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**BILL NO. S-14-09-29**

**SPECIAL ORDINANCE NO. S-112-14**

AN ORDINANCE approving CONSTRUCTION CONTRACT - DEMOLITION OF 1903 ST. MARYS AVENUE - W.O. #101-8-27-14-1 between MARTIN ENTERPRISES and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

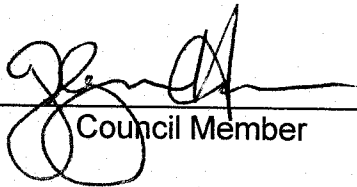
**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

**SECTION 1.** That the CONSTRUCTION CONTRACT - DEMOLITION OF 1903 ST. MARYS AVENUE - W.O. #101-8-27-14-1 by and between MARTIN ENTERPRISES 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:

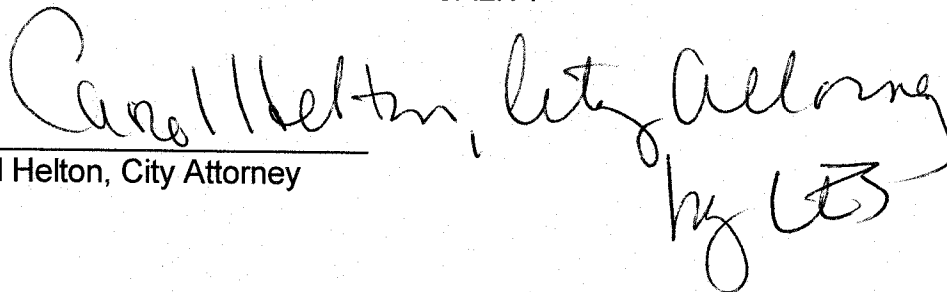
All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for abatement of asbestos containing materials, fuel tank removal/closure and demolition and clearance of site improvements (to exclude right-of-way sidewalks and unattached garage) and lot restoration with hydro-seed:

involving a total cost of THREE HUNDRED THIRTY-ONE THOUSAND, SIX HUNDRED THIRTY AND 00/100 DOLLARS - (\$331,630.00). A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

1                                   **SECTION 2.** That this Ordinance shall be in full force and effect  
2 from and after its passage and any and all necessary approval by the Mayor.  
3

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6                                     
7                                   \_\_\_\_\_  
8                                   Council Member

9  
10                               **APPROVED AS TO FORM AND LEGALITY**

11                                 
12                               \_\_\_\_\_  
13                               Carol Helton, City Attorney  
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# Board Agenda Transmittal

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To: Board of Public Works

From: JACK CLOSE, Community Development EXTENSION # 2154

Date: 9/15/14

Enclosed are (2) original copies of the following to be placed on the **BOPW Agenda** for 9/17/14.

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- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Improvement Resolution | <input checked="" type="checkbox"/> Owner-Contractor Agreement/Contracts | <input type="checkbox"/> Professional Service Agreement |
| <input type="checkbox"/> Purchase Agreement     | <input type="checkbox"/> Amendment/Supplemental                          | <input type="checkbox"/> Other Agreements               |
| <input type="checkbox"/> Award                  | <input type="checkbox"/> Change Order                                    | <input type="checkbox"/> Escrow Release                 |
| <input type="checkbox"/> Payment Approval       | <input type="checkbox"/> Special Street Permit                           | <input type="checkbox"/> Claims/Write offs              |
| <input type="checkbox"/> Consent Decree         | <input type="checkbox"/> Acceptance                                      | <input type="checkbox"/> Other (Description)            |
| <input type="checkbox"/> SRF Project            |  |   |

Resolution/Work Order #**101-8-27-14-1**

Contract #

Project/BOPW Item Name: **1903 St. Marys Avenue Demolition**

Project/BOPW Item Description (to be included on agenda)

Vendor/Contractor Name: **Martin Enterprises**

Dollar Amount **\$331,630.00**

Date for Council (if applicable)

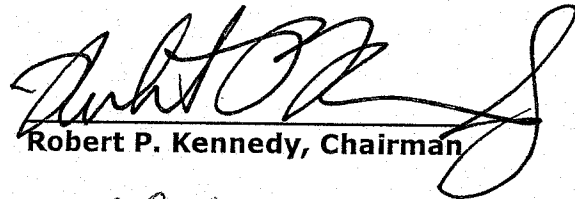
Additional Comments:


