

1 **BILL NO. S-11-09-13**

2
3 SPECIAL ORDINANCE NO. S-162-11

4 AN ORDINANCE approving CONTRACT FOR ST.
5 JOSEPH DAM CONCRETE AND STRUCTURAL
6 REHABILITATION - RES. #2308-2010, W.O.
7 #65944 between ADVANCED RESTORATION
8 CONTRACTORS and the City of Fort Wayne,
9 Indiana, in connection with the Board of Public
10 Works.

11 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON**
12 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

13 **SECTION 1.** That the CONTRACT FOR ST. JOSEPH DAM
14 CONCRETE AND STRUCTURAL REHABILITATION - RES. #2308-2010,
15 W.O. #65944 by and between ADVANCED RESTORATION CONTRACTORS
16 and the City of Fort Wayne, Indiana, in connection with the Board of Public
17 Works, is hereby ratified, and affirmed and approved in all respects,
18 respectfully for:

19 All labor, insurance, material, equipment, tools, power,
20 transportation, miscellaneous equipment, etc., necessary for
21 rehabilitation of all major components of the existing concrete
22 dam including concrete patching, sealing, epoxy injection and
23 joint rehabilitation:

24 involving a total cost of TWO MILLION, TWENTY-TWO THOUSAND, EIGHT
25 HUNDRED TWENTY-EIGHT AND 00/100 DOLLARS - (\$2,022,828.00). A
26 copy said Contract is on file with the Office of the City Clerk and made
27 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


Carol Helton, City Attorney

Read the first time in full and on motion by *Bender*, and duly adopted, read the second time by title and referred to the Committee on *City of Fort Wayne* (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building Fort Wayne, Indiana, on *9-13-11* the *13th* day of *September*, 2011, at *11:30* o'clock *A* M E S T

DATED *9-13-11*

Sandra E Kennedy
SANDRA E. KENNEDY, CITY CLERK
Bender and duly adopted,
LOST

Read the third time in full and on motion by placed on its passage PASSED by the following vote

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<i>9</i>			
BENDER	<i>✓</i>	<i>--</i>		<i>--</i>
BROWN	<i>✓</i>			
DIDIER	<i>✓</i>			
GOLDNER	<i>✓</i>			
HARPER	<i>✓</i>			
HINES	<i>✓</i>			
PAPE	<i>✓</i>			
SHOAFF	<i>✓</i>			
SMITH	<i>✓</i>			

DATED *9-13-11*

Sandra E Kennedy
SANDRA E. KENNEDY, 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. *3-16211* on the *13th* day of *September*, 2011

ATTEST
Sandra E Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL
Mitchell Henry
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the *14th* day of *September*, 2011, at the hour of *11:30* o'clock *A* M E S T.

Sandra E Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this *15th* day of *September* 2011, at the hour of *2:30* o'clock

Thomas C Henry
THOMAS C. HENRY, MAYOR

BILL NO. S-11-09-13

REPORT OF THE COMMITTEE

ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON TO WHOM WAS REFERRED AN
ORDINANCE HAVE HAD SAID UNDER CONSIDERATION AND BEG LEAVE TO
REPORT BACK TO THE COMMON COUNCIL THAT SAID

DO PASS

DO NOT PASS

ABSTAIN

NO REC

Martin A. B...
- I know...
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SANDRA E. KENNEDY
CITY CLERK

PROJEC
 Resolution
 2008 2010
 Work Order
 Contract / Program Manager
 Manager
 Bid Date
 Funding

St Joseph Dam Concrete & Structural Rehab
 65944
 Nathan Borett
 Mike Kreiser
 6/29/2011
 Friars Water Bond

