

CITY OF OBERLIN, OHIO

ORDINANCE No. 12-10 AC CMS

AN ORDINANCE ACCEPTING THE BID OF 2D CONSTRUCTION, LLC OF VERMILION, OHIO, FOR THE CITY OF OBERLIN WATER ENVIRONMENT PROTECTION FACILITY HEADWORKS IMPROVEMENTS PROJECT AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the bid of 2D Construction, LLC of Vermilion, Ohio for the Water Environment Protection Facility Headworks Improvements Project for the City of Oberlin, being the lowest and best bid received, is hereby accepted, and the City Manager is hereby authorized and directed to enter into a contract accordingly, said bid being in the amount of \$214,593.00.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department, to wit:

"to accept a bid within the time limitations provided by law" and shall take effect immediately upon passage.

PASSED: 1st Reading - February 21, 2012 (S, E)
2nd Reading -
3rd Reading -

ATTEST:


BELINDA B. ANDERSON, CMC
CLERK OF COUNCIL


RONNIE J. RIMBERT
PRESIDENT OF COUNCIL

POSTED: 02/22/2012

EFFECTIVE DATE: 02/21/2012

NOTICE OF AWARD

To: 2D Construction LLC
P.O. Box 360
Vermilion, OH 44089

Date: April 23, 2012

Project Description: WEPF Headworks Improvements

The OWNER has considered the Bid submitted by you on February 9, 2012 (Bid Date) for the above described work in response to its Advertisement for Bids and Instructions to Bidders.

You are hereby notified that your Bid has been accepted for items in the amount of \$ 214,593.00.

You are required by the Instructions to Bidders to execute the Agreement and furnish the required CONTRACTOR's Bonds (if applicable) and Certificates of Insurance within Ten (10) calendar days from the date of this notice to you.

If you fail to execute said Agreement and to furnish said Bonds within Ten (10) calendar days from the date of this notice, said OWNER will be entitled to consider all your rights arising out of the OWNER's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the OWNER.

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged

By 2D Construction LLC
CONTRACTOR

this the 25th day of

April

By [Signature]

Name Michael Harris

Title Member

Copy: Contractor's Surety
Surety's Agent

City of Oberlin
OWNER

By [Signature]

Name Eric P. Norenberg

Title City Manager

AGREEMENT

THIS AGREEMENT is dated as of the 23rd day of April in the year 2012 by and between
City of Oberlin (hereinafter called OWNER) and
2D Construction LLC (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The work covered by the Contract Documents includes the demolition of existing influent piping and manholes, installation of new influent screen channels, removal and relocation of one (1) existing mechanical bar screen, installation of one (1) new mechanical bar screen, screenings washer/compactor, new influent gates and miscellaneous other headworks improvements with all the necessary appertaining work included in the Contract Documents.

Article 2. ENGINEER/ARCHITECT.

For this agreement, the ENGINEER/ ARCHITECT is designated as:	Burgess & Niple, Inc. 50 South Main Street, Suite 600 Akron, Ohio 44308
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who is hereinafter called ENGINEER/ARCHITECT and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER/ARCHITECT in the Contract Documents in connection with completion of the work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

3.1. The work will be completed and ready for final payment within ninety (180) calendar days after the date when the Contract Time commences to run as provided in the Notice to Proceed and in paragraph 14.07.B and 14.07.C of the General Conditions.

3.2. **LIQUIDATED DAMAGES.** OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the work is not completed within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense, and difficulties involved in proving 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), CONTRACTOR shall pay OWNER the sum of \$360.00 for each consecutive calendar day that expires after the time specified in paragraph 3.1, or any proper extension thereof granted by OWNER for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

4.1. OWNER shall pay CONTRACTOR for completion of the work in accordance with the Contract Documents in current funds of \$ 214,593.00 , in accordance with the Bid Schedule as awarded by the OWNER as included herein, subject to additions and deductions by Change Order and quantities actually performed.

Article 5. PAYMENT PROCEDURES.

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

5.1. **PROGRESS PAYMENTS.** OWNER shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by ENGINEER/ARCHITECT monthly during construction as provided in the General Conditions. All progress payments will be on the basis of the progress of the work measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in the case of Unit Price work based on the number of units completed).

5.2. **FINAL PAYMENT.** Upon final completion and acceptance of the work in accordance with paragraphs 14.07.B and 14.07.C of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER/ARCHITECT as provided in said paragraphs 14.07.B and 14.07.C.

Article 6. INTEREST.

No interest shall be paid on this project.

Article 7. CONTRACTOR'S REPRESENTATIONS.

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

7.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."

7.2. 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, performance, or furnishing of the work.

7.3. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, performance, and furnishing of the work.

7.4. CONTRACTOR has examined and agreed with provisions concerning responsibilities for the adequacy of data furnished to prospective BIDDERS with respect to subsurface conditions, other physical conditions and underground facilities, and possible changes in the Contract Documents due to differing or unanticipated conditions appear in paragraphs 4.02, 4.03, and 4.04 of Section 00 70 00, "General Conditions," and Section 00 73 00, "Supplementary Conditions."

7.5. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, 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.

7.6. 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.

7.7. 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.