Upon approval please return 1 **Copy** to **Jack Close** Dept. **Community Development**

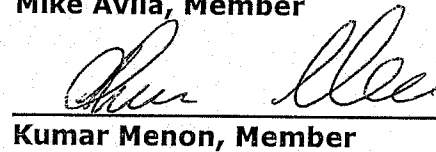
**AWARD: Resolution #101-8-27-14-1, 1903 St. Marys Avenue Demolition to Martin Enterprises in the amount of \$331,630.00.**


**CITY OF FORT WAYNE  
BOARD OF PUBLIC WORKS**

**Date: September 17, 2014**

  
Robert P. Kennedy, Chairman

  
Mike Avila, Member

  
Kumar Menon, Member

**ATTEST:**   
Victoria Edwards, Clerk

**Resolution # 101-8-27-14-1, 1903 Saint Marys Avenue Demolition**

Project Address: 1903 Saint Marys Ave

Demolition/abatement

CD Project Manager: Jack Close

Abatement of asbestos containing materials, Fuel tank removal/ closure and demolition and clearance of site improvements (to exclude right of way sidewalks and unattached garage) and lot restoration with hydro-seed.

Contractor	locality	Bid Price	EBE, WBE, MB E	Responsive
Martin Enterprises	Fort Wayne, IN	\$331,630.00	no	yes
Titanium Demolition	Buffalo, New York	\$555,169.00	no	yes

## CONSTRUCTION CONTRACT

Resolution No. 101-8-27-14-1

Work Order 101-8-27-14-1

**THIS CONTRACT** made and entered into in triplicate this 17<sup>th</sup> day of September, 2014 by and between Martin Enterprises herein called **CONTRACTOR**, and the **CITY OF FORT WAYNE, INDIANA**, an Indiana Municipal Corporation, acting by and through the **MAYOR** and the **Board of Public Works**, herein called **OWNER**;

**WITNESSETH**, that the **CONTRACTOR** and the **OWNER**, for the considerations hereinafter named, agree as follows:

### ARTICLE 1: SCOPE OF WORK

**CONTRACTOR** shall furnish all labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following: Abatement of asbestos containing materials, Fuel tank removal/ closure and demolition and clearance of site improvements (to exclude right of way sidewalks and unattached garage) and lot restoration with hydro-seed.

All according to **all provisions of RESOLUTION NO. 101-8-27-14-1**, and do everything required by this contract and the other documents constituting a part hereof.

### ARTICLE 2: THE CONTRACT SUM

The **OWNER** shall pay **CONTRACTOR** for the performance of the contract the amount of \$331,630.00. In the event the amount of work is increased or decreased by **OWNER**, the contract sum shall be increased or decreased according to the unit price schedule set forth in the **CONTRACTOR'S** Proposal.

### ARTICLE 3: PROGRESS PAYMENTS AND RETAINAGE

The **CONTRACTOR** may submit requests for payments no more often than every thirty (30) days for work performed and accepted under the contract. If the contractor is in compliance with the provisions of the contract, the Board will make payments for such work performed and completed. However, in any such case, the Board will retain five percent (5%) of the total amount owing to insure contractor's compliance with the E.B.E. provisions in Article 17 attached to this contract. Payments to the contractor are not to exceed 95% of the total contract amount until the **OWNER** has verified that the **CONTRACTOR** has made good faith efforts to attain the E.B.E. goal stipulated in Article 17.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 5% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. goals stipulated in Article 17 attached hereto, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the aforementioned Article 17.

### ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract, including the E.B.E. provisions in Article 17 attached hereto, is fully performed. Payments to the **CONTRACTOR** are not to exceed 90% of the total contract amount until the **OWNER** has verified that the **CONTRACTOR** has made good faith efforts to attain the E.B.E. goal stipulated in Article 17.