Item	Description	Qty	Unit	Engineer's Estimate		Advanced Restoration Contractors		Pollina/Structural Group		Western Waterproofing Co., Inc		Arlman Corporation	
				Estimate	Unit Price	Estimate	Unit Price	Estimate	Unit Price	Estimate	Unit Price	Estimate	Unit Price
1	Application of Sealant	2000	SF	\$10.85	\$21,700.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
2	Hydrochloric Acid Treatment (HAC)	2000	SF	\$11.00	\$22,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
3	General Concrete Patching (GCP)	980	SF	\$10.00	\$9,800.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
4	Form Release (FR)	980	SF	\$10.00	\$9,800.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
5	Horizontal Concrete Patching (HP)	150	SF	\$12.00	\$1,800.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
6	Overhead Concrete Patching (OP)	315	SF	\$12.00	\$3,780.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
7	Remove Old Light Bars (RL)	4	EA	\$500.00	\$2,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
8	Cyathine Waterproofing (CWS)	210	SF	\$10.00	\$2,100.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
9	Carbon Fiber Laminates (CFL)	100	LF	\$15.00	\$1,500.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
10	Repair Concrete Slab	150	SF	\$12.00	\$1,800.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
11	Reinforce Wall with Rebar	1	LS	\$4,000.00	\$4,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
12	Reinforce Wall with Rebar	1	LS	\$4,000.00	\$4,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
13	Reinforce Beam with Lumber	1	LF	\$10.00	\$10.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
14	Reinforce Beam with Rebar	6	FA	\$1,000.00	\$6,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
15	Light Foot Pedestal Repair	2	CF	\$1,000.00	\$2,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
16	Reinforce Head Stair	1	LS	\$1,000.00	\$1,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
17	Install Drain Pipe (IDP)	32	EA	\$70.00	\$2,240.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
18	5/8" Steel Stud	12	EA	\$15.00	\$180.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
19	Joint Sealer (JS)	160	LF	\$12.00	\$1,920.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
20	Remove Existing Light Fixtures	1	LS	\$1,000.00	\$1,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
21	New Panel Circuit	1	LS	\$1,000.00	\$1,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
22	Remove Existing Light Fixtures	1	LS	\$1,000.00	\$1,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
23	Remove Existing Light Fixtures	1	LS	\$1,000.00	\$1,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
24	Full Depth Concrete Patching (FDCP)	10	CF	\$200.00	\$2,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
25	Bay Equipment Repair	1	LS	\$17,000.00	\$17,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
26	Work AB	1	S	\$100,000.00	\$100,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
27	Video Surveillance System	1	LS	\$15,000.00	\$15,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
				\$ 2,100,964	\$ 2,100,964	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000

ENGINEER'S ESTIMATE													
Item	Description	Qty	Unit	Estimate	Unit Price	Estimate	Unit Price	Estimate	Unit Price	Estimate	Unit Price	Estimate	Unit Price
1	Concrete Patching (CP)	100	SF	\$10.00	\$1,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
2	Cyathine Waterproofing (CWS)	100	SF	\$10.00	\$1,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
3	Waterproofing (W)	1	LS	\$1,000.00	\$1,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
4	Waterproofing (W)	1	LS	\$1,000.00	\$1,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
5	Waterproofing (W)	1	LS	\$1,000.00	\$1,000.00	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24	\$1,847.00	\$9.24
Alternate A Totals				\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
GRAND TOTALS													
				\$ 2,100,964	\$ 2,100,964	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000



Handwritten notes and signatures at the top of the page, including a date '6/29/2011' and a signature.

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

Resolution 2308-2010

Work Order 65944

THIS AGREEMENT is by and between the Board of Public Works of the City of Fort Wayne, Indiana (hereinafter called OWNER) and Advanced Restoration Contractors, Inc., (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – WORK

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Rehabilitation of all major components of the existing concrete dam including concrete patching, sealing, epoxy injection and joint rehabilitation

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

St. Joseph Dam Concrete and Structural Rehabilitation

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by CE Solutions, Inc. and City of Fort Wayne Utilities Engineering Department. Throughout these Contract Documents, the term ENGINEER is used. ENGINEER is to act as OWNER'S representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. OWNER will advise CONTRACTOR prior to issuance of Notice to Proceed as to who will serve as ENGINEER.

ARTICLE 4 – CONTRACT TIMES

4.01 Time of Essence

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Days to Achieve Substantial Completion and Final Payment

- A. The Work will be substantially completed within 310 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 340 days after the date when the Contract Times commence to run.
- B. Definitions of Substantial Completion for this Work shall consist of bridge deck topped, and all concrete repairs contracted for that require a lowered river elevation, scaffolding and/or a barge.

4.03 Liquidated Damages

- A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER \$1,000.00 for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$250.00 for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- 5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

- A. Not used.
- B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this Paragraph 5.01.B:

As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in Paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General conditions.

