BILL NO. S-24-02-06

SPECIAL ORDINANCE NO. S-23-24

AN ORDINANCE approving CONSTRUCTION CONTRACT – ADAMS CENTER RD SANITARY SEWER EXTENSION - WORK ORDER #75685 – ($5,822,021.27) – between BUNN EXCAVATING, INC. and the City of Fort Wayne, Indiana, by and through its 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 - ADAMS CENTER RD SANITARY SEWER EXTENSION - WORK ORDER #75685 – ($5,822,021.27) – between BUNN EXCAVATING, INC. and the City of Fort Wayne, Indiana, by and through its 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 : INSTALLATION OF APPROXIMATELY 6,191 LF OF 36" PVC (PS46 AND PS 115 DEPENDING ON DEPTH), 1,108LF OF 72" OR 96"FRP (SN46), 30 LF OF 12" PVC SDR 35, AND 120 LF OF 8" DR 11 HDPE FORCE MAIN RELOCATION;

involving a total cost of FIVE MILLION EIGHT HUNDRED TWENTY-TWO THOUSAND TWENTY-ONE and 27/100 DOLLARS - ($5,822,021.27). 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

Malak Heiny, City Attorney

PROJECT:	Adams Center Rd Sanitary Sewer Extension
Resolution#:	75685
Work Order#:	75685
Project Designer	American Structurepoint
Construction Manager	Mike Kiester
Manager	Nathan Baggett
Bid Date: (Quote Date)	February 1, 2024
Funding:	Sewer Revenue

