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**BILL NO. S-15-11-09**

SPECIAL ORDINANCE NO. S- 91-15

AN ORDINANCE approving WPCP COMBINED HEAT & POWER SYSTEM MAINTENANCE AGREEMENT - RES. #75865, W.O.#75865 - \$120,000.00 between KRAFT POWER CORPORATION 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 WPCP COMBINED HEAT & POWER SYSTEM MAINTENANCE AGREEMENT - RES. #75865, W.O.#75865 - \$120,000.00 by and between KRAFT POWER CORPORATION 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 maintenance on two (2) 400 kW generators installed by Kraft Power for the WPCP Combined Heat & Power System as a part of project: "Primary, Secondary and Digester Improvements Part 1":

involving a total cost of ONE HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS - (\$120,000.00). A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

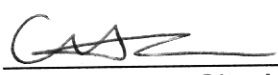
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**SECTION 2.** That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.



Council Member

APPROVED AS TO FORM AND LEGALITY



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Carol Helton, City Attorney



## CHP SYSTEM MAINTENANCE CONTRACT

21 THIS CHP SYSTEM MAINTENANCE CONTRACT (the "Contract") is entered into this day of October, 2015, by and between Kraft Power Corporation, (hereinafter the "Supplier"), a Massachusetts corporation with a principal place of business at 199 Wildwood Avenue, Woburn, MA 01801 and City of Fort Wayne (hereinafter the "Customer"), located at 2601 Dwenger Avenue, Ft Wayne, IN 46803.

WHEREAS, Customer has a single CHP System (hereinafter the "CHP System"), installed at the following location (hereinafter the "Site"):

Fort Wayne WPCP  
2601 Dwenger Avenue  
Fort Wayne, IN 46803

WHEREAS, Customer wishes to provide for the orderly and proper care and maintenance of the CHP System, and the Supplier is willing to provide such maintenance, service and repair to Customer for the CHP System.

NOW, THEREFORE, in consideration of the foregoing, which shall be deemed to be a substantive part of this Contract, and the mutual covenants, promises, agreements, representations and assurances contained in this Contract, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### 1 Form of Contract

- 1.1 This Contract is a contract for the delivery of maintenance, repair and service by the Supplier for the CHP System, and is not, and shall not be construed, as an Energy Supply Contract.

### 2 Definitions

- 2.1 "Operational Hours" means the number of actual run hours of the CHP System.
- 2.2 "Supplier" means Kraft Power Corporation.
- 2.3 "Contract" means this document and its Appendices
- 2.4 "Customer" means City of Fort Wayne, Indiana
- 2.5 "CHP System" means the plant and equipment supplied by Kraft Power Corporation under a separate contract, and which constitutes all of the equipment covered under this Contract, including warranties for such equipment.
- 2.6 "Generated Power" shall mean the power measured at the generator terminals.
- 2.7 "Month" means a calendar month.
- 2.8 "Minimum Running Load" is the kW demand level below which the CHP System will shut down on low load.
- 2.9 "Work" shall mean all services, repairs and/or maintenance operations provided by the Supplier under this Contract.

### 3 Scope of Contract

- 3.1 Except as otherwise described herein, this Contract covers all service, repair and maintenance operations, including parts, materials, equipment and labor, required to ensure that the CHP System maximizes the number and availability of Operational Hours, and ensures the reliable, efficient, safe and cost effective operation of the CHP System as supplied.
- 3.2 All work performed hereunder by the Supplier shall be done by Kraft Power System's trained professionals. All workmanship shall conform to practices which are standard and customary in the trade and all work shall be performed by workers skilled in their fields.
- 3.3 Any alteration to local permitting requirements for environmental emissions from the CHP System that necessitates equipment replacement or modification is excluded from the scope of this Contract.
- 3.4 All scheduled maintenance is provided for under this Contract, as shown in Exhibit B, provided that the CHP System is operated in accordance with the instructions and software provided by the Supplier. The Customer shall be liable for the additional cost of any repairs or maintenance required due to misuse, alteration or interference with the CHP System by any party other than the Supplier, and for excluded services as defined in Section 3.5. In the event that the Supplier and Customer cannot agree in advance upon responsibility for any additional costs pursuant to this Section, the Supplier may, and will have the right to provide necessary repairs, service and maintenance, notwithstanding the parties' dispute regarding financial responsibility for such work. Any disputes under this Section shall be resolved in accordance with Section 19 (Disputes) of this Contract.
- 3.5 This Contract does not cover any maintenance or repair which results, in whole or in part, from:
- a) Willful damage, misconduct, vandalism or other unauthorized acts by anyone other than Supplier or its agents;
  - b) Fire, theft, or other risks now or hereafter normally covered by an "all risks" policy of insurance, including extended coverage;
  - c) War, riots, civil commotion, flood, storm, earthquake, or any similar event;
  - d) Any alteration, addition to, substitution, repair, service or replacement of any part of the CHP System or related electrical, plumbing, or fuel connection not authorized by Supplier. Supplier acknowledges that the CHP System and related systems installed as of the first day of successful interconnection with the utility are installed in accordance with its requirements;
  - e) Any damage to the CHP System caused by fuel that is not in conformance with the manufacturer's fuel specification;
  - f) Any use of the CHP System in any manner other than its designated use, as defined in Exhibit A, and the manufacturer's documentation;
  - g) Customer's failure to perform any covenant contained in this Contract;
  - h) Any inaccuracies, improprieties, mishaps or issues related to the installation of other equipment or devices not approved by appropriate vendor or Supplier.