See Article 5 (Itemized Bid Schedule) of the Bid Form

Two Million, Twenty Two Thousand, Eight Hundred and Twenty Eight Dollars and Zero Cents

\$2,022,828.00

Project is awarded on the basis of Base Bid plus Alternates A, B, and C as outlined in the bidding documents.

- C. Not Used.

ARTICLE 5 - BASIS OF BID
 St. Joseph Dam Concrete and Structural Rehabilitation

Name Advanced Restoration Contractors, Inc.

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

BID SCHEDULE

ITEM #	DESCRIPTION	SPECIFICATION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	Mobilization/Demobilization	01 22 00	1	LS	\$117,847.00	\$117,847
2	Hydrodemolition and Topping (HD)	03 30 05	2800	SF	\$40.00	\$112,000
3	Concrete Patching (PV)	03 01 30.71	3981	SF	\$150.00	\$597,150
4	Epoxy Injection (E)	03 01 30 71	5839	LF	\$50.00	\$291,950
5	Concrete Patching (P)	03 01 30.71	150	SF	\$56.00	\$8,400
6	Concrete Patching (PO)	03 01 30.71	335	SF	\$175.00	\$58,625
7	Remove Old Light Boxes (L)	03 01 30.71	6	EA	\$200.00	\$12,000
8	Crystalline Waterproofing (CW)	03 01 30.71	211	SF	\$20.00	\$4,220
9	Carbon Fiber Laminate (CF)	03 27 13	100	LF	\$300.00	\$30,000
10	Replace Concrete Stair	03 30 00	1	LS	\$9,000.00	\$9,000
11	Inlet Wall #1 Repairs	03 30 00	1	LS	\$8,000.00	\$8,000
12	Inlet Wall #5 Repairs	03 30 00	1	LS	\$3,500.00	\$3,500
13	Replace Bottom Landing	03 30 00	12	CF	\$300.00	\$3,600
14	Replace Railing Sections @	03 03 00	6	EA	\$6,000.00	\$36,000
15	Light Post Pedestal Repair	03 30 00	13	CF	\$500.00	\$6,500
16	Replace Metal Stair	05 50 00	1	LS	\$7,000.00	\$7,000
17	Install Drain Pipes (DP)	05 50 00	32	EA	\$600.00	\$19,200
18	Silane Sealer (S)	07 19 00	22138	SF	\$2.00	\$44,276
19	Joint Sealant (J)	07 92 00	1604	LF	\$10.00	\$16,040
20	Remove Existing Light Fixtures, Wiring	26 05 00	1	LS	\$5,600.00	\$5,600.
21	New Panel Circuit	26 09 23	1	LS	\$6,000.00	\$6,000
22	Exterior Conduit, Wiring, Connections	26 05 19; 26 05 29; 26 05 33	1	LS	\$17,000.00	\$17,000
23	Decorative Hadco Light Fixtures	26 56 00	1	LS	\$22,500.00	\$22,500
24	Full Depth Concrete Patching (undistributed)	03 01 30 71	10	SF	\$400.00	\$4,000
25	Barge/Equipment Rental	01 22 00	1	LS	\$325,392.00	\$325,392
26	WORK ALLOWANCE	01 22 00	1	LS	\$100,000.00	\$100,000.00
27	Video Surveillance Allowance	28 23 00	1	LS	\$45,000.00	\$45,000.00

TOTAL BASE BID PRICE

\$ 900,000.00

BID SCHEDULE

Alternate A - Pier Rehab below El. 754.00 and Lower Deck Rehab

ITEM #	DESCRIPTION	SPECIFICATION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	Vertical Concrete Patching (PV)	03 01 30.71	289	SF	\$100.00	\$28,900
2	Crystalline Waterproofing (CW)	03 01 30.71	108	SF	\$16.00	\$1,728
3	Inlet Wall #1 Repairs	03 30 00	1	LS	\$4,000.00	\$4,000
4	Inlet Wall #5 Repairs	2 30 00	1	LS	\$1,500.00	\$1,500
5	Hydrodemolition and Topping	03 30 05	500	SF	\$75.00	\$37,500
TOTAL ALTERNATE A						\$73,628.00

Alternate B - LED Wiring

ITEM #	DESCRIPTION	SPECIFICATION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	Alternate for LED Wiring	26 56 00	1	LS	\$11,200.00	\$11,200
TOTAL ALTERNATE B						\$11,200.00

Alternate C - Tainter Gates

ITEM #	DESCRIPTION	SPECIFICATION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	X-Bracing (X)	05 50 00	16	EA	\$2,000.00	\$32,000
2	Clean and Paint Housing and Frames (CP)	09 97 00	4	EA	\$1,500.00	\$6,000
TOTAL ALTERNATE C						\$38,000.00

Unit prices have been computed in accordance with paragraph 11.03.B of the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided in the Contract Documents.