BID				Engineer's Estimate		Bunn Excavating		Dunnigan Bros., Inc.		API Construction	
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	Mobilization and Demobilization	1	LS	$250,000.00	$250,000.00	$52,209.09	$52,209.09	$301,817.13	$301,817.13	$311,287.50	$311,287.50
2	Remove & Reset Chain Link Fencing	200	LF	$40.00	$8,000.00	$39.19	$7,838.00	$81.94	$16,388.00	$35.00	$7,000.00
3	Remove and Replace Grade Beam	1	LS	$5,000.00	$5,000.00	$5,046.11	$5,046.11	$11,900.45	$11,900.45	$9,500.00	$9,500.00
4	Drain Tile Repair	5	EA	$750.00	$3,750.00	$1,165.93	$5,829.65	$623.97	$3,119.85	$2,575.00	$12,875.00
5	Maintenance and Protection of Traffic	1	LS	$40,000.00	$40,000.00	$11,335.05	$11,336.05	$53,772.46	$53,772.46	$95,000.00	$95,000.00
6	Temporary Erosion and Sedimentation Controls	1	LS	$30,000.00	$30,000.00	$40,464.40	$40,464.40	$17,068.82	$17,068.82	$5,500.00	$5,500.00
7	Bypass Pumping	1	LS	$50,000.00	$50,000.00	$54,966.83	$54,966.83	$75,198.85	$75,198.85	$110,500.00	$110,500.00
8	Video Documentation of Conditions	1	LS	$4,000.00	$4,000.00	$2,803.41	$2,803.41	$794.98	$794.98	$3,250.00	$3,250.00
9	Electrical Work	1	LS	$45,000.00	$45,000.00	$86,771.24	$86,771.24	$72,606.48	$72,606.48	$82,750.00	$82,750.00
10	Special Backfill, Compacted Aggregate (#53/#73 Stone)	650	CY	$60.00	$39,000.00	$59.86	$38,909.00	$74.91	$48,691.50	$67.50	$43,875.00
11	Restoration of Ditch Crossings	2	EA	$20,000.00	$40,000.00	$8,016.81	$16,033.62	$6,807.00	$13,614.00	$12,500.00	$25,000.00
12	Clearing and Grubbing	1	LS	$40,000.00	$40,000.00	$61,804.66	$61,804.66	$45,252.92	$45,252.92	$65,500.00	$65,500.00
13	6-in HMA Patching	120	SY	$150.00	$18,000.00	$137.64	$16,516.80	$94.17	$11,300.40	$110.00	$13,200.00
14	Seeding	1	LS	$40,000.00	$40,000.00	$71,489.60	$71,489.60	$119,435.75	$119,435.75	$95,000.00	$95,000.00
15	Manhole Cleaning and Coating	16.75	VF	$300.00	$19,500.00	$515.19	$33,487.35	$380.15	$25,359.75	$425.00	$27,625.00
16	12-in Sanitary Sewer, PVC SDR 35	30	LF	$200.00	$6,000.00	$98.03	$2,940.90	$257.76	$7,732.50	$225.00	$6,750.00
17	36-in Sanitary Sewer, PVC PS 115	5009	LF	$700.00	$3,506,300.00	$485.68	$2,432,771.12	$615.79	$3,084,492.11	$830.00	$4,157,470.00
18	24-in Sanitary Sewer PVC PS 115	20	LF	$400.00	$8,000.00	$294.43	$5,888.60	$471.08	$9,421.60	$450.00	$9,000.00
19	6-in Sanitary Lateral Connection, PVC SDR 35	2	EA	$2,500.00	$5,000.00	$2,256.41	$4,512.82	$2,564.39	$5,128.78	$3,750.00	$7,500.00
20	8-in Force Main, HDPE DR 11	120	LF	$150.00	$18,000.00	$351.38	$42,165.60	$247.46	$29,695.20	$175.00	$21,000.00
21	45-Degree Bend HDPE Fittings	4	EA	$900.00	$3,600.00	$515.80	$2,063.20	$518.57	$2,074.28	$400.00	$1,600.00
22	Pipe Plugs	4	EA	$1,500.00	$6,000.00	$5,819.73	$23,278.92	$3,502.98	$14,011.92	$2,200.00	$8,800.00
23	Remove Existing Pipe, All Sizes	1381	LF	$25.00	$34,525.00	$7.34	$10,136.54	$19.78	$27,316.18	$2.50	$3,452.50
24	72-in Sanitary Manhole with Conshield Additive	9	EA	$17,500.00	$157,500.00	$33,784.75	$304,062.75	$24,527.90	$221,551.10	$26,500.00	$238,500.00
25	72-in Drop Sanitary Manhole with Conshield Additive	1	EA	$20,000.00	$20,000.00	$34,406.57	$34,406.57	$25,038.39	$25,038.39	$47,500.00	$47,500.00
26	84-in Sanitary Manhole with Conshield Additive	4	EA	$22,500.00	$90,000.00	$44,448.02	$177,792.08	$32,817.51	$131,270.04	$36,350.00	$145,400.00
27	108-in Sanitary Manhole with Conshield Additive	2	EA	$45,000.00	$90,000.00	$54,054.19	$108,108.38	$55,672.46	$111,344.92	$58,300.00	$116,600.00
28	108-in Doghouse Sanitary Manhole with Conshield Additive	1	EA	$80,000.00	$80,000.00	$73,682.84	$73,682.84	$79,710.57	$79,710.57	$77,395.00	$77,395.00
29	Remove Existing Manhole Structure, All Sizes	5	EA	$1,500.00	$7,500.00	$3,489.23	$17,446.15	$593.40	$2,967.00	$750.00	$3,750.00
30	36in x 36in Stainless Steel Slide Gate & Appurtenances	1	EA	$82,500.00	$82,500.00	$59,975.71	$59,975.71	$45,248.94	$45,248.94	$72,145.00	$72,145.00
31	Utility Pole Bracing Allowance	1	LS	$5,000.00	$5,000.00	$5,000.00	$5,000.00	$5,000.00	$5,000.00	$5,000.00	$5,000.00
32	Systems Integrator Allowance	1	LS	$25,000.00	$25,000.00	$25,000.00	$25,000.00	$25,000.00	$25,000.00	$25,000.00	$25,000.00
33	New Electrical Service Allowance	1	LS	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00
34	Owner's Work Allowance	1	LS	$50,000.00	$50,000.00	$50,000.00	$50,000.00	$50,000.00	$50,000.00	$50,000.00	$50,000.00
	TOTAL BASE BID			$4,807,175.00		$3,894,737.79		$4,703,424.87		$5,914,725.00	

BID ALTERNATE 1				Engineer's Estimate		Bunn Excavating		Dunnigan Bros., Inc.		API Construction	
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
35	72-in Sanitary Sewer FRP SN 46	LF	1108	$800.00	$886,400.00	$1,066.16	$1,181,305.28	$991.39	$1,098,460.12	$1,430.00	$1,584,440.00
36	Automated Gate Structure (8ftx8ft)	EA	1	$90,000.00	$90,000.00	$114,907.39	$114,907.39	$214,448.52	$214,448.52	$116,995.00	$116,995.00
	TOTAL BID ALTERNATE 1			$976,400.00		$1,295,212.67		$1,312,908.64		$1,701,435.00	