Furthermore, the following are expressly excluded from this Contract unless covered by the original manufacturers' warranty:

- Complete replacement of the engine
- Repair or replacement of the engine crankcase or crankshaft
- Replacement or rewinding of the alternator (Generator)
- Replacement of steam generator or chemicals for feed-water
- Replacement of radiators or replacement of engine coolant.
- Replacement of electrical components (electric motors, VFD's, breakers, control boards, etc.)

In the event of a disagreement between the parties as to whether replacement or repair of the engine or other component is appropriate, the parties agree to refer the matter to the manufacturer of the subject equipment, to share the cost of having the manufacturer's representative examine the subject equipment, and to abide by the recommendation of the manufacturer as to whether or not the subject equipment is capable, within commercially reasonable limitations, of being repaired to a state of useful operational effectiveness.

If Supplier undertakes repairs to the CHP System as the direct result of any of the acts and/or events excluded from coverage under this Section, Customer agrees to pay Supplier for materials, expenses and labor required for the repair at Supplier's then-effective rates.

**3.6** Customer agrees that upon any parts replacement by Supplier, the parts or material removed shall become the property of Supplier. Supplier maintains sole, reasonable discretion as to repair or replacement of any portion of the CHP System. In the event that Supplier determines that it is necessary to replace any component, Supplier may at its sole, reasonable discretion supply a new or rebuilt component.

**3.7** This Contract excludes the cost of meeting ongoing emissions requirements (including annual testing, if required, or other ongoing emission compliance measures). This Contract excludes the cost of periodic protective relaying testing or other ongoing utility or government compliance measures, if required.

**3.8** The Supplier shall hold strategic spare parts for the CHP System on site or at its premises at its cost. If this Contract is cancelled prior to the end of its original or extended term, Customer will pay the Supplier for the spare parts deemed specific to this Contract prior to delivery of those spare parts to Customer FCA (Supplier's premises) in accordance with Incoterms 2010. It is hereby agreed that title to any parts supplied under this Contract shall pass from the Supplier to the Customer upon delivery FCA (Supplier's premises) in accordance with Incoterms 2010.

**3.9** The CHP System will be connected via an Ethernet connection to the Supplier's remote monitoring system, which will provide data collection, analysis and reporting functions, and responses to all alarms raised by the CHP System. All equipment is provided and will be maintained by the Supplier, but the Ethernet connection will be provided and maintained in working order by the Customer.

**3.10** Unless otherwise agreed by the parties, Supplier will perform scheduled maintenance tasks, including annual services and overhaul services, during the week (Monday through Friday) between the hours of 7:00 AM & 3:30 PM. Costs incurred for staff to provide productive work during the stipulated hours are not reimbursable by the Owner. Such costs may include, but are not limited to, overtime pay, overnight accommodations and meals. Major overhaul services may require the removal of part of the CHP System and transportation to Supplier's service facility,

### **3.11 Notices**

Unless otherwise specified herein, all notices, requests, consents and other communications hereunder shall be in writing, shall be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and shall be either delivered (i) in hand, (ii) by overnight courier, (iii) sent by certified or registered mail, return receipt requested, postage prepaid, or (iv) by email with a read receipt:

In the case of the Customer:

Brian Robinson  
WPCP Superintendent  
2601 Dwenger Ave  
Ft Wayne, IN 46803

Office: 260-427-2607  
Email: Brian.Robinson@cityoffortwayne.org

In the case of the Supplier:

Owen M. Duffy  
President  
Kraft Power Corporation  
199 Wildwood Avenue  
Woburn, MA 01888

Office: 781-938-9100  
Fax: 781-933-7812  
Email: oduffy@kraftpower.com

Any such notice shall be deemed given when so delivered in-hand, or if sent via telex, telecopy, facsimile, email, or by overnight courier when so received, or if mailed, three days after being deposited with the Postal Service.

#### 4 Operation of the CHP System

- 4.1 Customer understands and agrees that when its need for power from the CHP system is less than 200kW, the CHP System cannot operate because it can only run at fifty percent (50%) or more of its 400kW capacity. Customer must supply its own source of power when its power needs are less than 200kW.
- 4.2 Customer understands and agrees that when the load is continuously less than 200kW for more than 30 minutes, or less than 100kW for 10 minutes, the CHP System will shut down. The minimum off time for the CHP System on low load shut down will be one hour.
- 4.3 Customer agrees to operate the two CHP units with equal load and run hours, to the maximum extent possible. The contract price offered in Section 5 is based on accomplishing maintenance to both machines in the same service intervals.