Upon filing of a **Completion Affidavit** by the **CONTRACTOR** that the work is ready for final inspection and acceptance, the **Board of Public Works** will direct Community Development the **OWNER** to promptly make such inspection, and will direct the **CONTRACT COMPLIANCE DEPARTMENT** of the **OWNER** to make a final recommendation on whether the **CONTRACTOR** made good faith efforts to attain the E.B.E. goal stipulated in Article 17.

When the **Community Development Project Manager** finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the **Board of Public Works**. Likewise, when the **Contract Compliance Department** determines that the **CONTRACTOR'S** efforts constitute good faith efforts to attain the E.B.E. goal as agreed in Article 17 and that all required contract compliance reports have been submitted, it shall so inform the **Board of Public Works** through an E.B.E. Compliance Final Report.

Upon receiving both Community Development's and the **Contract Compliance Department's** recommendations, the **Board of Public Works** shall issue a **final certificate** stating that the work provided for in this Contract has been completed and is accepted, and further stating that the aforementioned E.B.E. goal in Article 17 has been met. Thereupon, **the entire balance** of the Contract sum shall be due and payable to the **CONTRACTOR**; provided only that **CONTRACTOR** shall first furnish **OWNER**, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required contract compliance reports for this project have been submitted.

In the event that the **Board of Public Works** determines that good faith compliance with the E.B.E. goals and provisions in Article 17 has not occurred, appropriate reduction in the final payment will be made, pursuant to paragraph 6 of the aforementioned Article 17 attached hereto. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and the contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 5% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. goals in Article 17, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the aforementioned Article 17 attached hereto.

#### **ARTICLE 5: WORKMEN'S COMPENSATION ACT**

The **CONTRACTOR** will furnish immediately a certificate from the **Worker's Compensation Board of Indiana**, that he has complied with the **Workmen's Compensation Act** in accordance with **Statutes of the State of Indiana** and **Ordinances of the City of Fort Wayne**.

Any judgment rendered against the **City of Fort Wayne** in any suits for Damages for injury to real or personal property, or for injury sustained by any person growing out of any act or doing of **CONTRACTOR**, or its agents, employees or workmen or any judgment of any court or award of any **Board of Arbitrators** or of the **Worker's Compensation Board of Indiana** rendered against the **City of Fort Wayne** in any suit or claim arising under said **Workmen's Compensation** for accidental injuries or death suffered by his employees or the employees of any Subcontractor(s) in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said **CONTRACTOR**, shall be conclusive against **CONTRACTOR** as to amount, liability and all other

things pertaining thereto; it being the intent of the parties hereto that **CONTRACTOR** indemnify and hold harmless **OWNER** in the premises.

#### **ARTICLE 6: NONDISCRIMINATION OF LABOR**

The **CONTRACTOR** further agrees to 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. The successful bidder shall file a **Manpower Utilization Report** for this project with the **Compliance Office** within ten (10) days after completion of construction or upon request of the **Office of Compliance**.

#### **ARTICLE 7: WAGE SCALE**

The **CONTRACTOR** agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the **Statutes of the State of Indiana**, and the **Ordinances of the City of Fort Wayne** according to the applicable wage scale as included in the bid documents.

#### **ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT**

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. **Notice to Contractors for Resolution 101-8-27-14-1.**
- b. **Instructions to Bidders for Resolution 101-8-27-14-1.**
- c. **Contractor's Proposal dated \_9/10/14\_.**
- d. **Supplemental Specifications for Resolution 101-8-27-14-1 .**
- e. **Workmen's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.**
- f. **Non-Discrimination of Labor, Chapter 93.036, Code of City.**
- g. **Prevailing Wage Scale.**
- h. **Performance and Guaranty Bond.**
- i. **Labor and Material Payment Bond.**
- j. **Comprehensive Liability Insurance Coverage.**
- k. **Form 96.**
- l. **Article 17: Emerging Business Enterprise**
- m. **Contract Compliance Reports.**
- n. **Vendor Disclosure Form.**
- o. **E-Verify Affidavit.**
- p. **Drug Policy Acknowledge Form**

#### **ARTICLE 9: GUARANTEE OF WORKMANSHIP**

At the time of execution of this contract, the **CONTRACTOR** shall furnish a **Performance Bond** in favor of the **City of Fort Wayne** in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work. "The requirement of a Performance/Payment and Guaranty Bond shall be waived for **EMERGENCY** projects under **TEN THOUSAND DOLLARS (\$10,000)**.

