

Ord.

2011-0229

**INTRODUCED BY: V.J. ST. PIERRE, JR., PARISH PRESIDENT
(COASTAL ZONE MANAGEMENT)**

ORDINANCE NO. 12-2-3

An ordinance to approve and authorize the execution of a contract with Frickey Brothers Construction, LLC, for the Bonnet Carre Spillway Boat Launch Rehabilitation, Disaster Recovery CDBG Contract #684276, 45-FSCC-1001, in the amount of \$117,699.60.

WHEREAS, sealed bids were received by St. Charles Parish on April 28, 2011, for the Bonnet Carre Spillway Boat Launch Rehabilitation; and,

WHEREAS, Principal Engineering, Inc., Andre C. Monnot, P.E., the Engineer for the project, has reviewed the bids and recommended that the contract be awarded to the low bidder, Frickey Brothers Construction, L.L.C., in the amount of \$117,699.60; and,

WHEREAS, the construction costs will be funded using a U.S. Dept. of Housing and Urban Development, Disaster Recovery Community Development Block Grant, in the amount of \$125,000.00.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That the bid of Frickey Brothers Construction, L.L.C., for the Bonnet Carre Spillway Boat Launch Rehabilitation, Disaster Recovery CDBG Contract #684276, 45-FSCC-1001, be hereby approved and accepted in the amount of \$117,699.60.

SECTION II. That the Parish President is hereby authorized to execute said contract documents on behalf of St. Charles Parish.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: SCHEXNAYDRE, FAUCHEUX, WILSON, TASTET, BENEDETTO, HOGAN, COCHRAN, FLETCHER, NUSS

NAYS: NONE

ABSENT: NONE

And the ordinance was declared adopted this 13th day of February, 2012, to become effective five (5) days after publication in the Official Journal.

CHAIRMAN: _____

Acting SECRETARY: *Calli Madure*

DLVD/PARISH PRESIDENT: *2-14-12*

APPROVED: DISAPPROVED: _____

PARISH PRESIDENT: *V. St. Pierre*

RETD/SECRETARY: *2-15-12*

AT: *9:50 am* RECD BY: *cm*

**RECORDED IN THE ST. CHARLES PARISH
CLERK OF COURT OFFICE**

ON *March 12, 2012*

AS ENTRY NO. *377353*

IN MORTGAGE/CONVEYANCE BOOK

NO. *1465* FOLIO *271*

SECTION 00600

PUBLIC WORKS CONTRACT

UNITED STATES OF AMERICA

BY: ST. CHARLES PARISH

STATE OF LOUISIANA

AND: FRICKEY BROTHERS CONSTRUCTION, INC.

PARISH OF ST. CHARLES

THIS AGREEMENT IS MADE AND ENTERED INTO on this 17th day of February, 2012, by and between the St. Charles Parish, acting through its Parish President, V. J. St. Pierre, Jr., duly authorized by Ordinance/Resolution No. 12-2-3, adopted February 13, 2012, hereinafter sometimes referred to as "PARISH"; and Frickey Brothers Construction, Inc., a Louisiana corporation/limited liability company, authorized to do and doing business in Louisiana with its principal place of business at 101 Louisiana St., Paradis, LA, acting by and through its duly authorized and empowered President, all as more fully shown by resolution attached hereto, hereinafter sometimes referred as the "CONTRACTOR", for the following project:

BONNET CARRE SPILLWAY BOAT LAUNCH REHABILITATION

WHEREAS, the CONTRACTOR has submitted a written proposal to the PARISH, dated April 28th, 2011, to furnish all labor, tools, equipment, materials, supplies, etc. and to perform all work required in accordance with the plans, specifications, terms and conditions for those certain prices stipulated in such proposal; and,

WHEREAS, the CONTRACTOR does hereby agree to supply all labor, tools, equipment, materials, supplies, etc. and all of the things necessary in accordance with terms, conditions, provisions, instructions and stipulations contained in and shown on the plans and specifications prepared to govern the above mentioned work and project;

WHEREAS, the CONTRACTOR expresses that it has the professional and required experience, education, expertise, equipment, skills, training, and personnel and is capable of providing such services/or supplies;

NOW, THEREFORE, for and in consideration of the mutual covenants of the parties hereto as contained in this Agreement, including but not limited to the Scope of Work described, and any attachments hereto, all of which are incorporated herein and made a part hereof, the parties agree as follows:

ARTICLE 1

The plans, general & special conditions, specifications, and drawings prepared for or by the PARISH and the written proposal submitted by the CONTRACTOR, being essential to a fully and proper understanding of this contract, are hereby made a part hereof as if set forth herein in full, including Addenda numbers 1 and 2.