#### 5 Contract Price

- 5.1 The price to undertake the maintenance and service plan detailed in Exhibit B of this Contract is broken into two elements, as stated in Section 5.2 through 5.3 below.
- 5.2 To account for the fixed costs associated with the services to be provided hereunder, regardless of utilization level, a fixed charge applies. This charge includes 24/7 monitoring, on-line alarm response (if needed), reports, management overheads, and plant preservation. It will be billed monthly:

**Fixed Charge:           \$600.00 / Month**

- 5.3 The core element of the CHP System maintenance program is the scheduled servicing of the biogas fired engine and auxiliary systems, and includes consumable maintenance supplies including lubricating oil, and filters, and all scheduled maintenance. It does not include repair or replacement of failed parts or components beyond the warranty period.

**Scheduled Maintenance Annual Charge: \$60,000.00 per each of the two units which make up the CHP System, invoiced in monthly equal instalments.**

## **6 Payment**

- 6.1** Payment shall be made against detailed, monthly invoices submitted promptly after the end of each calendar month of operation of the CHP System. Each invoice will contain an itemization of all charges for which payment is requested.
- 6.2** Payment shall be made within a maximum of thirty (30) days from receipt of invoice.
- 6.3** Hours of operation for purposes of Section 9.1 will be tracked and accessible through the CHP System.
- 6.4** In the event of any dispute regarding the invoiced amount, Customer shall pay the undisputed amount pending resolution of any disputed amount, and the disputed amount shall not be the subject of any interest or penalties if resolved between the parties themselves without arbitration.
- 6.5** Customer may request and Supplier shall deliver, within thirty (30) days of the request, any and all documents reasonably required by Customer in its discretion to confirm the accuracy of any Monthly Report and/or invoice. With notice to the Supplier, Customer reserves the right to postpone the start of processing of the invoice until all documents received. Customer reserves the right to engage the services of a company of its choice to audit and review the records of Supplier to ensure compliance with the terms and conditions of this Contract and Supplier shall assist all such efforts.

## **7 Performance**

- 7.1** The design performance of the CHP System is contained in the Data Sheet (Exhibit A). The Data Sheet states the tolerances and standards that apply to the performance of the CHP System. Supplier warrants and represents herein that the information contained in Exhibit A is a fair and accurate accounting of such data.
- 7.2** The CHP System Performance will be dependent upon gas quality and availability. Supplier cannot guarantee CHP performance if gas does not meet manufacturer's required standard. Supplier reserves the right to renegotiate the cost of services provided based on oil analysis which indicates chronic deviation in gas quality.
- 7.3** Once each year at a suitable time when the capacity can be utilized, the CHP System will be tested on full load to verify continued performance within the tolerances stated. An allowance for degradation shall be made depending on how close the engine is to a major overhaul. The degradation allowances are set forth on the Data Sheet. Testing will be conducted using the instrumentation and PLC installed in the CHP System. It is accepted that variation in fuel specification will lead to variation in performance. The CHP system is only warranted to meet its rated performance when fuel is strictly in accordance with the engine vendor's specification.
- 7.4** The measurement of performance shall be from the metered data recorded or by calculation where a heat meter is not fitted and shall be calculated by adding the Generated Power to the Recovered Heat then dividing by the Consumed Gas. For simplicity, all energy measurement units shall be kWh.

## **8 Variations**

- 8.1** From time-to-time the Supplier may offer enhancements to improve the efficiency, reliability of functionality of the installed system as such are developed. Also, the Customer may request modifications for similar reasons.
- 8.2** All such variations shall be fully priced and evaluated and a cost/benefit case made as appropriate to determine the impact of the variation on the installed

system. Customer shall have no obligation to accept any additional services or variations from Supplier and Supplier shall obtain advance written approval from Customer prior to implementing any such variation for which additional costs are requested from Customer. Refusal by Customer to accept any such additional services or variations will in no way limit, modify or waive any obligation by Supplier to deliver any services or assurances provided by this Contract.

- 8.3 Work carried out to repair or otherwise correct damage caused by misuse, alteration or interference with the system by any party other than the Supplier shall be deemed a variation to the Contract for which additional charges will be paid by the Customer. Supplier shall provide Customer with advance notice and receive written approval from Customer of any additional charges prior to commencement of such work.
- 8.4 Work that is not covered by the basic charges set forth above in Section 5 will not be implemented without a written instruction from the Customer incorporating the agreed cost of the work to be performed.