#### **ARTICLE 10: INDEMNITY**

**CONTRACTOR** shall furnish to **OWNER**, within ten (10) days of the date hereof, a certificate from an insurer acceptable to **OWNER** showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to **OWNER** and in accordance with the **Statutes of the State of Indiana**.

#### **ARTICLE 11: ADJUSTMENTS OF DISPUTES**

All questions or controversies which may arise between the **CONTRACTOR** and the **OWNER** under the provisions of this Contract shall be subject to the decision of the **Chairman of Board of Public Works** of the **OWNER**, and his/her decision shall be final and conclusive upon the parties. Provided, however, no changes in the plans, specifications, or other phases of work covered by this Contract will be permitted except on prior written authorization by the **Board of Public Works**.

#### **ARTICLE 12: COMPLETION DATE**

The **CONTRACTOR** agrees to complete the work specified in the contract within 45 business days after having been ordered by the **OWNER** to commence work under this contract.

#### **ARTICLE 13: COUNCILMANIC APPROVAL**

This Agreement, although executed on behalf of the **OWNER** by the **Mayor and Board of Public Works** of the **City of Fort Wayne, Indiana**, shall not be binding upon the **OWNER** unless and until the same shall have been ratified and approved by the **Common Council** of the **City of Fort Wayne, Indiana**, and should said **Common Council** fail to approve the contract within ninety (90) days after the date of the bid opening, then the contractor shall not be bound to the contract unless he/she/it elects to be so bound.

#### **ARTICLE 14: CITY OF FORT WAYNE ALCOHOL AND DRUG POLICY**

The City of Fort Wayne has in place an Alcohol and Drug Policy that also applies to any Contractors doing business with the City. A copy of this policy is available for inspection in the office of Risk Management, 200 East Berry Street, Suite 470 or on the City of Fort Wayne website at: <http://www.cityoffortwayne.org/finance/purchasing/drugpolicy.htm>. The successful bidder will be furnished a copy of said policy and, as a condition of being awarded any contract, the successful bidder shall execute an acknowledgment of receipt of said policy and agree to be bound by those provisions of the policy that may be applicable. A copy of this form will be retained by the Risk Management Department of the City of Fort Wayne.

#### **ARTICLE 15: EMPLOYMENT ELIGIBILITY VERIFICATION**

Pursuant to IC 22-5-1.7, **CONTRACTOR** shall enroll in and verify the work eligibility status of all hired employees of **CONTRACTOR** through the E-Verify Program ("Program"). **CONTRACTOR** is not required to verify work eligibility status of all hired employees through the Program if the Program no longer exists.

**CONTRACTOR** and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that **CONTRACTOR** or its subcontractor subsequently learns is an unauthorized alien. If **CONTRACTOR** violates this Section 16.23, **OWNER** shall require **CONTRACTOR** to remedy the violation not later than thirty (30) days after **OWNER** notifies **CONTRACTOR**. If **CONTRACTOR** fails to remedy the violation within the thirty (30) day period, **OWNER** shall terminate the contract for breach of contract. If **OWNER** terminates the contract, **CONTRACTOR** shall, in addition to any other contractual remedies, be liable to **OWNER** for actual damages. There is a rebuttable presumption that **CONTRACTOR** did not knowingly employ an unauthorized alien if **CONTRACTOR** verified the work eligibility status of the employee through the Program.

If **CONTRACTOR** employs or contracts with an unauthorized alien but **OWNER** determines that terminating the contract would be detrimental to the public interest or public property, **OWNER** may allow the contract to remain in effect until **OWNER** procures a new contractor. **CONTRACTOR** shall, prior to performing any work, require each subcontractor to certify to **CONTRACTOR** that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Contractor shall maintain on file a certification from each subcontractor throughout the duration of the Project. If **CONTRACTOR** determines that a subcontractor is in violation of this section, **CONTRACTOR** may terminate its contract with the subcontractor for such violation. Such termination may not be considered a breach of contract by **CONTRACTOR** or the subcontractor.

**ARTICLE 16:**

This contract is governed by Laws of the State of Indiana.

