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BILL NO. S-15-01-13

SPECIAL ORDINANCE NO. S-9-15

AN ORDINANCE approving CONSTRUCTION CONTRACT - ANTHIS CONCRETE/PARK STRIP REPAIR - #WMS52268013-5364 between FORT WAYNE COMMUNITY SCHOOLS ANTHIS CAREER CENTER 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 - ANTHIS CONCRETE/PARK STRIP REPAIR - #WMS52268013-5364 by and between FORT WAYNE COMMUNITY SCHOOLS ANTHIS CAREER CENTER 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 repair of concrete areas and grass and soil cuts made when repairing main, services and other water distribution system piping:

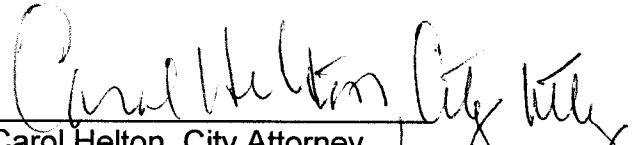
involving a total cost of TWO HUNDRED FIFTY-FIVE THOUSAND AND 00/100 DOLLARS - (\$255,000.00). A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

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

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Council Member

APPROVED AS TO FORM AND LEGALITY


Carol Helton, City Attorney



SERVICE AGREEMENT: _____

| | | | |
|---|-----|---|---------------------|
| SUPPLIER NAME Fort Wayne Community Schools Anthls Career Center | | CITY DEPARTMENT Water Maintenance and Service | |
| STREET ADDRESS 1200 S Barr Street | | STREET ADDRESS 415 East Wallace Street | |
| CITY, STATE, ZIP CODE Fort Wayne Indiana 46802 | | CITY, STATE, ZIP CODE Fort Wayne Indiana 46802 | |
| ATTENTION Christopher Roberts | | INVOICE ADDRESS 415 East Wallace Street | |
| TELEPHONE 260-425-7200 | FAX | CITY, STATE, ZIP CODE Fort Wayne Indiana 46802 | |
| REMIT-TO ADDRESS 1200 S Barr Street | | ATTENTION Matt Limpert | |
| CITY, STATE, ZIP CODE Fort Wayne Indiana 46802 | | TELEPHONE 260-427-2484 | FAX 260-427-1282 |

| Service Description | Rates |
|---|--------------------------------|
| Repair of concrete areas and Grass and Soil cuts made when repairing main, services and other water distribution system piping. | Per attached Contract |
| Aggregate Price | Not to exceed \$255,000 |

The following Attachments are part of this Agreement:

Agreement with Anthls Career Center

| |
|---|
| SERVICE ADDRESS To be assigned by Water Maintenance Personnel on an as needed basis. |
| CITY, STATE, ZIP CODE |
| AGREEMENT START DATE November 17, 2014 |
| AGREEMENT END DATE December 31, 2015 |

This Agreement is entered into between Supplier and the City as of November 13, 2013. The additional terms and conditions on the reverse side hereof are part of this Agreement. Capitalized terms on this page are used as defined terms when the context so requires. The City may extend the Contract at its option, for an equivalent period, by written notice to the Supplier not less than thirty days prior to the expiration date.

| | |
|---|--------------------------------------|
| SUPPLIER: | City of Fort Wayne |
| By (Signature): <i>Christopher Roberts</i> | By (Signature): <i>John Clark</i> |
| Printed Name: Christopher Roberts | Printed Name: John Clark |
| Title: Supervisor / Instructor | Title: Deputy Director Utility |
| Date: 10/14/14 | Date: 10/13/14 |
| FEDERAL TAX ID NUMBER: 23-7313828 | |

October 14, 2014

Fort Wayne Construction Trades Development
Contractual Agreement
with
The City of Fort Wayne Water Maintenance
2015