In the event of an arithmetic error in the tabulation of the TOTAL BASE OR ALTERNATE BIDS, the unit prices shall prevail and be used to compute the TOTAL BASE AND ALTERNATE BIDS

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. ENGINEER will process Applications for Payment as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment within 30 days of receipt during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the Schedule of Values established in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided in the General Requirements.
 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with Paragraph 14.02 of the General Conditions:
 - a. 95 % of Work completed (with the balance being retainage); and
 - b. 95 % of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 100% of the Work completed, less such amounts as ENGINEER shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200% of ENGINEER's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.
- C. E.B.E. Good Faith Deposit.
 1. The Board will retain 5% of the total owing to insure CONTRACTOR'S compliance with the E.B.E. Rider attached to this contract. Payments to the CONTRACTOR are not to exceed 95% of the total contract amount until the OWNER has verified the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.
- D. Escrow Agreement.
 1. If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement unless written notice is received from CONTRACTOR prior to execution of the Agreement stating that an Escrow Account is not desired. If an Escrow Account is not desired, then the Board of Public Works, in accordance with IC 36-1-12-14, shall hold the retainage and will not pay interest on the amounts of retainage that it holds.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate at the maximum rate allowed by law at the place of the Project.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:
 - A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. CONTRACTOR has carefully studied all: (1) reports of exploration and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General conditions and (2) reports and drawings of Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.
 - E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.
 - F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
 - G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
 - H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract

Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

- I. CONTRACTOR has given DESIGN MANAGER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof provided by DESIGN MANAGER is acceptable to CONTRACTOR.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- K. In connection with the performance of Work under this Contract, CONTRACTOR agrees to comply with Anti-Discrimination Under Indiana Code Chapter 5-16-6-1 and be bound by Chapter 93.036, of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. CONTRACTOR shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of the construction or upon request of the Office of Compliance.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 00 52 00-1 to 00 52 00-8, inclusive);
 - 2. E.B.E Rider (pages 00 54 33-1 to 00 54 34-3, inclusively);
 - 3. Escrow Account Agreement (pages 00 54 43-1 to 00 54 43-3, inclusive);
 - 4. Performance Bond Form (pages 00 61 13.13-1 to 00 61 13.13-2, inclusive);
 - 5. Payment Bond Form(pages 00 61 13.16-1 to 00 61 13.16-2, inclusive);
 - 6. Guaranty Bond Form(pages 00 61 31-1 to 00 61 31-2, inclusive);
 - 7. General Conditions (pages 00 72 00-1 to 00 72 00-41, inclusive);
 - 8. Supplementary Conditions (pages 00 73 00-1 to 00 73 00-9, inclusive);
 - 9. Specifications (as noted in the Table of Contents);
 - 10. Drawings consisting of Y-20511, pages 1 through 14, inclusive, with each sheet bearing the following general title: St. Joseph Dam Concrete and Structural Rehabilitation);
 - 11. Addenda (numbers 1 to 1, inclusive);
 - 12. Attachments to this Agreement (enumerated as follows):
 - a. CONTRACTOR's Bid Schedule (page 00 41 00-3 to 0041 00-4);
 - b. Documentation submitted by CONTRACTOR prior to Notice of Award (pages to , inclusive);

- c. Appendix B – Federal Construction Contract Requirements (pages 1 through 31, inclusive);
- 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 Order(s)
- B. The documents listed in Paragraph 9.01.A. are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

- A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 Other Provisions

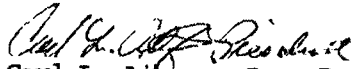
- A. None.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement (Contract/Resolution Number 2308-2010) in triplicate. Two counterparts have been delivered to OWNER, and one counterpart delivered to CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR.

This Agreement will be effective on August 17, 2011 (which is the Effective Date of the Agreement).

