

CONTRACT

For Sanitary Sewer Smoke Testing

THIS CONTRACT, made the 4th day of February 2022

BETWEEN:

Borough Alpha
1001 East Blvd., Alpha, NJ 08865

hereinafter is called the **OWNER**:

AND:

National Water Main Cleaning Company
1806 Newark Turnpike
Kearny, NJ 07032

hereinafter called the **CONTRACTOR**:

WHEREAS, the OWNER requires the construction of the Improvements to 2021 Road Program Phase 2 - Sanitary and Stormwater Repairs, hereinafter called the "Project", in accordance with all applicable federal, state, and local laws and regulations, and the Contract Documents.

NOW, THEREFORE, the OWNER and the CONTRACTOR, in exchange for the mutual consideration set forth herein, agree as follows:

ARTICLE I: SCOPE OF WORK

The CONTRACTOR must furnish all labor, materials, equipment, tools and services necessary to perform and complete the Project in strict compliance with the Contract Documents. The CONTRACTOR's services will hereafter be referred to as the "Work".

ARTICLE II: THE CONTRACT SUM

The OWNER will pay the CONTRACTOR for the performance of the Work based on the Bid prices, subject to additions and deductions provided by the Contract Documents, the total sum of

TWENTY-EIGHT-THOUSAND-NINE-HUNDRED-FORTY DOLLARS
(Amount in Words)

\$28,940.00
(Amount in Numbers)

The Contractor will be paid the prices stipulated in the Bid as full compensation for everything furnished and performed by the CONTRACTOR under this Contract, including all Work required, but not specifically mentioned, and all loss or damage arising out of the nature of the aforesaid Work, the action of the elements, any unforeseen obstruction or difficulty encountered in the prosecution of the Work, all risks of every description connected with the Work, all expenses incurred by or in consequence of the suspension or discontinuance of the Work as herein specified, and for well and faithfully completing the Work and the whole thereof, as herein provided.

ARTICLE III: TIME OF COMPLETION

The work to be performed under this Contract must be completed within sixty (60) calendar days from the date in the Notice to Proceed.

The CONTRACTOR will pay monetary liquidated damages to the OWNER for each and every calendar day that the CONTRACTOR will be in default in completing the Work within the time stipulated in the Contract Documents.

ARTICLE IV: THE CONTRACT DOCUMENTS

The parties agree that the terms and conditions contained in The Contract Documents (including bid information, bid documents, specifications, supplemental specifications, and drawings) are made part of this Contract and are binding on both parties as if all conditions contained in the Contract Documents were set forth in this Contract.

In addition, the Owner's designated engineer will furnish to the CONTRACTOR supplementary drawings or explanations as may be necessary to illustrate the work to be done, and the CONTRACTOR must conform to same as part of this Contract, and all such supplemental information will be part of the Contract Documents.

The Contract Documents comprise the entire agreement between the Owner and the Contractor and may only be amended as herein described.

ARTICLE V: SUBCONTRACTORS

The CONTRACTOR agrees to bind every subcontractor by the terms of the Contract Documents. The Contract Documents must not be construed as creating any contractual relationship between any subcontractor and the OWNER. Additional terms concerning the duties and obligations of the CONTRACTOR and its subcontractors are further defined in the Contract Documents.

ARTICLE VI: WAIVERS

Neither the inspection by the OWNER or by the OWNER's agents, nor any orders or measurement of certificate by the Engineer, nor any order by the OWNER for the payment of money, nor payment for or acceptance of the whole or any part of the Work by the OWNER, nor any extension of time or any possession taken by the OWNER or its employees, operate as a waiver of any provision of this Contract, any power herein reserved to the OWNER, or any right to damages herein provided. No waiver of any breach of this Contract will be held to be a waiver of any other or subsequent breach. Any remedy provided in this Contract will be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided and in addition to all other suits, actions, or legal proceedings. The OWNER will also be entitled as of right to a writ of injunction against any breach of any of the provisions of this Contract.