7.8. CONTRACTOR has given ENGINEER/ARCHITECT written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER/ARCHITECT is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the work consist of the following:

8.1. This Agreement.

8.2. Exhibits to this Agreement.

8.3. Specifications and Supplemental Specifications as listed in Section 00 01 09, "Table of Contents," from Division 0 through Division 46 prepared or issued by Burgess & Niple, Inc., dated August 9, 2011 and revised January 3, 2012, attached hereto.

8.4. Drawings prepared by Burgess & Niple, Inc., numbered 1 through 11, attached hereto.

8.5. ADDENDA:

No. 1R, dated February 3, 2012

No. _____, dated _____, 2011

No. _____, dated _____, 2011

8.6. All completed forms including procurement forms and contract forms as listed in Section 00 01 09, "Table of Contents."

8.7. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.04.A and 3.04.B of the General Conditions.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04.A or 3.04.B of the General Conditions.

Article 9. MISCELLANEOUS.

9.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies 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.

9.3. 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 of all covenants, agreements, and obligations contained in the Contract Documents.

9.4. 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.

9.5 The Contract, or any agreement subsidiary thereto, shall not be binding or of any force unless the County of Summit shall endorse thereon a certificate (similar to the legal and Fiscal Officers from, Section 00 56 00) that there remains unexpended or in the process of collection and unapplied, an appropriation or fund applicable thereto and sufficient to pay the estimated expenses of completing this Contract or subsidiary agreement, as certified by the officers making the same.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed 3 copies of this Agreement. _____ counterparts each have been delivered to OWNER, CONTRACTOR, and ENGINEER/ARCHITECT.

The effective date of this Agreement shall be April 30, 2012

OWNER:

City of Oberlin
By [Signature]
Name Eric P. Norenberg
Title City Manager

(SEAL)

ATTEST:

By [Signature]
Name Belinda Anderson
(Please Type or Print)
Title City Clerk

Address for giving notices

85 S. Main St.
Oberlin, OH 44074

CONTRACTOR:

2D Construction LLC
By [Signature]
Name Michelle Harris
Title Member

Address P.O. Box 360
Vermilion, OH 44089

Telephone 440-963-0233

Employer Identification No. _____

Contractor's License No. _____

(If a corporation, a second officer must sign.)

By _____

Name _____

(Please Type or Print)

Title _____

(SEAL)

ATTEST:

By _____

Name _____

(Please Type or Print)

Title _____

Address for giving notices

(If CONTRACTOR is a corporation, attach evidence of authority to sign.)

CONTRACT PRICE

Name of Project: WEPF Headworks Improvements

Owner: City of Oberlin

Contractor: 2D Construction LLC

The following items in the proposal and Bid of the Contractor are included in the award of this Contract:

Item	Description	Quantity	Unit	Unit Price	Amount
TOTAL OF ALL BID ITEMS				\$	<u>\$214,593.00</u>

ADD/DEDUCT FOR ALTERNATE BID ITEMS

Item	<u>N/A</u>			\$	<u> </u>
	<u> </u>				<u> </u>
	<u> </u>				<u> </u>
TOTAL	<u> </u>			\$	<u>214,593.00</u>

EQUIPMENT/MATERIAL LIST

Name of Project: _____

Owner: _____

Contractor: _____

The following equipment and/or material items have been selected by the Owner and are the basis of the award of this Contract:

Specification Section	Equipment/Material	Manufacturer
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

NOTICE TO PROCEED

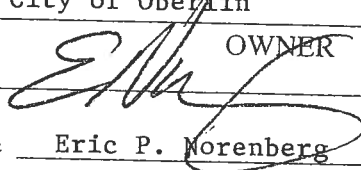
To: 2D Construction LLC
P.O. Box 360
Vermilion, OH 44089

Date: April 23, 2012

Project Description: WEPF Headworks Improvements

You are hereby notified to commence work in accordance with the Agreement dated April 23, 2012 on or before April 30, 2012, and you are to complete the work within 180 calendar days thereafter. The date of completion of all work is therefore October 28, 2012.

You are required to return an acknowledged copy of this Notice to Proceed to the OWNER.

City of Oberlin
By  OWNER
Name Eric P. Morenberg
Title City Manager

ACCEPTANCE OF NOTICE

Receipt of the above Notice to Proceed is hereby acknowledged

By 2D Construction LLC
CONTRACTOR

this the 25th day of

April 2012

By 

Name Michael James

Title Member

LEGAL AND FISCAL OFFICERS

April 23, 2012

The foregoing Agreement is approved as to form

By Eric R. Severs

Name Eric R. Severs

Title Law Director

I I. Salvatore Talarico, Finance Director hereby certify that I am
Name Title

the qualified and acting fiscal officer of the City of Oberlin,

Ohio, and that the amount of money to wit \$ 214,593.00
State

required to meet the cost of the attached Agreement between City of Oberlin
OWNER

and 2D Construction LLC has been lawfully
CONTRACTOR

appropriated for the purpose of said Agreement and the money so appropriated is on deposit (in process of collection) to the credit of the appropriate fund free from any previous encumbrances.

April 23, 2012, 201 2

By I. Salvatore Talarico (SEAL)

Name I. Salvatore Talarico

Title Finance Director