

RESOLUTION NO. 18-28

A RESOLUTION AUTHORIZING THE APPROVAL AND EXECUTION OF CONTRACT NO. 1 ENTITLED "EAST SEGMENT MGNWC 30-INCH WATER SUPPLY TRANSMISSION MAIN" BETWEEN THE MORTON GROVE-NILES WATER COMMISSION AND BERGER EXCAVATING CONTRACTORS, INC. FOR THE MGNWC WATER TRANSMISSION MAIN AND FACILITY IMPROVEMENTS PROJECT

WHEREAS, the Morton Grove Niles Water Commission, located in Cook County, Illinois ("MGNWC"), has been established to operate a public water supply system (the "System") by an intergovernmental agreement adopted by the Village of Morton Grove and the Village of Niles pursuant to 65 ILCS 5/11-135-1 *et seq.*, and the MGNWC further operates in accordance with the provisions of Article VII, Section 6 of the Illinois Constitution;

WHEREAS, the MGNWC Board of Commissioners has determined that it is advisable, necessary and in the best of the MGNWC to acquire property and construct water transmission mains and facility improvements including new water main lines, pump stations and a water storage standpipe, and to rehabilitate certain existing water main lines to construct and operate a public water supply system that connects the Villages of Morton Grove and Niles to the MGNWC's future water supplier, the city of Evanston ("the MGNWC Water Transmission Main and Facility Improvements Project" or the "Project"); and

WHEREAS, the estimated cost of construction and installation of the Project, including engineering, legal, financial and other related expenses is \$96,200,000.00; and

WHEREAS, the MGNWC has applied for low interest loans from the Illinois Environmental Agency's Public Water Supply Loans State Revolving Fund to pay for a substantial portion of the Project and has been assigned a Project Loan Number of L175513; and

WHEREAS, on November 1, 2017 the MGNWC posted its Advertisement for Bids for Contract No. 1, entitled "East Segment MGNWC 30-Inch Water Supply Transmission Main" for the construction of a 24-inch and 30-inch diameter transmission main, valves and appurtenances from the Evanston delivery structure north of the intersection of McCormick Boulevard and Emerson Street in the City of Evanston, IL to 150 feet west of the intersection of Suffield Court and Laramie Avenue in the Village of Skokie (approximately 18,600 linear feet of pipe), and on December 12, 2017 the MGNWC received and opened bids for Contract No. 1; and

WHEREAS, the Project Engineer, Stanley Consultants, Inc. reviewed the bids and has recommended awarding Contract No. 1 to Berger Excavating Contractors, Inc. for the contract amount of \$15,288,636.65. Berger Excavating Contractors, Inc. is the lowest responsive and responsible bidder, a duly registered contractor in the State of Illinois and possess the personnel, experience, expertise, and equipment to complete Contract No. 1; and

WHEREAS, the MGNWC has received the final approval of the loan documents by the Illinois Environmental Agency's Public Water Supply Loans State Revolving Fund; and

WHEREAS, the MGNWC Board and Berger Excavating Contractors, Inc. have agreed to the terms of Contract No. 1 attached hereto as **Exhibit "A"**; and

WHEREAS, the Board of Commissioners of the Morton Grove-Niles Water Commission have the authority to enter into Contract No. 1 pursuant to Article VII, Section 10 of the 1970 Constitution of the State of Illinois, the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*) and the Illinois Municipal Code (65 ILCS 5/1, *et seq.*, including 65 ILCS 5/11-135-1, *et seq.*), and find that entering into Contract No. 1 is in the best interests of MGNWC, the Village of Morton Grove and the Village of Niles.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE MORTON GROVE-NILES WATER COMMISSION, COOK COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

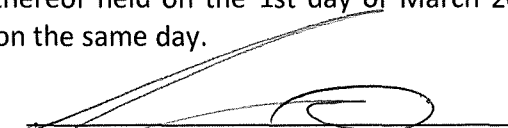
SECTION 2: The Board of Commissioners of the Morton Grove-Niles Water Commission ("MGNWC Board") authorize the approval of the economic terms and the attached form of Contract No. 1, entitled "East Segment MGNWC 30-Inch Water Supply Transmission Main" (the "Agreement") for the purposes set forth in the Agreement, attached hereto as Exhibit "A". The MGNWC Board authorize and direct the Chair, or his/her designee, and the Clerk to execute the final version of the Agreement, which may contain certain non-substantive and financial modifications that are approved by the Village Manager of Niles and the Village Administrator of Morton Grove, and to execute and deliver all other instruments and documents and pay all costs that are necessary to fulfill MGNWC'S obligations under the Agreement.