ARTICLE 2

While in the performance of services or carrying out its obligations under this agreement, CONTRACTOR shall be acting in the capacity of an independent contractor and not as an employee of PARISH with respect to the services and obligations being performed, dealings with other agencies, and administration of any contracts that may be contemplated or intended by the appropriate provisions of this agreement.

In all cases where **CONTRACTOR's** employees (defined to include **CONTRACTOR's** direct, borrowed, special, or statutory employees) are covered by the Louisiana Worker's Compensation Act, La.R.S. 13:1021 et seq., **PARISH** and **CONTRACTOR** agree that all work and operations performed by **CONTRACTOR**, its subcontractors, materialmen, suppliers and its employees pursuant to this Agreement are an integral part of and are essential to the ability of **PARISH** to generate **PARISH's** goods, products and services for purposes of La.R.S. 23:106(A)(1). Furthermore, **PARISH** and **CONTRACTOR** agree that **PARISH** is the principal or statutory employer of **CONTRACTOR's** employees for the purposes of La.R.S. 23:1061(A)(3). Irrespective of **PARISH's** status as the statutory employer or special employer (as defined in La.R.S. 23:1031 (c)) of **CONTRACTOR's** employees, **CONTRACTOR** shall remain primarily responsible for the payment of Louisiana Worker's Compensation benefits to its employees, and shall not be entitled to see contribution for any such payments from **PARISH**.

ARTICLE 3

For and in consideration of the proper, faithful and complete performance of all the obligations, duties and promises assumed and or made by the CONTRACTOR, the PARISH agrees to pay the CONTRACTOR in accordance with the terms and in the manner fully provided for in the above referenced plans, specifications and proposals.

ARTICLE 4

That OWNER shall pay to CONTRACTOR for performance of the Work embraced in this Contract, in accordance with the Contract Documents, and CONTRACTOR shall accept as full compensation therefore, the sum (subject to adjustment as provided in the Contract Documents) of one-hundred seventeen thousand, six hundred ninety nine and 60/100 Dollars (\$117,699.60) for all Work covered by and included in the Contract award and designated in the foregoing Article I; payment thereof to be made in current funds in the manner provided in the Contract Documents.

Notwithstanding anything to the contrary in the foregoing, CONTRACTOR acknowledges and agrees that, pursuant to the applicable Laws and Regulations, this Agreement is subject to an annual appropriation dependency requirement to the effect that the renewal and/or continuation of this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement. If the OWNER fails to appropriate sufficient monies to provide for payments under this Agreement, the Agreement shall terminate on the last day of the last fiscal year for which funds were appropriated. This ground for termination is in addition to any other grounds that are identified in the General Conditions or the Supplementary Conditions.

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

ARTICLE 5

A. All notices, letters, and other communications directed to OWNER shall be delivered or addressed and mailed (along with three copies), postage prepaid to the ENGINEER at the address in the Invitation to Bid, with four additional copies addressed and mailed to:

Earl Matherne
Coastal Zone Manager
St. Charles Parish
P.O. Box 302
Hahnville, LA 70057.

B. In addition, four copies of all correspondence directed to the ENGINEER shall be sent to the OWNER. The business address of CONTRACTOR given in this Agreement and CONTRACTOR's office in the vicinity of the Work are both hereby designated as the places to which all notices, letters, and other communications to CONTRACTOR will be mailed or delivered. CONTRACTOR shall notify ENGINEER and OWNER of any change of address immediately.

ARTICLE 6

NOTICE TO PROCEED/TASK ORDERS

The **CONTRACTOR** shall proceed with the work upon receipt of an executed contract previously approved by **PARISH** and a Notice to Proceed issued by **PARISH**. Unless otherwise provided in the general or special conditions, specifications, or bid package, **PARISH** reserves the right to partition the work by separate task orders and notices to proceed.

ARTICLE 7
COMPLETION

The Work will be substantially completed within 60 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions ("Substantial Completion"), and completed and ready for final acceptance in accordance with Paragraph 14.07.B. of the General Conditions within 10 days after the date when the Contract Times commence to run. This time allocation allows for 10 days of lost production due to inclement weather.

