

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between City of Mount Vernon ("Owner") and National Water Main Cleaning Company("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

1.01 Sewer cleaning, inspection, and rehabilitation services for stormwater and sanitary sewer mains, sewer service connections, manholes, and catch basins throughout the Owner's service area. Rehabilitation work may include, cured-in-place pipe lining, testing and sealing of service connections and joints, rehabilitation of manholes and catch basins, cementitious lining of manholes and catch basins, excavation pipeline point repairs, raising manhole to grade, and other miscellaneous rehabilitation work.

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is titled Sewer Rehabilitation – Phase 1, 122022-2. It includes sanitary and storm sewer system rehabilitation throughout the City of Mount Vernon. The City has 33 pipe segments identified for rehabilitation and has an aggressive cleaning and televising schedule planned to identify an expansive list of additional segments for rehabilitation. The estimated quantities were developed for the purpose of comparing bids; however, they are reflective of the overall breath of scope for this project.

ARTICLE 3—ENGINEER

3.01 The Owner has retained **Arcadis of New York, Inc.** ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by Engineer.

ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

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

4.03 *Contract Times: Days*

A. The Work will be substantially complete within 730 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions,

and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 730 calendar days after the date when the Contract Times commence to run.

ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

A. For all Work, at the prices stated in the Contractors Bid, attached hereto as an exhibit.

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in 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 elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

a. 10% percent of the value of the Work completed (with the balance being retainage).

1) If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

b. 5% percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

- A. All amounts not paid when due will bear interest at the rate of 3% percent per annum.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
1. This Agreement (Pages 1 through 6, inclusive).
 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 3. General Conditions (Pages 1 through 77, inclusive).
 4. Supplementary Conditions (Pages 1 through 13, inclusive).
 5. Specifications as listed in the table of contents of the project manual.
 6. Drawings (not attached but incorporated by reference) consisting of 1 cover page, and 5 sheets with each sheet bearing the following general title: **City of Mount Vernon, New York Sanitary Sewer Rehabilitation.**
 7. Drawings listed on the attached sheet index.
 8. Addenda (numbers 1 to 8 inclusive).
 9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Submitted Bid Form
 - b. 00 73 46, Wage Determination Schedule
 - c. 00 73 73, Statutory and Funding-Financing Requirements

10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 3. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
 4. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 5. 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.
 6. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of

discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

7. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
8. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract)

Owner:

City of Mount Vernon, NY
(typed or printed name of organization)

By:

Shawn Patterson Howard
(individual's signature)

Date:

6/8/2023
(date signed)

Name:

Shawn Patterson Howard
(typed or printed)

Title:

Mayer
(typed or printed)

Attest:

[Signature]
(individual's signature)

Title:

Deputy Corporation Counsel
(typed or printed)

Address for giving notices:

City Hall
One Roosevelt Square
MT Vernon, NY 10550

Designated Representative:

Name:

Brian G. Johnson
(typed or printed)

Title:

Corporation Counsel
(typed or printed)

Address:

City Hall
One Roosevelt Square Rm 111
MT Vernon NY 10550

Phone:

914/665-2366

Email:

MayerSPH@CMVNY.COM

(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Contractor:

National Water Main Cleaning Company
(typed or printed name of organization)

By:

[Signature]
(individual's signature)

Date:

05/31/23
(date signed)

Name:

Joseph Perone
(typed or printed)

Title:

Vice President
(typed or printed)

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

[Signature]
(individual's signature)

Title:

Raymond Lindsley - Secretary/Treasurer
(typed or printed)

Address for giving notices:

1806 Newark Turnpike
Kearny, NJ 07032

Designated Representative:

Name:

Joseph Perone
(typed or printed)

Title:

Vice President
(typed or printed)

Address:

1806 Newark Turnpike
Kearny, NJ 07032

Phone:

973-483-3200

Email:

bidreq@nwmcc.com

License No.:

(where applicable)

State:

NJ