BID ALTERNATE 2				Engineer's Estimate		Bunn Excavating		Dunnigan Bros., Inc.		API Construction	
Item#	Description	Quantity	Unit	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
37	96-in Sanitary Sewer FRP SN 46	LF	1108	$950.00	$1,052,600.00	$1,623.75	$1,799,115.00	$1,696.73	$1,879,976.84	$2,330.00	$2,581,640.00
38	Automated Gate Structure (9ftx9ft)	EA	1	$110,000.00	$110,000.00	$128,168.48	$128,168.48	$228,045.24	$228,045.24	$130,600.00	$130,600.00
	TOTAL BID ALTERNATE 2			$1,162,600.00		$1,927,283.48		$2,108,022.08		$2,712,240.00	

	Engineer's Estimate	Bunn Excavating	Dunnigan Bros., Inc.	API Construction
BASE + BID ALTERNATE 1	$5,783,575.00	$5,190,950.46	$6,016,333.51	$7,616,160.00
BASE + BID ALTERNATE 2	$5,969,775.00	$5,822,021.27	$6,811,446.95	$8,526,965.00
Basis of Award is Base Bid + Alternate 2		$5,822,021.27	$6,811,446.95	$8,526,965.00

	Bunn Excavating	Dunnigan Bros., Inc.	API Construction
Addendum No.1	X	X	X
Addendum No.2	X	X	X
Bidder's Bond	X	X	X
Form 96	X	X	X
Non-Collusion Affidavit	X	X	X
Cert In Lieu/Financial Statement	X	X	X
Employee Drug Testing Program (>$150K)	X	X	X

Reviewed By Nathan Baggett

AGREEMENT BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **Board of Public Works** ("Owner") and Bunn Excavating, Inc. ("Contractor").

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

Owner and Contractor hereby 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: **Installation of approximately 5,029 LF of 36" PVC (PS46 and PS 115 depending on depth), 1,108LF of 72" or 96"FRP (SN46), 30 LF of 12" PVC SDR 35, and 120 LF of 8" DR 11 HDPE Force main relocation**

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **75685 Adams Center Rd Sanitary Sewer Extension**

ARTICLE 3—ENGINEER

3.1 City Utilities ("Engineer"), will act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.2 The part of the Project that pertains to the Work has been designed by **American Structurepoint, Inc**

ARTICLE 4—CONTRACT TIMES

4.1 Time is 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.

4.2 ::NOT USED::

4.3 Contract Times: Days

A. The Work will be substantially complete by November 22, 2024.

B. Work shall be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions by January 17, 2025.

C. Definition of Substantial Completion for this Work shall consist of **All Milestones achieved; all pipe and structures passed testing; all road crossings repaired; slide gate and instrumentation installed and functional as designed**

4.4 Milestones

A. Parts of the Work must be completed on or before the following Milestone(s):

1. Milestone 1 **Sewer and conduit installed across Trier Ditch; Ditch restored 4/30/24**
2. Milestone 2 **Gravity sewer installed to Paulding Rd 9/30/2024**

4.5 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. 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):

1. Substantial Completion: Contractor shall pay Owner **$1,500.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **$1,000.00** for each day that expires after such time until the Work is completed and ready for final payment.
3. Milestones:
   a. Contractor shall pay Owner **$1,000.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.05.A.1 will apply, rather than the Milestone rate.
   b. Contractor shall pay Owner **$10,000.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 2, until Milestone 2 is achieved.
4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.

B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

C. ::NOT USED::

4.6 ::NOT USED::

ARTICLE 5—CONTRACT PRICE

5.1 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

A. :: NOT USED ::

B. :: NOT USED ::

C. :: NOT USED ::

D. For all Work, at the prices stated in Contractor's Bid on the QuestCDN online bid submittal, attached hereto as an exhibit.

TOTAL OF ALL UNIT PRICES Five Million Eight Hundred Twenty-Two Thousand Twenty-One Dollars and Twenty-Seven Cents.
$ 5,822,021.27
Basis of Award is Base Bid plus Alternate #2

ARTICLE 6—PAYMENT PROCEDURES

6.1 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.2 Progress Payments; Retainage

A. Owner shall make progress payments during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted within 45-days of the portions complete, and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in 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 elsewhere in the Contract.