ARTICLE 8
LIQUIDATED DAMAGES

A. OWNER and CONTRACTOR recognize and agree that time is of the essence of this Agreement and that the Work must be completed in every respect appropriate within the applicable time limits set forth in the Contract Documents, commencing from the date specified in the Contract Documents. OWNER and CONTRACTOR further understand and agree that it is difficult at this time to estimate the damage which the delay in completion of the Work would cause the OWNER and that, accordingly, if the CONTRACTOR shall neglect, fail, or refuse to complete the Work in accordance with the Contract Times specified in the Contract Documents, or any extension thereof granted by the OWNER in accordance with the applicable provisions of the Contract Documents then, in addition to the other stipulated damages provided below, the CONTRACTOR agrees, as a part of the consideration for the award of this Contract, that OWNER shall be entitled to receive the amount or amounts per day set forth in paragraph B below from CONTRACTOR, not as a penalty but as stipulated ("liquidated") damages for delay for such breach of contract, such amounts being specifically herein agreed upon in advance as the measure of damages to the OWNER on account of such delay in the completion of the Work.

B. The CONTRACTOR shall owe OWNER liquidated damages in the amount of One Hundred dollars (\$ 100) for each and every calendar day after the time specified for Substantial Completion of the Work until the Work is determined to be substantially complete in accordance with the Contract Documents. After Substantial Completion, if the CONTRACTOR shall neglect, fail, or refuse to complete the Work within the time specified for final completion, or any proper extension thereof granted by the OWNER, CONTRACTOR shall owe OWNER liquidated damages in the amount of One Hundred dollars (\$ 100) for each day after the time specified for final completion until the Work is determined to be finally completed in every respect in accordance with the Contract Documents.

C. The number of calendar days in default shall be calculated exclusive of the day on which the applicable completion time was specified and shall include each and every other calendar day up to and including the day that the CONTRACTOR has been determined to satisfy its obligation for the applicable degree of completion under the Contract Documents.

D. CONTRACTOR further agrees that the expiration of the Contract Time shall, ipso facto, constitute a putting in default where CONTRACTOR has failed to complete the Work in accordance with the applicable Contract Times, and OWNER need not formally place the CONTRACTOR in default, the CONTRACTOR hereby expressly waiving any and all notices of default.

E. CONTRACTOR agrees and consents that the liquidated damages may be deducted from progress payments payable to CONTRACTOR pursuant to the Contract Documents and that CONTRACTOR shall accept the Contract Price, reduced by the aggregate amount of the liquidated damages so deducted, in full satisfaction of all Work executed under the Contract Documents.

ARTICLE 9
PAYMENTS

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, as provided below. All such payments will be measured by the schedule of values established pursuant to Paragraph 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

Upon receipt of the Final Application for Payment, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in Paragraph 14.07.C.3. of the General Conditions and any relevant Supplementary Conditions.

Pursuant to LSA-R.S. 38:2248, OWNER shall retain the following percentages of each progress payment until payment is due under the terms and conditions governing retainage payment:

CONTRACT AMOUNT	RETAINAGE
\$0 - \$499,999.99	10%
\$500,000 or greater	5%

ARTICLE 10
CONTRACTOR REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, the CONTRACTOR makes the following representations:

1. CONTRACTOR has visited the Site, has familiarized himself with and is satisfied as to the nature and extent of the Contract Documents, Work, locality, and as to all general, local and Site conditions and federal, state, and local Laws, and Regulations, which may affect cost, progress, performance or furnishing of the Work.
2. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 1) and the other related data identified in the Bidding Documents including "technical data."
3. CONTRACTOR has carefully studied all (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02.A. of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.02.A. of the General Conditions. CONTRACTOR accepts the determination set forth in Paragraph SC-4.02 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in Paragraph 4.02 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purpose. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, test, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

4. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
5. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
6. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey an understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 11 **TERMINATION**

The terms of this contract shall be binding upon the parties hereto until the work has been completed and accepted by the **PARISH** and all payments required to be made to the **CONTRACTOR** have been made; but this contract may be terminated under any or all of the following conditions.

1. By mutual agreement and consent of the parties hereto.
2. By the **PARISH** as a consequence of the failure of the **CONTRACTOR** to comply with the terms, progress or quality of work in a satisfactory manner, proper allowance being made for circumstances beyond the control of the **CONTRACTOR**.
3. By either party upon failure of the other party to fulfill its obligations as set forth in this contract.
4. In the event of the abandonment of the project by the **PARISH**.
5. In the event the **CONTRACTOR** does not maintain valid Louisiana licenses necessary to comply with a public work.
6. Notwithstanding the above, by the **PARISH** for any reason provided **CONTRACTOR** is given 30 days notice of termination of contract.

This agreement shall automatically terminate upon satisfactory completion of all services and obligations described herein.