## 9 Duration

- 9.1 The initial Contract term shall be for 8,760 operating hours on each engine or twelve (12) months from the Contract Start Date set forth in Section 9.2, whichever occurs first.
- 9.2 The "Contract Start Date" shall be the time the CHP System is first put to beneficial use, which shall be documented by the issuance of the Substantial Completion Certificate.
- 9.3 An extension to the Contract term may be negotiated at any time by mutual written agreement of the Supplier and the Customer. The hourly rate may vary depending upon the term of the proposed contract extension.
- 9.4 TERMINATION/SUSPENSION. Customer may terminate this Contract upon 30 days written notice to the Supplier. Customer shall pay Supplier for all Work rendered prior to termination.

## 10 Assignment and Subcontract

- 10.1 The Supplier may subcontract parts of its obligations under this Contract to appropriately qualified and approved organizations. All subcontractors attending the Site will identify themselves as representing Supplier. Customer reserves the right to withhold approval of any subcontractor, but will not exercise that right unreasonably.
- 10.2 The Customer shall be informed in writing and prior to any commencement of work of any subcontract operated under the Contract.
- 10.3 The Contract shall not be assigned by a Party in its entirety except with the prior written permission of the other Party, which shall not be unreasonably withheld.

## 11 Supplier's Obligations

- 11.1 The Supplier will maintain the CHP System and use its best efforts to ensure that the assurances on availability and performance are met as per the performance criteria set forth in Article 8 - Performance of this Contract.
- 11.2 The Supplier will provide continuous monitoring of the CHP System and be equipped to receive and interpret alarms.

- 11.3** The Supplier will provide a qualified on-line response to all alarms within four hours of receipt.

In the event of an emergency the Customer will have 24 hour access to the Supplier at these numbers in order of priority:

Site Monitoring Center # \_\_\_\_\_

- 11.4** The Supplier will report to the Customer each month on the performance of the CHP System.
- 11.5** Supplier shall provide Customer, on a monthly basis, with a statement designating the number of available, unavailable, scheduled outage and unscheduled outage hours for the CHP System for the preceding month and shall include for each unavailable period a description of the reason and responsibility for such unavailability.
- 11.6** The Supplier will ensure that all staff and subcontractors attending the CHP System will at all times abide by the site rules and regulations as provided from time to time by Customer. All work at the Customer's site will be conducted in a manner to avoid disruption of or interference with the business operations of the Customer. The Supplier shall be responsible to instruct, train and advise all of its employees and agents regarding all Customer rules and regulations and all local, state and national health and safety rules and regulations applicable to any work to be performed pursuant to this Contract. Supplier remains primarily responsible for this Contract and the actions of its employees, agents, and subcontractors.
- 11.7** Supplier shall provide any documentation, records or data reasonably requested by Customer relative to any aspect of the performance of this Contract.
- 11.8** The Supplier will ensure that the CHP System and Customer's property will be left in a clean and workmanlike condition on completion of Work under the Contract, and that all waste material generated will be removed and disposed of legally.
- 11.9** The Supplier will provide 48 hours advance notice to the Customer on each occasion that it intends to make a planned or unplanned visit to the site and Supplier shall leave a record of each visit prior to departure from the site.
- 11.10** For each incident of an outage, the Supplier will work cooperatively with the Customer to determine the root cause of the outage. The Supplier will prepare a report documenting their findings as to the cause of the outage. Where the cause is the responsibility of the Supplier, the Supplier will include a description of the remedy, associated outage time and any recommendation to prevent a repeat incident. This report is due within 2 working days of the identified cause of the outage.
- 11.11 INSURANCE.** Supplier shall maintain in full force and effect during the performance of the Services the following insurance coverage:
- |     |                                |  |
|-----|--------------------------------|--|
| (a) | Worker's Compensation          | per statutory requirements.  |
| (b) | General Liability              | \$1,000,000 minimum per occurrence/<br>\$1,000,000 aggregate (if the value of the project exceeds \$10,000,000 then this shall be \$5,000,000 aggregate) |
| (c) | Automobile Liability           | \$1,000,000 minimum per occurrence   |
| (d) | Products Liability             | \$1,000,000 minimum per occurrence   |
| (e) | Completed Operations Liability | \$1,000,000 minimum per occurrence   |

The Certificate of Insurance must show the City of Fort Wayne, its Divisions and Subsidiaries as an Additional Insured and a Certificate Holder, with 30 days notification of. All Certificates of Insurance should be sent to the following address:

City of Fort Wayne Purchasing Department  
230 East Berry St.  
Fort Wayne, IN 46802

Supplier shall provide Customer with 30 days notification of any non-renewal of required policies.

## **12 Independence of the Parties**

Supplier, its agents, servants, employees and representatives are independent contractors with regard to performing this Contract. Nothing in this Contract in any way creates any agency or employment relationship between the Supplier or any of its employees, agents, representatives or servants, on the one hand, and the Customer, on the other hand. Supplier certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees which will participate in any way in the performance of the Supplier's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City of Fort Wayne or any of its departments, divisions, agencies, officers, directors or agents.