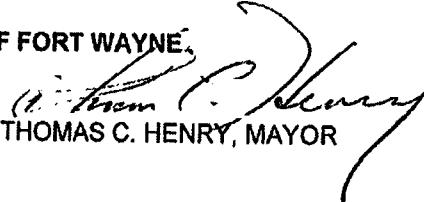
CONTRACTOR:

ADVANCED RESTORATION CONTRACTORS

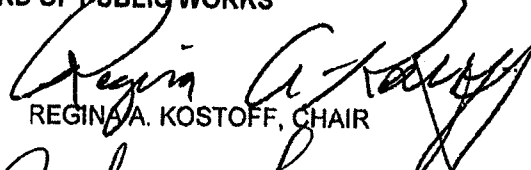
BY: 
Carl L. Aikman, Jr., President

OWNER:

CITY OF FORT WAYNE,

BY: 
THOMAS C. HENRY, MAYOR

BOARD OF PUBLIC WORKS

BY: 
REGINA A. KOSTOFF, CHAIR

BY: 
JOHN SUAREZ, MEMBER

BY: 
KUMAR MENON, MEMBER

ATTEST: 
VICTORIA GUERRERO, CLERK

ACKNOWLEDGMENT (CONTRACTOR)

STATE OF INDIANA)
SS:)
COUNTY OF ALLEN) MARION

BEFORE ME, a Notary Public, in and for said County and State, this 4th day of August, 2011, personally appeared the within named Carl L. Aikman, Jr. who under penalty of perjury says that he is the President of Advanced Restoration Contractors, Inc. and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of Advanced Restoration Contractors, Inc. for the uses and purposes therein set forth.

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

Lori L. Wilson
Notary Public

Lori L. Wilson
Printed Name of Notary

My Commission Expires: 1/13/18

Resident of Hancock County

ACKNOWLEDGMENT (OWNER)

STATE OF INDIANA)
SS:)
COUNTY OF ALLEN)

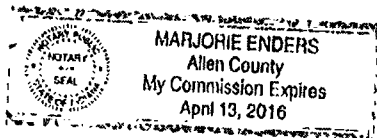
BEFORE ME, a Notary Public, in and for said County and State, this 17th day of August, 2011, personally appeared the within named Thomas C. Henry, Regina A. Kostoff, John Suarez, Kumar Menon and Victoria Guerrero, by me personally known, who being by me duly sworn said that they are respectively the 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.

Marjorie Enders
Notary Public
My Commission Expires April 13, 2016
Printed Name of Notary
ROTARY SEAL
ALLEN COUNTY
NOTARY PUBLIC, STATE OF INDIANA

My Commission Expires:

Resident of County



E.B.E. RIDER

THIS AGREEMENT made and entered into by and between the **CITY OF FORT WAYNE**, hereinafter referred to as **OWNER** and **Advanced Restoration Contractors, Inc.**, hereinafter referred to as **CONTRACTOR**,

WITNESSETH:

WHEREAS, the **CONTRACTOR** is the apparent low bidder on construction project commonly referred to as the **St. Joseph Dam Concrete and Structural Rehabilitation**, which project was bid under Resolution Number **2308-2010**; and

WHEREAS, **CONTRACTOR** agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as **E.B.E.'s**, as subcontractors on this specific project is ten percent (10%) of the Contract Price; and

WHEREAS, **OWNER** has, pursuant to Executive Order 90-01 (as amended 5-8-06), adopted a goal of at least 10% of the Contract Price to Emerging Business Enterprises as defined under said Executive Order (as amended 5-8-06); and

WHEREAS, said Executive Order (as amended 5-8-06) states:

"Section 2. Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded. In the event a contractor is unable to subcontract 10% of the contract amount or secure services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts taken to comply with the participation goals."

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

- 1. Conditional Award - Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction Contract to which this Rider is attached, OWNER awards the construction Contract to the CONTRACTOR.**
- 2. E.B.E. Retainage requirements - If the CONTRACTOR is in compliance with the provisions of the construction Contract to which this Rider is attached, the OWNER will make payments for such work performed and completed. However, in any such case, the OWNER will retain five percent (5%) of the total amount owing to insure compliance with this E.B.E. Rider. 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 this E.B.E. Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this E.B.E. Rider will be made.