**ARTICLE 17: EMERGING BUSINESS ENTERPRISE**

**THIS AGREEMENT** made and entered into by and between the **CITY OF FORT WAYNE**, hereinafter referred to as **OWNER** and **Martin Enterprises**, hereinafter referred to as **CONTRACTOR**,

**WITNESSETH:**

**WHEREAS**, the **CONTRACTOR** is the apparent low bidder on construction project commonly referred to as the **1903 St. Marys Avenue Demolition**, which project was bid under Resolution Number **101-8-27-14-1**; 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 project is **10%** of the contract amount; and

**WHEREAS**, **OWNER** has, pursuant to Executive Order 90-01 (as amended 05-08-06), adopted a goal of at least 10% of the contract amount to Emerging Business Enterprises as defined under said Executive Order (as amended 05-08-06); and

WHEREAS, said Executive Order (as amended 05-08-06) 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 Article 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 Article 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 Article. 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 10% of the contract amount to emerging business enterprises, the contractor will be paid in full.**

**In the event there is a determination that good faith compliance with this Article has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this Article will be made.**

**If the contract 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 amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in this Article. Payment of the final 5% of the total contract amount will be dependent upon good faith efforts to comply with this Article, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this Article**

3. **Request for Waiver - If, at the time final payment application is made, contractor has not attained the ten 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 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.**

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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 shall be reduced by the amount calculated as the difference between 10% 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 Article has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

#### **ARTICLE 18: PREMATURE WORK COMMENCEMENT**

Contractor shall not commence any work or operation as described in these Project Specifications and/or Project Bid items, in part or whole, prior to the Notice-to-Proceed. Work performed prior to the date of the Notice to Proceed shall be considered work outside of the scope of the contract for purposes of payment. Contractor agrees that any work or operation, as described in the Project Specifications and/or Project Bid Items, in part or whole, prior to the Notice to Proceed shall be deducted from the project Bid Quantities and Project Cost. Contractor agrees that such action is at the Contractor's risk and without liability on the part of the City.

**ACKNOWLEDGMENT**

STATE OF INDIANA)  
SS: )  
COUNTY OF ALLEN)

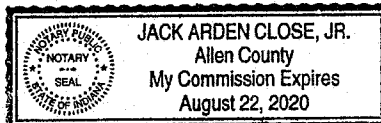
BEFORE ME, a Notary Public, in and for said County and State, this 15 day of September, 2014, personally appeared the within named Sam Math who being by me first duly sworn upon his oath says that he is the owner of and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of Sam Math for the uses and purposes therein set forth.

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

[Signature]  
Notary Public  
Jack Arden Close Jr  
Printed Name of Notary

My Commission Expires: 8-22-2020

Resident of Allen County.



**ACKNOWLEDGMENT**

STATE OF INDIANA )  
SS: )  
COUNTY OF ALLEN )

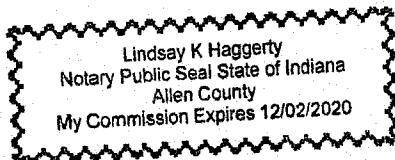
BEFORE ME, a Notary Public, in and for said County and State, this 17 day of September 2014, personally appeared the within named **Thomas C. Henry, Robert Kennedy, Mike Avila, Kumar Menon and Victoria Edwards**, by me personally known, who being by me duly sworn said that they are respectively the **Mayor 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.

[Signature]  
Notary Public  
Lindsay K Haggerty  
Printed Name of Notary

My Commission Expires: 12/02/2020

Resident of Allen County.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CONTRACTOR

CITY OF FORT WAYNE

BY: *Gerald C Martin*

BY: \_\_\_\_\_  
THOMAS C. HENRY, MAYOR

BOARD OF PUBLIC WORKS

BY: *Robert Kennedy*  
ROBERT KENNEDY, CHAIRMAN

BY: *Mike Avila*  
MIKE AVILA, MEMBER

BY: *Kumar Menon*  
KUMAR MENON, MEMBER

ATTEST: *Victoria Edwards*  
VICTORIA EDWARDS, CLERK

THIS DOCUMENT PREPARED BY Jack A. Close Jr.  
DOCUMENT/PLAN CERTIFIER

**(SPECIMEN FORM)  
PAYMENT BOND**

Martin Enterprises, Inc.

