

BILL NO. S-12-03-07

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONSTRUCTION CONTRACT FOR MODERNIZATION OF SIX (6) ELEVATORS AT CITIZENS SQUARE - RESOLUTION #99-2-8-12-1 between AMERICAN ELEVATOR, INC. 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 FOR MODERNIZATION OF SIX (6) ELEVATORS AT CITIZENS SQUARE - RESOLUTION #99-2-8-12-1 by and between AMERICAN ELEVATOR, INC. 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 modernization of six (6) elevators at Citizens Square.

involving a total cost of EIGHT HUNDRED FIFTY-TWO THOUSAND, FIVE HUNDRED FIFTY-SEVEN AND 50/100 DOLLARS - (\$852,557.50). A copy 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

[illegible]



Board Agenda Transmittal

To: Board of Public Works

From: Jack Willis, Property Management, EXTENSION #2673

Date: 3/5/12

Re: Resolution #99-2-8-12-1, Modernization of six Elevators at Citizens Square.

Enclosed are (3) original copies of the following to be placed on the Board agenda for 3/7/12.

- ☐ Improvement Resolution ☐ Award ☐ Acceptance ☒ Contracts
☐ Change Order ☐ Agreements ☐ Escrow Release ☐ Claims/Write offs
☐ Special Street Permit ☐ Consent Decree ☐ Other (Description)

*Prior Approval Required ☐ Yes ☐ No Date for Council

*Council Approval Required ☒ Yes ☐ No Date for Council 3/13/12

Project/Agreement Amount \$852,557.50

Additional Comments: _____

Upon approval please return **One Original** to Jack Willis X2673

CONSTRUCTION CONTRACT

Resolution No. 99-2-8-12-1

Work Order: N/A

THIS CONTRACT made and entered into in triplicate this **1ST** day of **March**, 2012 by and between **AMERICAN ELEVATOR, INC.**, 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: **MODERNIZATION OF SIX ELEVATORS AT CITIZENS SQUARE**

All according to **all provisions of RESOLUTION NO. 99-2-8-12-1**, 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 **\$852,557.50**. 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 the **Engineering Department** of 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 **Engineering Department** 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 the **Engineering Department'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 **Industrial Board of the State 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 **Industrial Board of the State 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 99-2-8-12-1.**
- b. **Instructions to Bidders for Resolution 99-2-8-12-1.**
- c. **Contractor's Proposal dated February 29, 2012.**
- d. **Supplemental Specifications for Resolution 99-2-8-12-1.**
- 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. **Right-of-Way Cut Permit.**
- k. **Comprehensive Liability Insurance Coverage.**
- l. **Form 96.**
- m. **Article 17: Emerging Business Enterprise**
- n. **Contract Compliance Reports.**
- o. **Vendor Disclosure Form.**
- p. **E-Verify Affidavit.**

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the **CONTRACTOR** shall furnish a **Performance and Guaranty 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 covered hereunder and shall guarantee the materials and workmanship for a period of **TWO (2) YEARS** following written acceptance of the work by the **OWNER**. "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/by 365 days after taking the first elevator out of service thereby beginning the modernization project.

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, One East Main Street, Room 920 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

1. **E.B.E. Retainage requirements** - If the **CONTRACTOR** is in compliance with the provisions of the construction Contract the **OWNER** will make payments for such work performed and completed. Pursuant to Executive Order 90-01 (amended 5-8-06), the **OWNER** will retain five percent (5%) of the Contract Price to insure compliance with the EBE participation requirements. Upon final inspection and acceptance of the Work, and determination by the City of Fort Wayne (BOARD) that the **CONTRACTOR** has made a good faith effort to subcontract ten percent (10%) of the Contract Price to emerging business enterprises, the **CONTRACTOR** will be paid in full.

In the event there is a determination that good faith compliance with these E.B.E. participation requirements has not occurred, appropriate reduction in the final payment pursuant to paragraph 5 of this Article will be made.

If the Contract Price is in excess of \$100,000, the contract may 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 here within. Payment of the final 5% of the total Contract Price will be dependent upon acceptance of the Work, in accordance with Article 4, and good faith efforts to comply with these E.B.E. participation requirements; subject to reduction in the event of non-compliance as provided in paragraph 5 of this Article.

2. **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.
3. **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.