1. Prior to Final 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 Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

a. 95 percent of the value of the Work completed (with the balance being retainage).

b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment. However, payments to the Contractor are not to exceed 95% of the total Contract Price until the Owner has verified that the Contractor has made good faith efforts to attain the EBE goal stipulated in Paragraph 9.03.E. Payment of the final 5% of the total Contract Price will be dependent upon acceptance of the Work, in accordance with Paragraph 15.06 of the General Conditions, and good faith efforts to comply with the EBE participation requirements; subject to reduction in the event of non-compliance as provided in Paragraph 9.03.E.

C. 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.

6.3 Final Payment

A. Upon final completion and acceptance of the Work, Owner shall pay the remainder ofthe Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.4 Consent of Surety

A. Owner will not make final payment or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

ARTICLE 7—CONTRACT DOCUMENTS

7.1 Contents

A. The Contract Documents consist of the following:

1. This Agreement (00 52 00, inclusive);
2. Escrow Account Agreement (00 54 43, inclusive);
3. Drug Policy Acknowledgment Form (00 5452, inclusive);
4. E-Verify Affidavit (00 54 53, inclusive);
5. Performance Bond Form (00 61 13.13, inclusive);
6. Payment Bond Form (00 61 13.16, inclusive);
7. General Conditions (00 72 00, inclusive);
8. Supplementary Conditions (00 73 00, inclusive);
9. Specifications as listed in the table of contents of the project manual
10. Drawings consisting of Drawing SY-20538, Sheets 1-24, inclusive, with each sheet bearing the following general title: Adams Center Rd Sanitary Sewer Extension;
11. Addenda (numbers 1 to 2, inclusive);
12. Attachments to this Agreement (enumerated as follows);
    a. Contractor's Bid Worksheet;
    b. Documentation submitted by Contractor prior to Notice of Award.
13. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    a. Notice to Proceed;
    b. Written Amendments;
    c. Work Change Directives;
    d. Change Orders;

B. ::NOT USED::

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.1 Contractor's Representations

A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; 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 Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no 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.
8. 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.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

12. 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.

8.2 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 8.02:

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 the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.3 Standard General Conditions

A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

ARTICLE 9—MISCELLANEOUS

9.1 Terms

Terms used in this Agreement will have the meanings stated in the General Conditions

9.2 Severability

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.

9.3 Emerging Business Enterprise (EBE) Participation

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

In the event there is a determination that good faith compliance with these EBE participation requirements has not occurred, appropriate reduction in the final payment pursuant to paragraph 9.03.E will be made.

If the Contract Price is in excess of $200,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the Contractor are not to exceed 95% of the total Contract Price until the Owner has verified that the Contractor has made good faith efforts to attain the 10% EBE goal stipulated in here within. Payment of the final 5% of the total Contract Price will be dependent upon acceptance of the Work, in accordance with Paragraph 15.06 of the General Conditions, and good faith efforts to comply with these EBE participation requirements; subject to reduction in the event of non-compliance as provided in paragraph 9.03.E.

A. Request for Waiver – If, at the time final payment application is made, Contractor has not attained the ten percent (10%) EBE goal, Contractor shall file with the final payment application a "Request for Waiver." Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the ten percent (10%) EBE goal.

B. Determination of Waiver Requests – The Vendor Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.

C. Good Faith Efforts. – In determining whether or not the Contractor used "good faith" efforts, the following shall be considered:

    1. Whether the contract can be subdivided as determined by the Engineer and Administrator of Contract Compliance;

    2. Availability of certified EBE businesses to participate as subcontractors;

    3. Non-competitive price quotes received from EBE firms. The Board of Public Works determination for granting a reduction or waiver of the goal because of higher quotes from EBE firms will be based on factors that include, but are not limited to the following:

        a. The Engineer's estimate for the work under a specific contract;

        b. The Contractor's own estimate for the work under the subcontract;

c. An average of the valid prices quoted for the subcontract;

d. Demonstrated increase in other contract costs as a result of sub-contracting to EBE firm(s).

4. Documented measures taken by the Contractor to comply with the EBE participation goal;

5. EBE subcontractor failed to fulfill their obligation in regard to the time delivery of goods and/or services. Also in regards to the quality of the goods and/or services set forth in the bid specifications.

6. Such other matters as the Board of Public Works deems relevant.

D. Consequences of Noncompliance – In the event the Board of Public Works approves a recommendation that Contractor failed to make good faith efforts at compliance, the Contract Price shall be reduced by the amount calculated as the difference between the EBE participation goal of 10% and the actual participation level met by the Contractor, but in no case shall it be reduced by more than 5%. Said amount shall be added to the City of Fort Wayne EBE Bond Guarantee Fund and Contractor agrees to accept the reduced amount as full payment under the terms of his/herContract.