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_, Contractor, hereinafter called **PRINCIPAL**, and \_\_\_\_\_, FCCI Insurance Company, hereinafter called **SURETY**, are held and firmly bound unto the City of Fort Wayne, an Indiana Municipal Corporation in the penal sum of \*See below Dollars (\$ \*See ) (value of work) for the payment whereof well and truly to be made, the **PRINCIPAL** and the **SURETY** bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

\* Three Hundred Thirty-One Thousand Six Hundred Thirty and 00/100 Dollars (\$331,630.00)

**THE CONDITION OF THIS OBLIGATION** is such that whereas the **PRINCIPAL** entered into a certain contract with the **OWNER** dated the 15th day of September, 2014, for the demolition of: 1903 Saint Mary's Avenue, Fort Wayne, Indiana

**WHEREAS**, said **SURETY** for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

**WHEREAS**, no final settlement between the **OWNER** and the **CONTRACTOR** shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

**NOW, THEREFORE**, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations, furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor performed in such work, whether by subcontractor, or otherwise, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, this instrument is executed 1 (number) counterparts, each one of which shall be deemed an original, this 15th day of September, 2014.

MARTIN ENTERPRISES, INC.

PRINCIPAL

WITNESS TO PRINCIPAL

BY: *Jimi Martin* (SEAL)

4315 Meyer Road, Fort Wayne, IN 46806

ADDRESS OF PRINCIPAL

ADDRESS OF WITNESS

ATTEST: *Theresa R Martin*

FCCI Insurance Company

SURETY

*Rebecca Virt*

WITNESS TO SURETY

BY: *Cynthia L Jenkins* (SEAL)

Rebecca Virt

Cynthia L. Jenkins, Attorney-In-Fact  
9225 Priority Way W Dr., Ste 100, Indianapolis, IN 46240

9225 Priority Way W. Drive, Suite 100  
Indianapolis, IN 46240

ADDRESS OF SURETY

ADDRESS OF WITNESS

ATTEST: *Sherril*

NOTE: Date of the bond must not be prior to date of contract. If the contractor is a partnership, all partners should execute the bond.

**(SPECIMEN FORM)  
CITY OF FORT WAYNE, INDIANA  
PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS**, that we Martin Enterprises, Inc. (Contractor or Developer) as Principal, and the FCCI Insurance Company (Insurance Company), a corporation organized under the laws of the State of Florida, 1959 (State and Date), and duly authorized to transact business in the State of Indiana, as Surety, are held firmly bound unto the City of Fort Wayne, Indiana, an Indiana Municipal Corporation in the sum of \$ 331,630.00 \*, (value of work) for the payment whereof well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally firmly by those present. The condition of the foregoing obligation is such that \*Three Hundred Thirty-One Thousand

Six Hundred Thirty and 00/100 Dollars  
**WHEREAS**, the Principal has entered into contract with the City or has applied for authority to raze or cause to be demolished 1903 Saint Mary's Avenue in Fort Wayne Ave., which said demolition is to be in accordance with the attached specifications prepared by or approved by City and known as 1903 Saint Mary's Avenue, Franklin School Demolition.

**WHEREAS**, the grant of authority by the City to so demolish provides:

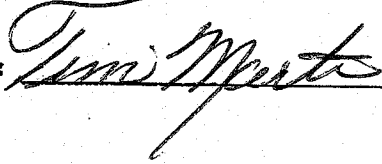
1. That said demolition shall be completed according to said plans and specifications.
2. There shall be filed with the City, within thirty (30) days after completion, a Completion Affidavit;
3. Said Principal is required to agree to make such adjustments, modifications, and repairs as required by the City within thirty (30) days after notice; and,

**WHEREAS**, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed hereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications.

**CONTRACTOR/DEVELOPER**

MARTIN ENTERPRISES, INC.