SECTION 3: This Resolution shall be in full force and effect from and after its adoption and approval as provided by law.

ADOPTED this 1st day of March 2018, pursuant to a roll call vote as follows:

AYES: John Pietron and Steven Vinezeano
NAYS: None
ABSENT: None (Cook County Appointee not appointed yet)

PASSED by the Board of Commissioners of the Morton Grove-Niles Water Commission, Cook County, Illinois on a roll call vote at a Regular Meeting thereof held on the 1st day of March 2018, and approved by the Chair, and attested by the Clerk on the same day.


Steven Vinezeano, Chair

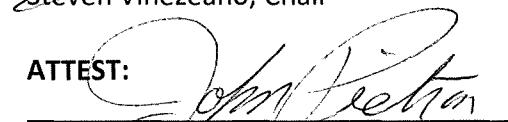
ATTEST: 
John Pietron, Clerk

Exhibit "A"
CONTRACT NO. 1 ENTITLED
"EAST SEGMENT MGNWC 30-INCH WATER SUPPLY TRANSMISSION MAIN"
(attached)

THIS AGREEMENT is by and between the Morton Grove – Niles Water Commission (Owner) and Berger Excavating Contractors, Inc.(Contractor). Owner and Contractor hereby agree as follows:

ARTICLE 1 - WORK

1.1 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as Contract 1 – East Segment MGNWC 30-Inch Water Supply Transmission Main, including the construction of 24-inch and 30-inch diameter transmission main, valves and appurtenances; from the Evanston delivery structure north of the intersection of McCormick Boulevard and Emerson Street in the City of Evanston, IL to 150 feet west of the intersection of Suffield Court and Laramie Avenue in the Village of Skokie (approximately 18,600 linear feet of pipe). This segment includes coordinating connection with Contract 2 – West Segment MGNWC 30-Inch Water Supply Transmission Main, Contract 6 – MGNWC Intermediate Pump Station, and the City of Evanston's delivery structure.

ARTICLE 2 - THE PROJECT

2.1 The Project for which Work under the Contract Documents may be the whole or only a part is generally described as Contract 1 – East Segment MGNWC Water Transmission Main and Facility Improvements Project.

ARTICLE 3 - ENGINEER

3.1 The Project has been designed by Stanley Consultants, Inc. and its sub-consultants.

3.2 The Owner has retained Stanley Consultants (Engineer) to act 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 completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.1 *Time of the Essence.* All time limits for Milestones, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.2 *Contract Times: Durations.*

- A. Milestone No.1: Install and successfully pressure test 25% of the mainline pipeline as measured by pipeline installation costs within 90 days of the Notice to Proceed.
- B. Milestone No.2: Install and successfully pressure test 50% of the mainline pipeline as measured by pipeline installation costs within 165 days of the Notice to Proceed.
- C. Milestone No.3: Install and successfully pressure test 75% of the mainline pipeline as measured by pipeline installation costs within 235 days of the Notice to Proceed.
- D. Substantial Completion: The Work will be substantially completed and ready to transport water within 331 days of the Notice to Proceed.
- E. Final Completion: Complete all aspects of the Work and be ready for final payment in accordance with paragraph 15.06 of the General Conditions within 525 days of the Notice to Proceed.

4.3 *Liquidated Damages.* Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.1 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.2 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

- A. Milestone No. 1: Contractor shall pay Owner \$1,000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2 above for Milestone No. 1 until the Work reaches that milestone.
- B. Milestone No. 2: Contractor shall pay Owner \$1,000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2 above for Milestone No. 2 until the Work reaches that milestone.

- C. Milestone No. 3: Contractor shall pay Owner \$1,000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2 above for Milestone No. 3 until the Work reaches that milestone.
- D. Substantial Completion: Contractor shall pay Owner \$1,000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2 above for Substantial Completion until the Work is substantially complete.
- E. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$1,000 for each day that expires after such time until the Work is completed and ready for final payment.
- F. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and Final Completion are additive and will be imposed concurrently.