## **13 Customer's Obligations**

- 13.1 Customer shall provide Supplier with utility prices applicable to the CHP System, these will include but not be limited to: Natural Gas, Imported Power, Demand Charges. Customer accepts that such charges will be used by Supplier to define economic operation of the system. Utility prices will be provided annually to coincide with Section 7 of this Contract.
- 13.2 Customer will provide reasonable access to the Supplier and its subcontractors, 24 hours per day and 365 days per year, to the CHP System for the purpose of maintaining, repairing, or inspecting the equipment, with Supplier providing advance verbal notice of each site visit.
- 13.3 Customer shall provide a continuous supply of fuel to the CHP System at Customer's cost.
- 13.4 Customer shall restrict access to the CHP System, its immediate environment, and to its interfaces with fuel supply and power delivery points, to adequately trained and knowledgeable persons. The Customer will post warning notices placed on or within the plant, and at the points of connection of the plant, and Customer will take reasonable steps to ensure that those notices are clearly visible at all times, and that the warnings and instructions on such notices are strictly adhered to.
- 13.5 For each incident of an outage, the Customer will work cooperatively with the Supplier to determine the root cause of the outage. The Customer will prepare a report documenting their findings as to the cause of the outage. Where the cause is the responsibility of the Customer, the Customer will include a description of the remedy, associated outage time and any recommendation to prevent a repeat incident. This report is due within 2 working days of the identified cause of the outage.
- 13.6 Customer shall perform daily visual inspection of the CHP System and shall maintain a log of such inspections on a Supplier-provided form.

## **14 Access to Site**

- 14.1** Procedures for access to site and reporting attendance shall be provided by the Customer, as will any security passes needed for vehicles and individuals regularly attending the CHP System installation and maintenance.
- 14.2** Within 30 minutes of arrival on site during normal working hours and with advance notice of the arrival time, the Supplier's agent shall be given access to the CHP System.
- 14.3** When the Site is closed or unoccupied and access to the Site is required by Supplier, a procedure shall be provided by the Customer to allow access to the Supplier within two hours of telephone contact being made and within 30 minutes of arrival at the Site.

## **15 Force Majeure**

Supplier will make reasonable commercial efforts to observe the dates indicated for delivery or other performance. Supplier shall be excused and shall not be liable for delays in delivery or in performance or failure to deliver due to any cause not within Supplier's reasonable control, which causes include but are not limited to, strikes; slow-downs; lockouts; riots; civil unrest; war (declared or undeclared); terrorism; fire, severe weather, volcanoes and acts of God. Supplier's performance shall be deemed suspended during any such excusable delay and for a reasonable period of time thereafter and Customer shall accept performance hereunder. No penalty of any kind nor shall any liquidated damages be effective against nor be paid by Supplier for any delays in performance, whether or not such delays are based on an excusable delay. As used herein, "performance" includes, without limitation, engineering, design, fabrication, shipment, delivery, assembly, installation, testing, and warranty repair or replacement as applicable. If any such delay lasts for a period longer than ninety (90) days in the aggregate, then the Parties agree that this Contract shall be considered cancelled for convenience in accordance with Section 11.

## **16 Liability**

- 16.1 INDEMNITY.** To the fullest extent permitted by law, each party shall indemnify and save harmless the other party from and against loss, liability, and damages sustained by that other party, its agents, employees, and representatives by reason of injury or death to persons or damage to property to the extent caused directly by the willful or negligent errors or omissions of the indemnifying party, its agents or employees.
- 16.2 LIMITATION OF LIABILITY.** Each party's liability to the other party for any loss, cost, claim, damage, or expense (including attorneys' fees) relating to or arising out of any negligent act or omission in its performance of obligations arising out of this Contract, shall be limited to the amount of direct damage actually incurred. Neither party shall be liable to the other or to anyone else for any consequential, special, punitive or indirect damages.

## **17 Intellectual Property**

All Intellectual Property owned by the Supplier shall continue to be the sole property of the Supplier. Intellectual Property includes all patents, copyright materials, and design rights.

## **18 Confidentiality**

- 18.1** The parties recognize that in the course of their relationship, Supplier may disclose to Customer, and Customer will have, and will continue to have access to certain Confidential Information (as defined below) belonging to Supplier, and that

Supplier desires that any such Confidential Information remain confidential. Customer agrees not to disclose Supplier's Confidential Information to any Person (as defined herein) and will use the same means it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of Supplier's Confidential Information. The foregoing will not prevent Customer from disclosing Confidential Information which belongs to Supplier that is (i) already known by Customer without an obligation of confidentiality, (ii) publicly known or becomes publicly known through no unauthorized act of Customer, (iii) rightfully received from a third party who received the Confidential Information without similar restrictions, (iv) independently developed by Customer without use of Supplier's Confidential Information, (v) authorized by Supplier for disclosure, or (vi) required to be disclosed pursuant to a requirement of a governmental agency, court order, so long as Customer provides Supplier with notice of such requirement prior to any such disclosure. This language may conflict with the Freedom of Information Act that City Utilities must abide by.