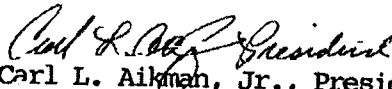
If the Contract Price is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the CONTRACTOR are not to exceed 95% of the total Contract Price until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the 10% E.B.E. goal stipulated in this E.B.E. Rider. Payment of the final 5% of the total Contract Price will be dependent upon good faith efforts to comply with this E.B.E. Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this E.B.E. Rider.

- 3. Request for Waiver - If, at the time final payment application is made, CONTRACTOR has not attained the ten percent (10%) E.B.E. 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%) E.B.E. goal.**
- 4. Determination of Waiver Requests - The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if CONTRACTOR'S efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.**
- 5. Good Faith Per Se. - In any case, a CONTRACTOR shall be deemed to have made good faith efforts at compliance where E.B.E.'s have subcontracted for every sub-contract for which there are qualified E.B.E.'s available.**
- 6. Consequence 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 five percent (5%) and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and CONTRACTOR agrees to accept the reduced amount as full payment under the terms of his/her Contract.**
- 7. Waiver approved - In the event the Board of Public Works determines that a good faith effort to comply with this E.B.E. Rider has been made, the Contract Price shall not be reduced, and the balance owing to the CONTRACTOR shall be paid in full.**

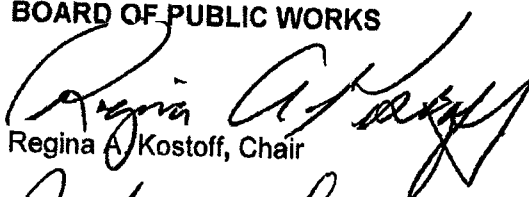
IN WITNESS WHEREOF, the parties have executed the E.B.E. Rider this 14th day of August, 2011.

CONTRACTOR

ADVANCED RESTORATION CONTRACTORS, INC.

BY: 
Carl L. Aikman, Jr., President

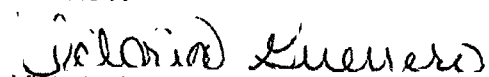
BOARD OF PUBLIC WORKS


Regina A. Kostoff, Chair


John Suarez, Member


Kumar Menon, Member

ATTEST:


Victoria G. Guerrero, Clerk

RE: **St. Joseph Dam Concrete and Structural Rehabilitation
Resolution # 2308-2010
Work Order # 65944**

Interoffice Memo

Date: **August 31, 2011**
To: **Common Council Members**
From: **Michael Kiester, Manager, City Utilities Engineering / ESS**
RE: **St. Joseph Dam Concrete and Structural Rehabilitation
Res. #2308-2010, W.O. #65944**

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project: "St. Joseph Dam Concrete and Structural Rehabilitation" as follows: rehabilitation of all major components of the existing concrete dam including concrete patching, sealing, epoxy injection and joint rehabilitation.

Implications of not being approved: If not approved, the City would lose nearly \$2M of grant money and structural repairs to the dam would be further postponed until the Water Utility could afford them. The 80-year old dam would be more susceptible to further degradation caused by weather and flooding which would need to be repaired most likely at a higher cost to the Utility. The St. Joseph Dam is vital to the health and well being of our community as its reservoir is the sole source of drinking water for over 200,000 people in the area.

If Prior Approval is being Requested, Justify: The contractor for this project visited the site and became aware of the current lowered level of the St Joe River downstream of the dam. The contractor is requesting prior approval so that they can take advantage of the lowered river levels and additional favorable weather as we near the end of this year's construction season.

This project was advertised to contractors on June 10, 2011, June 17, 2011 in the Journal Gazette and in the News Sentinel and June 15, 2011 in Frost, Inc.

The contract for Resolution # 2308-2010 awarded to **Advanced Restoration Contractors for \$2,022,828.00** was the lowest most responsive bidder of 4 bidders and 13% below the Engineer's estimate of \$2,320,764.00. The second lowest bidder was \$46,313.00 above Advanced Restoration Contractor's bid.

The cost of said project funded by an 80/20 grant from HUD Federal Disaster Relief Funds for the 2008 floods and is administered by Indiana Office of Community and Rural Affairs (OCRA) and the Water Utility.

Council Introduction Date: September 13, 2011

CC: BOW
Matthew Wirtz
Diane Brown
Construction Manager
Chrono
File