBE/WBE Good Faith Deposit
1. The Board will retain 5% of the total owing to insure Contractor's compliance with the MBE/WBE Rider attached to this Agreement. Payment to the Contractor is not to exceed 95% of the total contract amount until the Owner has verified the Contractor has made good faith efforts to attain the MBE/WBE goal stipulated in the MBE/WBE Rider attached hereto.
- D. Escrow Agreement.
1. If the Contract is in excess of \$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 of Work 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 Engineers 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 rate 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 correlated the information known to Contractor; information and observations obtained from visits to the Site, report and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof provided by Design Manager is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- K. In connection with the performance of Work under this Contract, Contractor agrees to comply with Anti-Discrimination Under Indiana Code Chapter 5-16-6-1 and be bound by Chapter 93.036, of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. 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 00-11, inclusive);
 - 2. MBE/WBE Rider (pages 00 54 34-1 to 00 54 34-2, inclusive)
 - 3. Escrow Account Agreement (pages 00 54 43-1 to 00 54 43-3, inclusive);
 - 4. Drug Policy Acknowledgement Form (page 00 54 52-1);
 - 5. E-Verify Affidavit (page 00 54 53-1, inclusive);

6. SRF Loan Program DBE Packet (pages 00 54 61-1 to 00 54 61-4, inclusive);
7. SRF Attachment B – Davis-Bacon Act Contract Provisions (pages 00 54 65-1 to 00 54 65-8, inclusive);
8. SRF Attachment C – Wage Fringe Benefit Certification Contract Provisions (page 00 54 66);
9. SRF Attachment E – Suspension and Debarment Contract Provisions (page 00 54 68-1);
10. SRF Attachment I – US Iron and Steel Requirement Form;
11. SRF Attachment J – Required Certification from Contractor Related to American Iron and Steel;
12. SRF EPA Form OEE-1 (page 00 54 72-1);
13. SRF EPA Form OEE-2 (page 00 54 73-1);
14. Performance Bond Form (pages 00 61 13.13-1 to 00 61 13.13-2, inclusive);
15. Payment Bond Form (pages 00 61 13.16-1 to 00 61 13.16-2, inclusive);
16. Guaranty Bond Form (pages 00 61 31-1 to 00 61 31-2, inclusive);
17. Federal Wage Rate Requirements (00 73 43 inclusive);
18. General Conditions (pages 00 72 00-1 to 00 72 00-41, inclusive);
19. Supplementary Conditions (00 73 00, inclusive);
20. Specifications as listed in the Table of Contents of the Project Manual;
21. Drawings consisting of WPCP Effluent Aeration Improvements, inclusive, with each sheet bearing the following general title: Water Pollution Control Plant Effluent Aeration Improvements;
22. Addenda (numbers 1 to 2, inclusive);
23. Attachments to this Agreement (enumerated as follows);
 - a. Contractor's Bid Schedule (page 00 41 00-4 to 00 41 00-5);
 - b. Documentation submitted by Contractor prior to Notice of Award (pages ____ to ____, inclusive);
24. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed;
 - b. Written Amendments;
 - c. Work Change Directives;
 - d. 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.

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

- 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 anything 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 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 M.B.E./W.B.E. Participation

- A. **Indiana State Revolving Fund Loan Program** – This project is being financed in whole or in part by the Indiana State Revolving Fund Loan Programs. The Contractor is required to comply with all federal and state laws, rules, regulations, and contract provisions included in Indiana Finance Authority (IFA) State Revolving Fund (SRF) documents per Article 9 of this agreement

(IFA SRF requirements and forms are available on the IFA SRF website.)

10.07 Other Provisions

- A. None.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement (Contract/Resolution Number 76062). 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:

OTTENWELLER CONTRACTING

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: _____
LYNDSEY RICHARDS, CLERK

DATE: _____
(Date signed by Board)

ACKNOWLEDGMENT (CONTRACTOR)

STATE OF _____)
)
) SS:)
 COUNTY OF _____)

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 Lyndsey Richards, 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 Public Board of 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

Interoffice Memo

Date: 9/25/2015
To: Common Council Members
From: Michael Kiester, Manager, City Utilities Engineering / ESS
RE: Water Pollution Control Plant Effluent Aeration Improvements
Res. #76062, W.O. #76062

[Handwritten signature]
10-1-2015

Council District # WPCP

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

1. Modifications and improvements to the existing East and West Contact Tanks including installation of helical anchors, isolation gates, walkways, and railing.
2. Installation of fine bubble diffused aeration equipment, piping, valves and appurtenances at the East and West Contact Tanks.
3. Construction of a new Contact Tank Building to house electrical equipment, blowers and variable speed drives, controls, and appurtenances.
4. Installation of new blowers, variable speed drives, piping, valves, and appurtenances.
5. Heating, ventilating and air conditioning work for the new Contact Tank Building.
6. Electrical work including installation of new primary power transformer, switchgear, motor control center and appurtenances.
7. Instrumentation and controls.
8. Miscellaneous sitework.

Implications of not being approved: Currently aeration takes place at both the aerated sludge basins and at the outfall from Pond 3. The WPCP NPDES permit requires a minimum dissolved oxygen (DO) content in the plant effluent before being discharged to the river. The aeration structure at the Pond 3 outfall is non-mechanical and has been challenging and costly to operate periodically in the summer months and is also less effective during high river events. The aeration process for nitrification used at the aerated sludge basins currently is set to over inject air to also help achieve effluent DO levels. Separating the nitrification process air from air requirements needed to obtain proper DO levels will free up capacity in the blowers needed for new design treatment process flow and also reduce the power consumption at the plant.

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

This project was advertised to contractors on August 14th 2015, August 21st 2015 in the Journal Gazette and the News Sentinel and August 19th 2015 in Frost Illustrated, Inc.

The contract for Resolution #76062 awarded to Ottenweller Contracting for \$3,828,000.00 was the lowest most responsive bidder of 2 bidders and 2% below the Engineer's estimate of \$3,900,000.00. The second lowest bidder was \$421,000.00 above Ottenweller's bid.

The cost of said project funded by State Revolving Fund.

Council Introduction Date: October 13, 2015

CC: BOW
Matthew Wirtz
Diane Brown
Construction Manager
Chrono
File