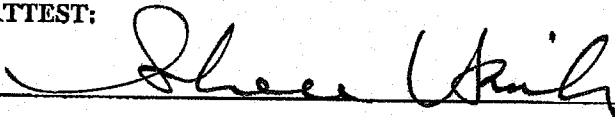
BY:



Tim Martin

PRINTED NAME OF SIGNATORY

ATTEST:




FCCI INSURANCE COMPANY

TITLE

SURETY (INSURANCE COMPANY)

\*BY



Cynthia L. Jenkins, Attorney-In-Fact  
AUTHORIZED AGENT

\*If signed by an agent, Power of Attorney must be attached.



**GENERAL POWER OF ATTORNEY**

Know all men by these presents: That the FCCI Insurance Company, a Corporation organized and existing under the laws of the State of Florida (the "Corporation") does make, constitute and appoint:

Cynthia L Jenkins; Lauran Reynolds; Brenda Johnston; Sherée Hsieh; Michael M Bill;  
Michael H Bill; Cindy H Stellhorn; Edward L Mournighan

Each, its true and lawful Attorney-In-Fact, to make, execute, seal and deliver, for and on its behalf as surety, and as its act and deed in all bonds and undertakings provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the sum of (not to exceed \$5,000,000); **\$5,000,000.00**

This Power of Attorney is made and executed by authority of a Resolution adopted by the Board of Directors. That resolution also authorized any further action by the officers of the Company necessary to effect such transaction.

The signatures below and the seal of the Corporation may be affixed by facsimile, and any such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached.

In witness whereof, the FCCI Insurance Company has caused these presents to be signed by its duly authorized officers and its corporate Seal to be hereunto affixed, this 22<sup>ND</sup> day of September, 2011.

Attest: Craig Johnson  
Craig Johnson, President  
FCCI Insurance Company



Thomas A. Koval  
Thomas A. Koval Esq., SVP, General Counsel,  
Government Affairs and Corporate Secretary  
FCCI Insurance Company

State of Florida  
County of Sarasota

Before me this day personally appeared Craig Johnson, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 9/25/2016

**ARLENE CUEMAN**  
Notary Public, State of Florida  
My Comm. Expires Sept. 25, 2016  
No. EE 213092

Arlene Cueman  
Notary Public

State of Florida  
County of Sarasota

Before me this day personally appeared Thomas A. Koval, Esq., who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 9/25/2016

**ARLENE CUEMAN**  
Notary Public, State of Florida  
My Comm. Expires Sept. 25, 2016  
No. EE 213092

Arlene Cueman  
Notary Public

**CERTIFICATE**

I, the undersigned Secretary of FCCI Insurance Company, a Florida Corporation, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the February 24, 2011 Resolution of the Board of Directors, referenced in said Power of Attorney, is now in force.

Dated this 15<sup>th</sup> day of September, 2014

Thomas A. Koval  
Thomas A. Koval, Esq., SVP, General Counsel,  
Government Affairs and Corporate Secretary





C. The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – **Commercial General Liability Conditions:**

The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
2. We receive written notice of a claim or "suit" as soon as practicable; and
3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. For the purposes of the coverage provided by this endorsement:

1. The following is added to the Other Insurance Condition of Section IV – **Commercial General Liability Conditions:**

**Primary and Noncontributory insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions:**

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

E. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III – **Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Paragraph A. of this endorsement; or
2. Available under the applicable Limits of Insurance shown in the Declarations, whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms and conditions of this policy remain unchanged.

## DESCRIPTIONS (Continued from Page 1)

### Waiver of Subrogation

Waiver of Subrogation applies to General Liability per Endorsement # UGL925 1201, Automobile per Endorsement # UCA424 0414, and Workers Compensation per Endorsement # WC000313, subject to the terms, conditions and exclusions on the policy(s).

### Primary & Noncontributory

Primary & Noncontributory applies to General Liability and Automobile Liability subject to the terms, conditions and exclusions on the policy(s).

### Umbrella Follows Form

Umbrella is form following subject to the policy terms, conditions and exclusion on the policy.

CERTIFICATE HOLDER CONT'D: City of Fort Wayne, its Divisions and Subsidiaries



# Additional Insured – Automatic – Owners, Lessees Or Contractors

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**Named Insured:**

**Address (including ZIP Code):**

This endorsement modifies insurance provided under the:

**Commercial General Liability Coverage Part**

**A. Section II – Who Is An Insured** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:**

This insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

- a. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 20 37 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

# COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Purchasing Department is providing this information to Council as an overview of this award.