Upon termination the **CONTRACTOR** shall be paid for actual work performed prior to the notice of termination on a pro-rata share of the basic fee based on the phase or percentage

of work actually completed. Notwithstanding any other provision contained herein, the release, defense, indemnity obligations, allocation of risks contained herein and all corresponding insurance shall survive any termination of this agreement.

ARTICLE 12 **INDEMNITY**

CONTRACTOR agrees to indemnify, defend and save harmless PARISH against any and all causes of action, liabilities, claims, demands, penalties, fines, forfeitures, suits, judgments, and costs and expenses thereto (including costs of defense, settlement and reasonable attorney fees), which PARISH may hereafter incur or become responsible to pay, (a) as a result of death or bodily injuries to any person including without limitation CONTRACTOR'S employees, employees of PARISH, and any other person, natural or juridical, and (b) destruction or damage to any property, caused in whole or in part, by any negligent act or omission of CONTRACTOR, its agents, owners, officers, employees or subcontractors in the performance of this contract.

ARTICLE 13 **DOCUMENTS**

In the event that the **CONTRACTOR** modifies the contract documents without the express prior written consent of **PARISH**, whether such modification is made by the Supplementary Conditions, the Specifications, Addenda, Written Amendments, Change Orders, or in any manner, the **CONTRACTOR** shall indemnify, defend and hold harmless **PARISH** from any claims, lawsuits, or damages that arise out of or are attributable to the modification. In particular, this shall include, but not be limited to, modifications to any contract warranties; liquidated damages; payment terms; substantial or final completion; subsurface conditions; drawing requirements; "or-equal" materials, insurance; notice to proceed; change orders; contract amendments; obligations, duties, or responsibilities of the Contractor, etc. This indemnification and hold harmless obligation shall include not only the damages suffered by **PARISH** but also all reasonable expenses including, but not limited to, any and all litigation or other dispute resolution costs and any and all professional fees incurred by **PARISH** as a result of the **CONTRACTOR'S** deviation from the contract documents.

All Data collected by the **CONTRACTOR** and all documents, notes, drawings, tracings, plans, specifications and files prepared by the **CONTRACTOR** pursuant to this Agreement shall be the property of the **PARISH** pursuant to the mandatory provisions of LSA – R.S. 38:2317 except the **CONTRACTOR'S** personal, personnel and administrative files.

ARTICLE 14 **SEVERABILITY**

In the event that any of the provisions, or any portion of the provisions, of this Agreement are held to be unenforceable or invalid by any court or quasi-judicial entity of competent jurisdiction, such ruling shall not invalidate the remaining provisions of this Agreement, and CONTRACTOR and PARISH agree to negotiate in good faith towards an

equitable addition to and/or deletion of terms in this Agreement consistent with the purpose of this Agreement and the validity and enforceability of the remaining provisions thereof.

ARTICLE 15
GOVERNING LAW/VENUE/JURISDICTION

Proper venue and jurisdiction for all lawsuits, arbitration, mediation, claims, disputes, and other matters in questions between the parties to this agreement or any breach thereof, shall be in the 29th Judicial District Court for the Parish of St. Charles, State of Louisiana.

ARTICLE 16
ENTIRE AGREEMENT

This Agreement, together with the plans, general & special conditions, specifications, drawings, bid package and written proposal, constitutes the entire understanding and agreement between the parties hereto relating to the subject matter hereof, and supersedes any previous agreement or understandings. Notwithstanding anything to the contrary, any modification to this Agreement shall be in writing and signed by both parties.

ARTICLE 17
SUCCESSORS/ASSIGNS

This agreement shall be binding upon the successors and assigns for the parties hereto. This Agreement, being for the personal services of the CONTRACTOR, shall not be assigned or subcontracted in whole or in part by the CONTRACTOR as to the services to be performed hereunder without the written consent of the PARISH.

ARTICLE 18
HEADINGS

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

ARTICLE 19
NOTICES

All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then five business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient. Any Party

may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

ARTICLE 20
COUNTERPARTS

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the respective dates set forth below, but effective as of the date first hereinabove written.

WITNESSES

Calli Madere
Calli T. Madere

[PRINT NAME]
Sandra B. Miguez
Sandra B. Miguez
[PRINT NAME]

Courtne Comardelle
Courtne Comardelle
[PRINT NAME]

Andrea Oyeda
Andrea Oyeda
[PRINT NAME]

St. Charles Parish

By: W. St. Pierre, Jr.
V. J. St. Pierre, Jr.
Title: Parish President

Frickey Brothers Construction, Inc.

By: [Signature]
Title: President