**18.2 Confidential Information means:**

A. Information related to Supplier or any business entity which controls, is controlled by, or is under common control with Supplier ("Affiliate"),

(i) Which derives economic value, actual or potential, from not being generally known to or readily ascertainable by other persons who can obtain economic value from its disclosure or use; and

(ii) Which is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and

B. All tangible reproductions or embodiments of such information.

Confidential Information includes, but is not limited to, all business records, trade secrets, business plans, know-how, marketing plans, strategies and ideas, lists or compilations of information, supplier contacts, or service partners, financial information, personnel data, existing or future products or services, and any information contained in any documents prepared by or for Supplier, at Supplier's expense or otherwise in furtherance of Supplier's business which it does not make known to the public. Confidential Information also includes information, which has been disclosed to Supplier or its Affiliates by a third party and that Supplier or any Affiliate is obligated to treat as confidential

**18.3** Customer shall hold the Confidential Information in trust and in strictest confidence, and will not use, reproduce, distribute, disclose or otherwise disseminate the Confidential Information except as provided herein. Supplier reserves the right to either not give Customer a copy of its Confidential Information or require Customer to return all copies once Customer has reviewed the Confidential Information.

**18.4** Customer may disclose the Confidential Information to its employees, officials, board members, auditors, and consultants, in each case on a "need to know" basis. Customer will notify Supplier if it receives any requests that call for the release of Supplier's Confidential Information.

**18.5** Nothing contained in this Contract shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed to Customer. All Confidential Information shall remain the property of Supplier and shall be returned by Customer to Supplier upon request. All notes, abstracts, memoranda, or other documents prepared by Customer that contain Confidential Information or any discussion thereof, except as relates to the operation,

maintenance or ownership of the CHP System, shall be destroyed or returned to Supplier upon written request by Supplier. Customer will certify to Supplier that it has complied fully with Supplier's instructions and has not retained any portion of the Confidential Information. However, upon termination of this Contract due to Supplier's default, and/or completion of the Contract term, Customer will be allowed to retain such service manuals as it needs to maintain the operation of the CHP System.

- 18.6** The Customer shall not unreasonably withhold permission for the Supplier to use details of the CHP System installation and its operation for marketing and publicity purposes. Supplier will give Customer notice prior to bringing any visitors to see the CHP System as long as it does not jeopardize security of the system and facility that would affect the health and safety of the community
- 18.7** The Customer shall give reasonable access, on receiving a minimum of seven (7) day notice, for visits by interested parties to the Site and CHP System conducted by the Supplier for marketing purposes. The Customer reserves the rights to limit the number of visits or frequency of visits, refuse parties and refuse dates that conflict with plant operation schedule or jeopardize plant security.

## **19 Disputes**

- 19.1** If any dispute arises between the Customer and the Supplier, the party identifying such dispute shall notify the other in writing, specifying the nature of the dispute ("Matter in Dispute").
- 19.2** Should the Customer and the Supplier fail to agree on a solution to the Matter in Dispute, in writing, within ten (10) business days of the notice referred to in Section 19.1 either party may refer the Matter in Dispute to their respective CEO or other senior executive/manager together with any correspondence, agreed minutes of meetings and agreed notes of discussions between the parties relating to the Matter in Dispute, who shall then attempt to resolve the Matter in Dispute in good faith within ten (10) business days from the date of the referral.
- 19.3** Where the circumstances so require, the parties shall use all reasonable efforts to expedite the above procedure.
- 19.4** If agreement is reached on the Matter in Dispute pursuant to Section 19.2 each party shall promptly comply with its obligations as set out in the written record of such agreement. If a solution to the Matter in Dispute has not been agreed in writing within twenty-five (25) business days of service of the notice referred to in Section 19.1, either party may take such lawful action as they may deem necessary or appropriate to protect or enforce their rights under this Contract.

## **20 Governing Law**

- 20.1** This Contract shall be governed by and construed in all respects in accordance with the Laws of the State of Indiana.
- 20.2** It is the desire and intent of the parties that the provisions of this Contract shall be enforced to the fullest extent permissible. Accordingly, if any particular paragraph(s), subparagraph(s), or portion(s) of this Contract shall be adjudicated to be invalid or unenforceable as written, such paragraph(s), subparagraph(s), or portion(s) shall be modified to the extent necessary to be valid or enforceable. Such modification shall not affect the remaining provisions of this Contract. To the extent any paragraph(s), subparagraph(s), or portion(s) of this Contract found invalid or unenforceable cannot be modified to be made valid or enforceable, then the Contract shall be construed as if that paragraph(s), subparagraph(s), or portion(s) were deleted, and all remaining terms and provisions shall be

enforceable in law or equity in accordance with their terms to the extent permissible by law.