Fort Wayne Construction Trades proposes the following items for the repair and restoration work that the City Water Maintenance is requesting. With the partnership of employment of Fort Wayne Community Schools, Fort Wayne Construction Trades students will begin restoration work as soon as the ground thaws, and will continue working until or through December 2015. A crew will begin the work under general instructional supervision of Chris Roberts and site supervision of Michael Wright and Andrew Seyfert. There will be a group of five Junior's hired and one senior re-hired from the Anthis Career Center. All students will be subject to the general hiring guidelines and employment regulations of Fort Wayne Community Schools. The restoration staff will be held to all safety guidelines specified by The City Fort Wayne Water Maintenance. The general hourly pay rate of the entire crew of five students, one dirt crew foreman, one concrete foreman, one daily operations supervisor, and one general instructor is \$175.00. During the 2014-2015 school year the staff will be supervised indirectly by Chris Roberts as an unpaid position. At the conclusion of the 2014-2015 school year the instructor will join the team of construction trades students on site. This pay scale is subject to change due to weekly crew changes and personnel daily schedules but will not exceed the \$175.00 per hour rate. The amount per hour will only exceed the rate listed above due to overtime pay on a bi-weekly basis, at a rate of time and a half for each employee.

All materials necessary for job completion will be charged to City Water Maintenance over and beyond the general hourly rate. The items included as part of material fees would include concrete, rebar, expansion, curing, form release, gasoline, hand tools, concrete forms and minor equipment repairs. All receipts and invoices will be returned to City Water Maintenance for their records.



Construction Trades Instructor

Date 10/14/14



Construction Trades Project Manager

Date 10/15/14



Deputy Director City Utilities Capital Assets

Date 10/15/14



Water Maintenance and Service Superintendent

Date 10/15/14

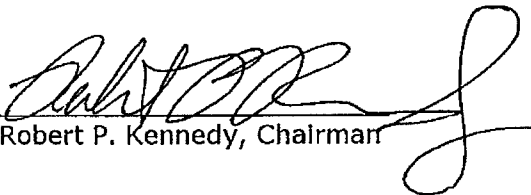
ADDITIONAL TERMS AND CONDITIONS

1. **SERVICES.** Supplier agrees to perform the Services beginning on the Begin Date and continuing until the Services are completed. Supplier warrants that the Services will be completed on or before the End Date. **TITLE IS OF THE ESSENCE.** Supplier warrants that all Services shall conform to the Service Description, be of good quality and workmanship, and be free from defects. Supplier further warrants that all goods furnished in connection with the Services shall be merchantable and suitably safe and sufficient for the purpose for which they are normally used. Supplier warrants that it has good title to goods supplied hereunder and that they are free of all liens and encumbrances. These warranties are in addition to those implied in fact or in law. For the purposes of this Agreement, the term "Services" shall include any goods furnished in connection with the Services.
2. **INVOICES.** Supplier shall invoice the City for Services performed according to the Rates, Billing Interval, and Invoice Address. Invoices shall be rendered in triplicate and shall itemize the Services performed, the Service Address, and the corresponding rates and taxes, if any. Payment shall be due within thirty (30) days after the invoice date or the date of completion of the invoiced Services, whichever occurs later, provided that the City shall not be obligated to make any payment to Supplier hereunder until Supplier has furnished proof satisfactory to the City of full payment for all labor, materials, supplies, machinery, and equipment furnished for or used in performance of this Agreement or has furnished all necessary waivers of lien supported by affidavits, all satisfactory to the City, establishing that all liens and rights to claim liens that could arise out of the performance of the Services have been waived. Payment of invoices shall not constitute acceptance of the Services, and invoices shall be subject to adjustment for defects in quality or any other failure of Supplier to meet the requirements of this Agreement. The City may at any time set off any amount owed by the City to Supplier against any amount owed by Supplier or any of its affiliated companies to the City.