4.4 *Special Damages.* In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.2 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

4.5 After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.2 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.1 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 Document 00 43 22 - Unit Price Schedule, attached hereto as an exhibit.

ARTICLE 6 - PAYMENT PROCEDURES

6.1 *Submittal and Processing of Payments.* 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.

6.2 *Progress Payments; Retainage.* Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 30th day of each month during performance of the Work as provided in Paragraph 6.2.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.

- A. 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:
 - 1. 95% 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
 - 2. 50% 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% of the Work completed, less such amounts set off by Owner pursuant to paragraph 15.01. E. of the General Conditions and less 200% 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.

6.3 *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 15.06.

6.4 *Pre-Procured Materials.* The Owner will directly pay the supplier for Pre-Procured Materials delivered to the Site inclusive of suppliers' delivery costs.

ARTICLE 7 - INTEREST

7.1 All amounts not paid when due shall bear interest at the maximum rate allowed by law at the place of the project.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

8.1 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, 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 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 adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. 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 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; and (3) Contractor's safety precautions and programs.
- F. 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.
- 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.

- J. 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.
- K. The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

ARTICLE 9 - CONTRACT DOCUMENTS

9.1 *Contents:* The Contract Documents consist of the following:

- A. This Agreement (pages 1 to 6, inclusive).
- B. Performance Bond (pages 1 to 3, inclusive).
- C. Payment Bond (pages 1 to 3, inclusive).
- D. General Conditions (pages 1 to 38, inclusive).
- E. Supplementary Conditions (pages 1 to 11, inclusive).
- F. Specifications as listed in Project Manual table of contents.
- G. Drawings as listed on the Drawing List.
- H. Addenda numbers 1 to 3, inclusive.
- I. Exhibits to this Agreement (enumerated as follows):
 - 1. Document 00 43 22 - Unit Price Schedule (pages 1 to 8, inclusive).
- J. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - 1. Notice to Proceed.
 - 2. Instructions to Contractors.
 - 3. Change Orders.
 - 4. Field Orders.

9.2 The documents listed in paragraph 9.1 are attached to this Agreement (except as expressly noted otherwise above).

9.3 There are no Contract Documents other than those listed above in this Article 9.

9.4 The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.1 *Terms.* Terms used in this Agreement will have the meanings indicated in the General Conditions and the Supplementary Conditions.

10.2 *Assignment of Contract.* Unless expressly agreed to elsewhere in the Contract, 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, money that may become due and money that is

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.

10.3 *Successors and Assigns.* Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.4 *Severability.* 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.

10.5 *Contractor's Certification.* 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 10.5:

- A. "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;
- B. "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;
- C. "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
- D. "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.

10.6 *Other Provisions.* Owner stipulates that the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and Owner is the party that has furnished said General Conditions, and has plainly shown all modifications to the standard wording of such published document to the Contractor in the Supplementary Conditions.

10.7 *Pre-procured Materials.* Contractor is not responsible for project delays caused by failure of ^{Add No. 1} valve suppliers to deliver pre-procured products as needed for the timely completion of the Work unless Contractor fails to provide adequate notice of delivery requirements to the suppliers as stipulated by the suppliers prior to the start of the Work.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. This Agreement will be effective on 03/02, 2018 (which is the Effective Date of the Agreement).

**OWNER:
MORTON GROVE – NILES WATER COMMISSION**

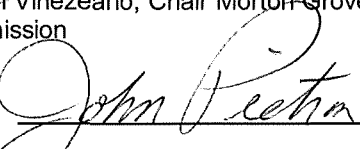
**CONTRACTOR:
BERGER EXCAVATING CONTRACTORS, INC.**

By: 

By: _____

Steven Vinezeano, Chair Morton Grove-Niles Water Commission

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

Attest 

Attest _____

John Pietron, Clerk Morton Grove-Niles Water Commission

Title: _____

Address for giving notices:

Address for giving notices:

Niles Village Hall Administrative Building
1000 Civic Center Drive, Niles, Illinois 60714

(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 Owner-Contractor Agreement.)

License No. _____
(Where applicable)

END OF DOCUMENT