## **21 Suspension**

**21.1** If the Customer suspends, delays or otherwise encumbers (a "Suspension") the Supplier's performance under this Contract for a period of time that in the aggregate exceeds sixty (60) days, then unless otherwise agreed to in writing by the Supplier, the Supplier may, at its option, either: (a) treat such Suspension as though the Customer cancelled this Contract for convenience and as such the Customer agrees to pay the Supplier for such deemed cancellation pursuant to Section 9.4 and such other charges as specifically provided for in this Contract; or (b) if the Customer requests in writing, and the Supplier accepts such request, resume performance provided that the Customer also agrees in such request to pay the Supplier for all reasonable costs and expenses incurred related to the Suspension and the resumption of performance and to reschedule all delivery and milestone dates as required by the Supplier. If the Supplier treats a Suspension as though the Customer cancelled this Contract for convenience, the Supplier may make arrangements to deliver the affected repair or parts in accordance with Section 9.4. The Customer shall consider reimbursing the Supplier for reasonable costs and expenses incurred and fully documented, as a result of any Suspension by the Customer that does not in the aggregate exceed sixty (60) days.

## **22 Export Compliance and Anti-Corruption**

- 22.1** The Customer will not sell, assign or otherwise transfer the Work or replacement parts purchased from the Supplier if such sale, assignment or transfer would violate, or would result in the Supplier being in violation of any United Nations, United States, European Union or other applicable laws or rules related to export or re-export restrictions. In case of doubt regarding US export or re-export restrictions, The Customer is obliged to address the Supplier for appropriate information and assistance.
- 22.2** The Customer agrees that it and its employees or representatives will not violate any provision of any United Nations, United States, European Union or any other applicable law related to bribery, whether related to a public official or private person.
- 22.3** If the Customer fails to meet its obligations in Sections 22.1 or 22.2, the Customer shall defend, indemnify and hold the Supplier harmless from and against any fines, penalties and/or damages resulting therefrom. In addition, the Supplier may, at its discretion, terminate this order without any further liability or obligation.

## **23. Miscellaneous**

- 23.1** NO WAIVER. No waiver by either party of any default by the other party in the performance of any particular section of this Contract shall invalidate another section of this Contract or operate as a waiver of any future default, whether like or different in character.
- 23.2** SEVERABILITY. The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.
- 23.3** AUTHORITY. The persons signing this Contract warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract as of the day and year first above written.

**The CUSTOMER:**

**The City of Fort Wayne**

See attached  
Name:

Date:

**The SUPPLIER:**

**Kraft Power Corporation**

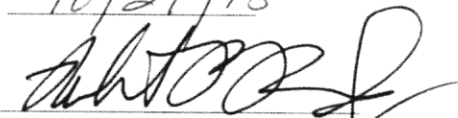
Owen M. Duffy  
Name: Owen M. Duffy, President


Date: October 9, 2015

Approval of Maintenance Agreement between the City of Fort Wayne and Kraft Power for Work Order #75865, Water Pollution Control Plant Combined Heat & Power System Maintenance. Compensation for services performed shall be \$120,000.00.


**BOARD OF PUBLIC WORKS**

Date: 10/21/15

BY:   
Robert P. Kennedy, Chairman

BY:   
Kumar Menon, Member

BY:   
Mike Avila, Member

ATTEST:   
Lyndsey Richards, Clerk

**CITY OF FORT WAYNE, INDIANA**

Kraft Power Corporation  
(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

\_\_\_\_\_  
\_\_\_\_\_

- 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

\_\_\_\_\_  
\_\_\_\_\_

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years:  
Yes \_\_\_\_\_ No

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- c. Relationship to Member of Immediate Family holding appointive City office currently or in the previous 3 years:  
Yes \_\_\_\_\_ No

\_\_\_\_\_  
\_\_\_\_\_

**Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION**

- a. Does Vendor have current contracts (including leases) with the City? Yes  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).

\_\_\_\_\_ RFP-008 \_\_\_\_\_  
\_\_\_\_\_

b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes \_\_\_\_\_ 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).

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

Yes \_\_\_\_\_ No

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

Name / Position / Payment Terms:

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Name / Position / Payment Terms:

---

Name / Position / Payment Terms:

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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

Kraft Power Corporation  
(Name of Vendor)

199 Wildwood Ave. Woburn MA  
Address  
781 938-9100  
Telephone  
laalmeida@Kraftpower.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) Lori Ann Almeida Title Credit Manager  
Signature Lori Ann Almeida Date 11/3/15

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

## Request for Taxpayer Identification Number and Certification

Give Form to the  
 requester. Do not  
 send to the IRS.

Print or type  
 See Specific Instructions on page 2.