3. **INDEPENDENT CONTRACTOR RELATIONSHIP.** City and Supplier are and shall remain as independent contractors with respect to each other. The persons provided by Supplier to perform the Services shall be Supplier's employees and shall be under the sole and exclusive direction and control of Supplier. They shall not be considered employees of the City for any purpose. Supplier shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions, and payment of wages with respect to such persons. Supplier shall also be responsible for payment of taxes, including federal, state and municipal taxes chargeable or assessed with respect to its employees, such as Social Security, unemployment, Workers' Compensation, disability insurance, and federal and state withholding. Supplier shall also be responsible for providing such reasonable accommodations, including auxiliary aids and services, as may be required under the Americans With Disabilities Act, 42 U.S.C. 12101 et seq., so as to enable any disabled person furnished by Supplier to perform the essential functions of the job. Supplier agrees to defend, indemnify, and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained by reason of Supplier's failure to comply with this paragraph.
4. **INDEMNITY.** Supplier shall defend, indemnify, and hold harmless the City (including its officers, employees, and agents) from all demands, damages, liabilities, costs, and expenses (including reasonable attorney's fees), judgments, settlements, and penalties of every kind arising out of its performance of Services including, without limitation, damages for personal injury or death or loss or damage to property due, or claimed to be due, to the negligence or willful misconduct of Supplier including such portion thereof due, or claimed to be due, to the negligence of the City except that Supplier shall have no duty to hold harmless the City for such portion of the foregoing proximately caused by negligence or misconduct of the City; and if any suit, claim, or demand was defended by Supplier, then the City will reimburse Supplier for its pro-rata share of its costs, expenses (including reasonable attorney's fees), and damages. The City may elect to participate in the defense of any suit, claim, or demand by employing attorneys at its own expense, without waiving Supplier's obligations to indemnify, defend, or hold harmless. Supplier shall not settle or compromise any claim, suit, or action, or consent to entry of judgment without the prior written consent of the City and without an unconditional release of all liability by each claimant or plaintiff to the City.
5. **LIMITATION OF LIABILITY.** Each party's liability to the other for any loss, cost, claim, liability, damage, or expense (including attorney's fees) relating to or arising out of any negligent act or omission in its performance of obligations arising out of this Agreement, shall be limited to the amount of direct damage actually incurred. Absent gross negligence or knowing and willful misconduct which causes a loss, neither party shall be liable to the other for any indirect, special or consequential damage of any kind whatsoever.
6. **INSURANCE.** Supplier shall maintain in full force and effect during the performance of the Services the following insurance coverage provided, however, that if a High Risk Insurance Attachment is attached hereto, the requirements of the High Risk Insurance Attachment shall be substituted in lieu of the following requirements:

