

CITY OF READING  
RESOLUTION NO. 91 2012

**RESOLUTION FOR AWARD OF CONTRACT  
42-INCH FORCE MAIN – 6<sup>TH</sup> AND CANAL PUMP STATION TO  
ANGELICA CREEK PROJECT**

**WHEREAS**, the City of Reading, (the “City”) has sought competitive bids, by due public notice requesting same, for the installation of approximately 7,000 lineal feet of new 42-inch diameter ductile iron force main extending from the City’s 6th and Canal Street Pump Station to connect with a new section of 42-inch ductile iron force main at Angelica Creek near the City’s Fritz Island Wastewater Treatment Plant (“WWTP”) and lining of a portion of the existing 42-inch steel force main (the “Project”); and

**WHEREAS**, the City received such competitive bids for the Project on June 1, 2012; and

**WHEREAS**, the City desires to proceed expeditiously with the award of contracts and commencement of construction activities with respect to the Project in order to perform its obligations under a Consent Decree with the United States Department of Justice, United States Environmental Protection Agency and Pennsylvania Department of Environmental Protection.

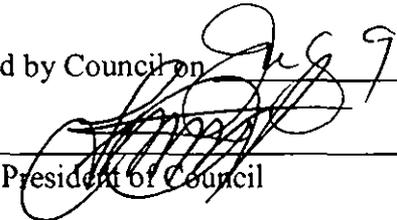
**NOW, THEREFORE**, be it resolved by the members of City Council of the City of Reading, Pennsylvania, as follows:

**“RESOLVED**, that City hereby approves the award of the Contract for the Project to lowest responsible bidder, PACT Construction, Inc., P.O. Box 74, 554 Route 31, Ringoes, NJ 08551, (“PACT”) for the Total Base Bid Amount of Nine Million Seven Hundred Thirty-Eight Thousand Five Hundred Dollars in the amount of the Total Base Bid Price of \$9,738,500.00, subject to increases or decreases to the Contract Price in accordance with the Contract Documents.

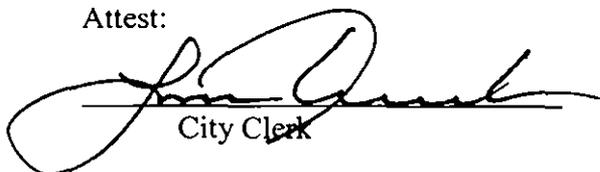
**“RESOLVED**, City Council hereby finds that all deficiencies and/or discrepancies in the Bid submitted by PACT are not in substantial non-conformance with the bid specifications as set forth in Section 11.3 of the the Bid Solicitation, Evaluation and Award Process within the City’s Administrative Code and, therefore, the City waives such deficiencies and discrepancies, as it is authorized to do so by the Bidding Documents;

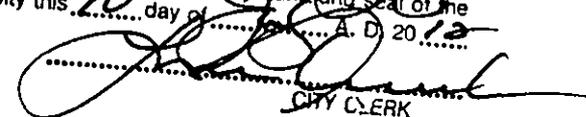
**“RESOLVED**, that the award of the contract set forth above is expressly made contingent upon the City’s receipt of (1) all necessary agency approvals of PACT’s Disadvantaged Business Solicitation submission, (2) the Agreement Between Owner and Contractor for Construction Contract (Stipulated Price), attached hereto as Exhibit “A” and incorporated here, executed on behalf of PACT Construction, Inc., (3) the Payment Bond, (4) the Performance Bond, (5) the Waiver of Liens, and (6) a Certificate of Insurance; all in compliance with the Contract Documents.

**“RESOLVED**, the Mayor of the City of Reading is hereby authorized to enter into and execute Agreement Between Owner and Contractor for Construction Contract (Stipulated Price) the upon receipt of such approved documentation.

Adopted by Council on Aug 9  
  
\_\_\_\_\_  
President of Council

Attest:

  
\_\_\_\_\_  
City Clerk

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Resolution passed by the Council of the City of Reading, on the 9 day of Aug A. D. 2012. Witness my hand and seal of the said City this 10 day of Aug A. D. 2012.  
  
\_\_\_\_\_  
CITY CLERK

# **Exhibit “A”**



## ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**COR Project # 2001-12 – 42-Inch Force Main – 6<sup>th</sup> and Canal Pump Station to Angelica Creek Project**

## ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Entech Engineering, Inc. (Engineer), which is to act, along with the Program Manager, as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

## ARTICLE 4 – CONTRACT TIMES

4.01 *Time 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.

4.02 *Days to Achieve Substantial Completion and Final Payment*

A. The Work will be substantially completed within 540 calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, as modified by the Supplementary Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions, as modified by the Supplementary Conditions within 600 calendar days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

A. Contractor shall be liable for and shall pay the Owner the cost of expenses incurred by Owner resulting from Contractor's delay in completing the Work of the Contract within the Contract Time, as liquidated damages, and not as a penalty, in the amount of One Thousand Dollars (\$1,000.00) per calendar day, for each calendar day of delay until the Work is substantially complete in accordance with the Contract Documents, subject to adjustments of the Contract Time as provided in the Contract Documents.