## RFPs & BIDS

Bid/RFP #	101-8-27-14-1
Awarded To	Martin Enterprises
Amount	\$ 331,630.00
Conflict of interest on file?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Number of Registrants	2
Number of Bidders	2
Required Attachments	RFPs – attach Award Matrix; Bids – attach Tab Sheet

## EXTENSIONS

Date Last Bid Out	
# Extensions Granted To Date	

## SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback--Authority)	
Sole Source/ Compatibility Justification	

## BID CRITERIA *(Take Buy Indiana requirements into consideration.)*

Most Responsible, Responsive Lowest	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If no, explain below</i>
If not lowest, explain	

# COUNCIL DIGEST SHEET

## COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	
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## DESCRIPTION OF PROJECT / NEED

<i>Identify need for project &amp; describe project; attach supporting documents as necessary.</i>	<i>See attached</i>

## REQUEST FOR PRIOR APPROVAL

<i>Provide justification if prior approval is being requested.</i>	

## FUNDING SOURCE

<i>Account Information.</i>	<i>CREDIT</i>

**Project Description: Franklin School Demolition**

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The Franklin School Project proposed by the City of Fort Wayne would call for the razing of 1903 Saint Mary's Avenue and associated infrastructure.

The former Franklin School, 1903 Saint Mary's Avenue, has undergone several modifications since its original construction in 1921 and has been repurposed for various educational purposes throughout the years. The City of Fort Wayne was gifted the structure in 1999 after the United States Department of Defense relocated their Naval Reserve office. Upon taking ownership, the City utilized the structure as a police training facility. The enormity of the structure (75,000 square feet), the associated maintenance costs, and the buildings antiquated mechanical systems led to the building's abandonment.

The Franklin school is currently vacant, attracting nuisances to the property, destabilizing the area, and simply too costly for adaptive reuse.

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

Read the first time in full and on motion by Councilman Glynn Hines  
Read the second time by title and referred to the Public Works Committee  
Committee. Read the third time in full and on motion by Councilman  
Glynn Hines, placed on passage by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>9</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: 10-14-14 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. S-112-14 on the 14<sup>th</sup> day of  
October, 2014

ATTEST:  
Sandra E. Kennedy  
SANDRA E. KENNEDY,  
CITY CLERK

Robert A. Bender  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 15<sup>th</sup> day  
of October, 2014, at the hour of \_\_\_\_\_ o'clock 1 E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 16<sup>th</sup> day of October  
2014, at the hour of 1:00 o'clock PM E.S.T.

Thomas C. Henry  
THOMAS C. HENRY, MAYOR

**BILL NO. S-14-09-29**

**REPORT OF COMMITTEE ON PUBLIC WORKS**

**OCTOBER 7, 2014**

*Glynn Hines, Chair  
Tom Smith, Co-Chair  
All Council Members*

**AN ORDINANCE** approving Construction Contract - Demolition of 1903 St. Marys Avenue - W.O. #101-8-27-14-1 between Martin Enterprises and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

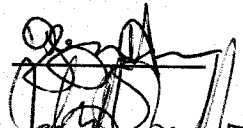
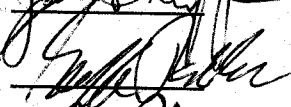
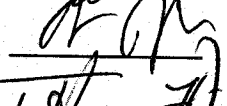
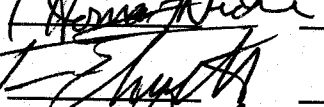
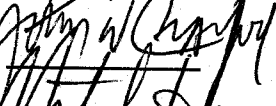
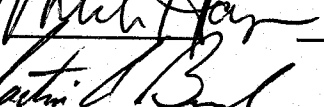
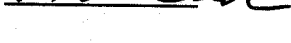
**COMMITTEE ON PUBLIC WORKS HAVE HAD SAID** Ordinance under consideration and beg leave to report back to the Common Council that said ordinance

DO PASS

DO NOT PASS

ABSTAIN

NO REC

	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____

**SANDRA E. KENNEDY  
CITY CLERK**