4. **Good Faith Efforts** - In determining whether or not the CONTRACTOR used "good faith" efforts, the following shall be considered:
 - a. Whether the contract can be subdivided as determined by the ENGINEER and Administrator of Contract Compliance;
 - b. Availability of certified EBE businesses to participate as subcontractors;
 - c. Non-competitive price quotes received from EBE firms. The Board of Public Works' determination for granting a reduction or waiver of the goal because of higher quotes from EBE firms will be based on factors that include, but are not limited to the following:
 - 1) The ENGINEER'S estimate for the work under a specific contract;
 - 2) The CONTRACTOR'S own estimate for the work under subcontract;
 - 3) An average of the valid prices quoted for the subcontract;
 - 4) Demonstrated increase in other contract costs as a result of sub contracting to EBE firm(s).
 - d. Documented measures taken by the CONTRACTOR to comply with the EBE participation goal;
 - e.
 - f. EBE subcontractor failed to fulfill their obligation in regard to the time delivery of goods and/or services. Also in regards to the quality of the goods and/or services set forth in the bid specifications.
 - f. Such other matters as the Board of Public Works deem relevant.
5. **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 the EBE participation goal of 10% and the actual participation level met by the CONTRACTOR, but in no case shall it be reduced by more than 5%. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and CONTRACTOR agrees to accept the reduced amount as full payment under the terms of his/her Contract.
6. **Waiver approved** - In the event the Board of Public Works determines that a good faith effort to comply with these E.B.E. participation requirements has been made, the Contract Price shall not be reduced, and the balance owing to the CONTRACTOR shall be paid in full.

ACKNOWLEDGMENT

STATE OF INDIANA)

SS:)

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 1st day of March, 2012, personally appeared the within named Rod Barrett who being by me first duly sworn upon his oath says that he is the President of American Elevator, Inc. and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of American Elevator, Inc. for the uses and purposes therein set forth.

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



Heather L. Barrett
Notary Public

Heather L. Barrett
Printed Name of Notary

My Commission Expires: 9/21/19

Resident of Madison County.

ACKNOWLEDGMENT

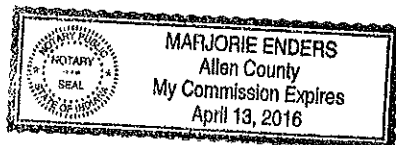
STATE OF INDIANA)

SS:)

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 7th day of March, 2012, personally appeared the within named **Thomas C. Henry, Robert Kennedy, John Suarez, 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.

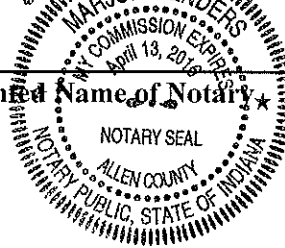


Marjorie Enders
Notary Public

Marjorie Enders
Printed Name of Notary

My Commission Expires:

Resident of _____ County.



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

CONTRACTOR

CITY OF FORT WAYNE

BY: Rod Barrett
ROD BARRETT

BY: Thomas C. Henry
THOMAS C. HENRY, MAYOR

BOARD OF PUBLIC WORKS

BY: Robert Kennedy
ROBERT KENNEDY, CHAIRMAN

BY: _____
JOHN SUAREZ, MEMBER

BY: Kumar Menon
KUMAR MENON, MEMBER

ATTEST: Victoria Edwards
VICTORIA EDWARDS, CLERK

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 #	Resolution #99-2-8-12-1
Awarded To	AMERICAN ELEVATOR
Amount	\$852,557.50
Conflict of interest on file?	☒ Yes ☐ No
Number of Registrants	7
Number of Bidders	5
Required Attachments	RFPs – attach Award Matrix; Bids – attach Tab Sheet

EXTENSIONS

Date Last Bid Out	
# Extensions Granted To Date	NONE

SPECIAL PROCUREMENT

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

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

Most Responsible, Responsive Lowest	☒ Yes ☐ 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>	
--	--

DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project; attach supporting documents as necessary.</i>	MODERNIZATION OF SIX ELEVATORS AT CITIZENS SQUARE

REQUEST FOR PRIOR APPROVAL

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

FUNDING SOURCE

<i>Account Information.</i>	208CTIF4-5454



CITY OF FORT WAYNE

THOMAS G. HENRY, MAYOR

Property Management Department
200 E. Berry St., Suite 490
Fort Wayne, IN 46802
(260) 427-2673
Fax: (260) 427-1393

March 8, 2012

City Council Members
City of Fort Wayne

RE: Resolution #99-2-8-12-1
Modernization of Six Elevators at Citizens Square
American Elevator, Inc. Contract

Dear Council Members:

On March 7, 2012 the City of Fort Wayne Board of Public Works approved the above contract with American Elevator, Inc. for \$852,557.50 who was the lowest bidder.

We are asking for City Council approval of this contract. The funds for these expenditures will be appropriated out of Fund 208CTIF4-5454.

If you have any questions on the above, please feel free to contact me at 427-2673.

Sincerely,

A handwritten signature in black ink that reads "Jack Willis". The signature is fluid and cursive, with the first and last names clearly legible.

Jack W. Willis, P.E.
Property Manager
Energy Manager

SAFE CITY • QUALITY JOBS • B.E.S.T.

One Main St. • Fort Wayne, Indiana • 46802-1804 • www.cityoffortwayne.org
An Equal Opportunity Employer