| | |
|------------------------------------|--|
| (a) Worker's Compensation | per statutory requirements |
| (b) General Liability | \$1,000,000 minimum per occurrence/ \$1,000,000 aggregate |
| (c) Automobile Liability | \$1,000,000 minimum per occurrence |
| (d) Products Liability | \$1,000,000 minimum per occurrence |
| (e) Completed Operations Liability | \$1,000,000 minimum per occurrence |

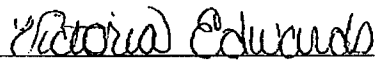
The Certificate of Insurance must show the City of Fort Wayne, its Divisions and Subdivisions as an Additional Insured and a Certificate Holder, with 30 days notification of cancellation or non-renewal. All Certificates of Insurance should be sent to the following address:
City of Fort Wayne Purchasing Department
1 East Main Street, Rm D-91
Fort Wayne, IN 46802
7. **HAZARDOUS MATERIALS.** Supplier will provide to the City before performing any Services, a statement describing any Hazardous Materials intended and necessary for use in performing the Services. "Hazardous Materials" means any item which may be classified under federal, state, or local law, as hazardous or toxic. Supplier must comply with all federal, state, or local law in the use, transportation, and disposal of such Hazardous Materials.
8. **PROGRESS REPORTS.** The Supplier shall submit progress reports to the City upon request. The report shall serve the purpose of assuring the City that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date. This contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.
9. **CONFLICT OF INTEREST.** Supplier certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees which will participate in any way in the performance of the Supplier's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City of Fort Wayne or any of its departments, divisions, agencies, officers, directors or agents.
10. **CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS, AND COPYRIGHT PROHIBITION.** Supplier further agrees that all information, data findings, recommendations, proposals, etc. by whatever name described and by whatever form therein secured, developed, written or produced by the Supplier in furtherance of this contract—shall be the property of the City. The Supplier shall take action as is necessary under law to preserve such property rights in and of the City while such property is within the control and/or custody of the Supplier. By this contract the Supplier specifically waives and/or releases to the City any copyrightable property right of the Supplier to copyright, license, patent or other wise use such information, data findings, recommendations proposals, etc.
11. **CONFIDENTIALITY OF CITY INFORMATION.** Supplier understands and agrees that data, materials, and information disclosed to Supplier may contain confidential and protected data. Therefore, the Supplier promises and assures that data, material, and information gathered, based upon or disclosed to the Supplier for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the City.
12. **COMPLIANCE WITH LAWS.** Supplier warrants that the Services shall be in strict conformity with all applicable local, state and federal laws including, but not limited to, the standards promulgated by the Occupational Safety and Health Act, Executive Order 11246, as amended, relative to Equal Employment Opportunity and all other applicable laws, rules, and regulations, including the Civil Rights Act of 1964 pertaining to equal opportunity, Section 503 of the Vocational Rehabilitation Act of 1973, the American with Disabilities Act, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and all applicable immigration laws and regulations including the 1986 Immigration Reform and Control Act et. seq. Supplier agrees to indemnify and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained because of Supplier's breach of such warranty.
13. **DEFAULT.** In the event that (a) Supplier breaches any warranty contained herein; (b) Supplier fails to provide the insurance certificate required herein; (c) Supplier or Supplier's insurance carrier fails to defend, indemnify, or hold harmless the City as required herein; (d) Supplier's performance of the Services violates applicable law; (e) Supplier admits insolvency, makes an assignment for the benefit of creditors, or has a trustee appointed to take over all or a substantial part of its assets; or (f) Supplier fails to perform or comply with any other provision of this Agreement, such failure, breach, or violation shall constitute a default under this Agreement.
14. **TERMINATION.** In the event of default by Supplier under this Agreement, the City reserves the right without liability, in addition to its other rights and remedies, to terminate this Agreement by notice to Supplier as to the portion of the Services not yet rendered and to purchase substitute services at Supplier's expense. Supplier shall reimburse the City for the cost of such substitute services upon Supplier's receipt of an invoice therefor.
15. **WAIVER.** No action or inaction by the City shall constitute a waiver of any right or remedy.
16. **CANCELLATION.** City may at any time cancel this Agreement in whole or in part for its sole convenience upon written notice to Supplier, and Supplier shall stop performing the Services on the date specified in such notice. The City shall have no liability as a result of such cancellation, except that the City will pay Supplier the Rates for completed Services accepted by the City and the actual incurred cost to Supplier for Services in progress. These payments shall not exceed the Aggregate Price.
17. **FORCE MAJEURE.** Neither party shall be liable to the other or responsible for nonperformance of any of the terms of this Agreement due to unforeseeable causes beyond the reasonable control and without the fault or negligence of such party, including, but not restricted to acts of God or the public enemy, acts of government, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.
18. **NOTICES.** All notices required or permitted to be made or given hereunder by one party to the other party shall be in writing and shall be deemed to have been given when hand delivered, or on the date stated on the receipt if deposited in the United States mail in certified form, postage prepaid with return receipt requested, and addressed to such other party at its Notice Address or at such other address as may be specified by such other party by written notice sent or delivered in accordance herewith.
19. **ASSIGNMENT.** Any assignment, in whole or in part, of Supplier's rights or obligation under this Agreement without the prior written consent of the City shall be void. Supplier shall not use subcontractors to perform any part of the Services without the prior written consent of the City.
20. **DISPUTE RESOLUTION.** The City shall be the sole judge of the quality of services. In the event of any dispute or disagreement between the parties either with respect to the interpretation of any provision of this agreement, or with respect to the performance of either party hereunder, the dispute shall be resolved by the Director of Finance and Administration and will not be subject to arbitration.
21. **ACCESS TO RECORDS.** The Supplier shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred. They shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the City or by any other authorized representative of city government. Copies thereof shall be furnished at no cost to the City if requested.
22. **NONDISCRIMINATION.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Supplier and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this contract. The Supplier shall not discriminate with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
23. **MISCELLANEOUS.** If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected. This Agreement shall be governed by the laws of the state of Indiana and shall be subject to the exclusive jurisdiction of the courts therein. This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understanding, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. No agreement hereafter made shall be effective to modify or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the modification or discharge is sought. The paragraph headings are for convenience only and are not intended to affect the interpretation of the provisions hereof. This agreement shall be binding on the parties hereto and their respective personal and legal representatives, successors and assigns.