Name (as shown on your income tax return) <b>Kraft Power Corporation</b>	
Business name/disregarded entity name, if different from above	
Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input checked="" type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____  <input type="checkbox"/> Other (see instructions) ▶ _____	
Exemptions (see instructions):  Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____	
Address (number, street, and apt. or suite no.) <b>199 Wildwood Ave</b>	Requester's name and address (optional)
City, state, and ZIP code <b>Woburn MA 01801</b>	
List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number								

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number								
0	4	-	2	3	8	1	3	2

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

**Sign Here**

Signature of U.S. person ▶ *Lou Ann Almeida*

Date ▶ *July 14, 2015*

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** The IRS has created a page on [www.irs.gov/w9](http://www.irs.gov/w9) for information about Form W-9, at [www.irs.gov/w9](http://www.irs.gov/w9). Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

# Interoffice Memo

Date: November 4, 2015  
To: Common Council Members  
From: Doug Fasick, Sr. Program Manager Energy Engineering & Sustainability Services/City Utilities Engineering  
RE: **WPCP Combined Heat & Power System Maintenance Agreement  
Res. # 75865 , W.O. # 75865**

## Council District – City Wide

The contractor shall furnish all labor, insurance, equipment, materials for maintenance on two 400 kW generators installed by Kraft Power for the WPCP Combined Heat & Power System as a part of project: “Primary, Secondary and Digester Improvements Part 1”.

Implications of not being approved: If the generators are not properly maintained by the installation contractor, we jeopardize the reliability of the generators and could incur approximately \$410,000 in additional electrical costs by having to purchase retail electricity from local electric utility.

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

The Generator Maintenance contract for Resolution # 75865 awarded to Kraft Power Corporation for \$120,000 and was the most responsive of 3 proposals received by biogas generator manufacturers.

The cost of said project funded by Sewer Utility.

Council Introduction Date: November 10, 2015

CC: BOW  
Matthew Wirtz  
Diane Brown  
Construction Manager  
Chrono  
File

Public Hearing Date, if applicable \_\_\_\_\_

Read the first time in full and on motion by Councilman Thomas Smith,  
Read the second time by title and referred to the City Utilities  
Committee. Read the third time in full and on motion by Councilman  
Thomas Smith, placed on passage by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>7</u>	_____	_____	<u>2</u>
BENDER	<u>✓</u>	_____	_____	_____
CRAWFORD	<u>✓</u>	_____	_____	_____
DIDIER	<u>✓</u>	_____	_____	_____
HARPER	_____	_____	_____	<u>✓</u>
HINES	_____	_____	_____	<u>✓</u>
JEHL	<u>✓</u>	_____	_____	_____
PADDOCK	<u>✓</u>	_____	_____	_____
SHOAFF	<u>✓</u>	_____	_____	_____
SMITH	<u>✓</u>	_____	_____	_____

DATED: 11-24-15 Michelle D. Chambers  
MICHELLE D. CHAMBERS, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as  
(ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE  
(RESOLUTION) NO. S-91-15 on the 24<sup>th</sup> day of  
November, 2015

Michelle D. Chambers ATTEST: John N. Crawford  
MICHELLE D. CHAMBERS, PRESIDING OFFICER  
CITY CLERK

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 30<sup>th</sup> day  
of November, 2015, at the hour of 12:00 o'clock P.M. E.S.T.

Michelle D. Chambers  
MICHELLE D. CHAMBERS, CITY CLERK

Approved and signed by me this 1<sup>st</sup> day of December  
2015, at the hour of 4:00 O'clock PM E.S.T.

Thomas C. Henry  
THOMAS C. HENRY, MAYOR

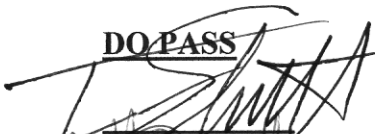
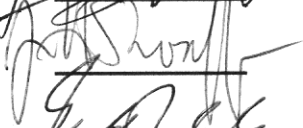
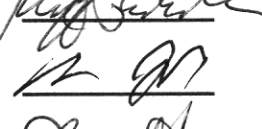
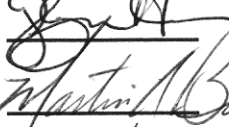

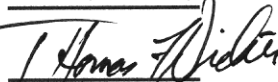

**BILL NO. S-15-11-09**

**REPORT OF COMMITTEE ON CITY UTILITIES**

**NOVEMBER 17, 2015**

*Thomas Smith, Chair  
Martin Bender, Co-Chair  
All Council Members*

**AN ORDINANCE** approving WPCP COMINED HEAT & POWER SYSTEM MAINTENANCE AGREEMENT-RES. #75865,W.O. #75865-\$120,000.00 BETWEEN KRAFT POWER CORPORATION and the City of Fort Wayne, Indiana, in connection with the Board of Public Works. **COMMITTEE ON CITY UTILITIES HAVE HAD SAID** Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____

**MICHELLE D. CHAMBERS  
CITY CLERK**