E. Waiver Approved – In the event the Board of Public Works determines that a good faith effort to comply with these EBE participation requirements has been made, the Contract Price shall not be reduced, and the balance owing to the Contractor shall be paid in full.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement (Contract/Resolution Number 75685). 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:

BUNN EXCAVATING, INC.

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

BY: _____
Shan Gunawardena, CHAIR

BY: _____
Kumar Menon, MEMBER

BY: _____
Chris Guerrero, MEMBER

ATTEST: _____
Michelle Fulk-Vondran, 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, Shan Gunawardena, Kumar Menon, Chris Guerrero and Michelle Fulk-Vondran, by me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, and Chairman, Members, and Clerk of the Board of Public Works of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said City for the uses and purposes therein set forth.

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

_____
Notary Public

_____
Printed Name of Notary

My Commission Expires:

Resident of_____County

City Utilities
Engineering

Interoffice Memo

Date: February 6, 2024

To: Common Council Members

From: Michael Kiester, Manager, City Utilities Engineering

RE: Adams Center Road Sanitary Sewer Extension
75685

Council District # 6

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project: **Installation of approximately 6,191 LF of 36" PVC (PS46 and PS 115 depending on depth), 1,108LF of 72" FRP (SN46), 30 LF of 12" PVC SDR 35, and 120 LF of 8" DR 11 HDPE Force main relocation.**

Implications of not being approved: This project provides sewer service to a large new customer developing on the southeast portion of the City while increasing capacity in the system for existing customers. Approval of this project ensures near-term and future economic development and growth in this portion of the City and County.

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

This project was advertised to contractors on 01/01/2024 and 01/18/2024 in the Journal Gazette.

The contract for Resolution #75685 awarded to Bunn Excavating, Inc. for $5,822,021.27 was the lowest most responsive bidder of three bidders and 2% below the Engineer's estimate of $5,969,775.00. The second lowest bidder was $989,425.68 above Bunn Excavating, Inc.

The cost of said project funded by Sewer Revenue.

Council Introduction Date: 02/13/2024

CC: Matthew Wirtz
Jill Helfrich
File

BILL NO. S-24-02-06

REPORT OF COMMITTEE ON CITY UTILITIES

February 27, 2024

Paul Ensley Chair
Russ Jehl Co-Chair
All Council Members

An Ordinance approving Construction Contract – Adams Center Rd Sanitary Sewer Extension - Work Order #75685 – between Bunn Excavating, Inc. and the City of Fort Wayne, Indiana, by and through its Board of Public Works

Involving a total cost of $5,822,021.27

COMMITTEE ON CITY UTILITIES HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

COUNCIL MEMBER	DO PASS	DO NOT PASS	ABSTAIN
BENDER			
CHAMBERS			
ENSLEY			
FREISTROFFER			
HARTMAN			
JEHL			
MYERS			
PADDOCK			
TUCKER			

STACY REED
DEPUTY CITY CLERK

Public Hearing Date: N/A
Read the first time in full and on motion by Councilperson Ensley.
Read the second time by title and referred to the City Utilities Committee.
Read the third time in full and on motion by Councilperson Jehl, placed on passage by the following vote:

TOTAL VOTES	AYES	NAYS	ABSTAINED	ABSENT
BENDER	☒	☐	☐	☐
CHAMBERS	☒	☐	☐	☐
ENSLEY	☐	☐	☐	☒
FREISTROFFER	☒	☐	☐	☐
HARTMAN	☒	☐	☐	☐
JEHL	☒	☐	☐	☐
MYERS	☒	☐	☐	☐
PADDOCK	☒	☐	☐	☐
TUCKER	☒	☐	☐	☐

DATED: February 27, 2024

Stacy Reed
STACY REED, DEPUTY CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Resolution No. S-24-02-06 on the 27th day of February, 2024

ATTEST:

Stacy Reed
STACY REED
DEPUTY CITY CLERK

Thomas J. Freistroffer
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th of February 2024, at the hour of 9:10 o'clock A.M. E.S.T.

Stacy Reed
STACY REED, DEPUTY CITY CLERK

Approved and signed by me this 1st day of MARCH 2024, at the hour of 9:30 o'clock AM. E. S.T.

Thomas C. Henry
THOMAS C. HENRY, MAYOR

FORT WAYNE, INDIANA
RECEIVED
MAR 01 2024
LANA R. KEESLING
CITY CLERK