B. In addition to the foregoing and without limiting the foregoing, Contractor shall be liable for and shall pay the Owner the cost of expenses incurred by Owner resulting from Contractor's delay in submitting Shop Drawings, Product Data, Samples and similar submittals beyond the required number of days specified for such submittals as provided in the Contract Documents as liquidated damages, and not as a penalty, in the amount of Five Hundred Dollars (\$500.00) per calendar day, for each calendar day of delay until such submittal has been properly submitted as provided in the Contract Documents. All submittals shall be received from Contractors by the earlier of the date set forth in the Contract Documents, if applicable, but in no event later than provided in the Schedule of Submittals.

C. In the event Contractor or Surety litigates the validity of the liquidated damages set forth herein or the assertion of liquidated damages, Contractor and Surety, jointly and severally,

shall also be liable for legal fees, professional fees, costs, other expenses and/or damages incurred by Owner. Owner's right to receive liquidated damages shall be in addition to all other rights and remedies available to Owner at law or in equity.

- D. If Contractor is responsible, in the opinion of the Program Manager and the Engineer, for delay in the actual time of completion of any other contractor employed by the Owner in performance of any other portion of the Project, then Contractor shall be liable for and shall pay to the Owner all liquidated damages otherwise attributable to such other contractor, as well as any legal fees, professional fees, or other costs or expenses incurred by Owner.

## **ARTICLE 5 – CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below (cumulatively, the "Contract Price"):
- A. For all Unit Price Work, an amount equal to the sum of the unit price for each separately identified item of Unit Price Work as set forth in Contractor's Bid, attached hereto as Exhibit "A", times the actual quantity of that item incorporated in the Project, as verified by the Engineer.
- B. For all Work other than Unit Price Work, a lump sum of: \$ 3,205,000. All specific cash allowances are included in the above prices in accordance with Paragraph 11.02 of the General Conditions, as modified by the Supplementary Conditions.
- C. Owner retains the right to elect Alternate No. 2 if it determines that off-site disposal of groundwater is required. If Owner elects, in its sole discretion, to award Alternate No. 2, a Change Order shall be prepared by the Engineer for such Work and shall be paid to Contractor at a Unit Price of \$2.00 per gallon.

## **ARTICLE 6 – PAYMENT PROCEDURES**

### **6.01 *Submittal and Processing of Payments***

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions, as modified by the Supplementary Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions, as modified by the Supplementary Conditions.

### **6.02 *Progress Payments; Retainage***

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the last Friday of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions, as modified by the Supplementary 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.
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 Engineer or Program Manager may determine

or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions, as modified by the Supplementary Conditions.

- a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent 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. 25 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 as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions, as modified by the Supplementary Conditions and less 150 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, as modified by the Supplementary Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

## **ARTICLE 7 – INTEREST**

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions, as modified by the Supplementary Conditions shall bear interest at the rate of 3 percent per annum.

## **ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. 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 relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental

Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."

- E. Contractor has considered the information known to Contractor; 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 Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that 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 Documents.
- G. 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.
- H. 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.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **ARTICLE 9 – CONTRACT DOCUMENTS**

### **9.01 *Contents***

- A. The Contract Documents consist of the following in order of precedence:
  - 1. This Agreement.
  - 2. Supplementary Conditions.
  - 3. General Conditions, as revised by Owner.
  - 4. Performance bond.
  - 5. Payment bond.
  - 6. Project Manual bearing the title "City of Reading – COR Project # 2001-12 – 42-Inch Force Main – 6<sup>th</sup> and Canal Pump Station to Angelica Creek" consisting of the following:
    - a. All items defined in the Project Manual
    - b. All Reference Documents which are part of the Project Manual
    - c. All Attachments to the Project Manual

- d. All Addenda to the Project Manual (the later addenda bearing greater precedence over earlier versions)
- 7. All Technical Specifications and Drawings
  - a. All Attachments as defined in the Project Manual Index
  - b. All Addenda to the Technical Specifications and Drawings (the later addenda bearing greater precedence over earlier versions)
- 8. Prime Contractor DBE Compliance Statement
- 9. Exhibits to this Agreement (enumerated as follows):
  - a. Exhibit A – Contractor's Bid
- 10. The following, which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a. Notice to Proceed.
  - b. Work Change Directives.
  - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are expressly incorporated to this Agreement.
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions, as modified by the Supplementary Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### **10.01 Terms**

- A. Terms used in this Agreement will have the meanings stated in the General Conditions, as modified by the Supplementary Conditions.

### **10.02 Assignment of Contract**

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### 10.05 *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 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing 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.

### 10.06 *Other Provisions*

- A. The grant requirements established by the Pennsylvania Infrastructure Investment Authority and Pennsylvania H2O apply to this Project.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Agreement).

OWNER:

**City of Reading**

By: \_\_\_\_\_

Title: \_\_\_\_\_

[SEAL]

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

**815 Washington Street**

**Reading, PA 19601**

CONTRACTOR:

**PACT Construction, Inc.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

[CORPORATE SEAL]

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

**P.O. Box 74, 554 Route 31**

**Ringoes, NJ 08551**

License No.: \_\_\_\_\_

(Where applicable)

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

Agent for service of process:

\_\_\_\_\_

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