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

BY: 
Robert P. Kennedy, Chairman

BY: _____
Kumar Menon, Member

BY: 
Mike Avila, Member

ATTEST: 
Victoria Edwards, Clerk

DATE: October 22, 2014



Board Agenda Transmittal

To: Board of Public Works

From: John Clark, City Utilities Capital Assets, EXTENSION # 2698

Date: 10/14/14

Enclosed are (2) original copies of the following to be placed on the **BOPW Agenda** for 10/22/14.

- xx Improvement Resolution Agreement Owner-Contractor Agreement/Contracts Professional Service Agreement
- Purchase Agreement Amendment/Supplemental Other Agreements
- Award Change Order Escrow Release
- Payment Approval Special Street Permit Claims/Write offs
- Consent Decree Acceptance Other (Description)
- SRF Project

Resolution/Work Order # **WMS52268013-5364** Anthis Concrete repair Contract Contract #

Project/BOPW Item Name Anthis Concrete/ and park strip cut repair contract

Project/BOPW Item Description (to be included on agenda) **Establish the contract for 2015 with Anthis Career Center to perform Cut restorations of Concrete and Soil for City Utilities**

Vendor/Contractor Name **Anthi Career Center/Christopher Roberts**

Dollar Amount \$ **255,000**

Date for Council (if applicable) **Next introduction day**

Additional Comments: This is Sixth year for this partnership and it is working exceptionally well.

Upon approval please return 1 **Copy to Kurt Roberts Dept. WMS**

Council Agenda Item Submission Form

Staff Contact:

Division: (Select from Drop-down):

Department:

Today's Date:

Issue:

Type of Action: Ordinance Resolution Presentation

Anticipated Introduction Date (2nd or 4th Tuesday):

Presenter:

Is there a requirement for a public hearing? Yes No

Is there a deadline for your final action? Yes No If yes, deadline date:

Do you need to meet with the Mayor and Deputy Mayor regarding this issue? Yes No

Do you plan to meet with Councilmembers to educate on issue? Yes No

Clark, John

Public Hearing Date, if applicable _____

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

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

DATED: 2-10-15 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. 8-9-15 on the 10th day of
February, 2015

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

John N. Crawford
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 11th day
of February, 2015, at the hour of 10:15 O'clock Am. E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 12th day of FEBRUARY
2015, at the hour of 8:00 O'clock AM. E.S.T.

Thomas C. Henry
THOMAS C. HENRY, MAYOR

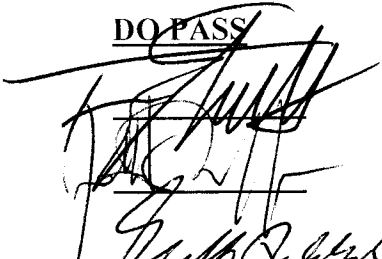

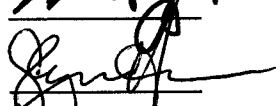


BILL NO. S-15-01-13

REPORT OF COMMITTEE ON CITY UTILITIES

FEBRUARY 3, 2015

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

AN ORDINANCE approving Construction Contract - Anthis Concrete/Park Strip Repair - #WMS52268013-5364 between Fort Wayne Community Schools Anthis Career Center and the City of Fort Wayne, Indiana, in connection with the Board of Public Works. **COMMITTEE ON CITY UTILITIES HAVE HAD SAID** Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

| <u>DO PASS</u> | <u>DO NOT PASS</u> | <u>ABSTAIN</u> | <u>NO REC</u> |
|---|--------------------|----------------|---------------|
|  | _____ | _____ | _____ |
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**SANDRA E. KENNEDY
CITY CLERK**