ARTICLE VII: OWNER AND RESPONSIBILITY OF THE ENGINEER

All work must be done under the observation of the Engineer, or another authorized representative of the OWNER. The Engineer will decide any and all questions which may arise regarding the quality and acceptability of materials furnished, work performed, rate of progress of work, interpretation of Contract Documents, and all questions concerning the acceptable fulfillment of the Contract by the CONTRACTOR.

The Engineer's services during the construction of the Project are intended to provide OWNER a greater degree of confidence that the completed work of CONTRACTOR will conform in general to the Contract Documents, Drawings and Specifications. The Engineer will not, during visits to the project site or as a result of observation of CONTRACTOR's work in progress, supervise, direct or have control over CONTRACTOR's work, nor will Engineer have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by CONTRACTOR's, for any safety precautions and programs incident to the work of CONTRACTOR's or for any failure of CONTRACTOR to comply with laws, rules, regulations, ordinances, codes or orders applicable to CONTRACTOR's furnishing and performing the work. Accordingly, Engineer neither guarantees the performance of any CONTRACTOR's nor assumes responsibility for any CONTRACTOR's failure to furnish and perform its work safely or in accordance with the Contract Documents.

ARTICLE VIII: SUCCESSORS AND ASSIGNS

This Contract and all of the covenants herein will be binding upon the OWNER and the CONTRACTOR respectively, and the CONTRACTOR's subcontractors, subconsultants, partners, successors, assigns and legal representatives. Neither the OWNER nor the CONTRACTOR will have the right to assign, transfer or sublet their interests or obligations hereunder without written consent of the other party.

ARTICLE IX: TERMINATION

- a. The OWNER may, upon seven days written notice to the CONTRACTOR, and at any time after the execution of this Contract, terminate or limit the services of the CONTRACTOR

furnished hereunder for any reasons; including but not limited to, the abandonment of the Project, or the unavailability of monies to complete the Work.

- b. In the event of such termination, the CONTRACTOR will be compensated for his authorized services rendered hereunder up to that date, and for all reasonable shutdown costs as agreed to by both parties.

ARTICLE X: INDEMNIFICATION

The CONTRACTOR must indemnify, defend, and hold harmless the OWNER and the Engineer, their officers, employees and agents, against any loss, liability, claims or demands (including death and/or property damage), arising out of or resulting, in whole or in part, from the CONTRACTOR's performance of this Contract.

ARTICLE XI: CONTRACTOR'S STATUS AND RESPONSIBILITIES

- a. The CONTRACTOR's status will be that of an independent principal, and not an agent or employee of the OWNER.
- b. The CONTRACTOR will be responsible for providing competent, suitably qualified personnel to perform the Work.
- c. The CONTRACTOR will be responsible for proceeding with the work and adhering to the schedule during all disputes or disagreements with the OWNER. No work will be delayed or postponed pending resolution of any dispute or disagreement.
- d. The CONTRACTOR will pay to the OWNER, and the OWNER will have the right to deduct the full amount of all expenses, losses, and damages from all monies due or to become due the CONTRACTOR under this Contract, for any of the following reasons:
 - 1. Any defect, omission, or mistake of the CONTRACTOR or his employees; and the repairs of same, as determined by the Engineer.
 - 2. All costs of engineering work and inspection after the specified completion time for the Contract.
 - 3. All costs incurred by the OWNER for overtime payments to the inspection personnel caused by the CONTRACTOR's overtime work. Overtime is considered as all hours worked exceeding eight hours per day or forty hours per week; all hours worked on Saturday or Sunday; and all hours worked on legal holidays observed by the OWNER.
 - 4. Liquidated Damages in the amount set forth in Section 108.16 of the Supplementary Specifications for each and every calendar day that the

CONTRACTOR will be in default of completing the Work of this Contract. This sum is hereby agreed to be proper and reasonable liquidated damages which the OWNER will suffer by reason of such default.

5. All costs associated with liens filed and/or served by any of the CONTRACTOR's subcontractors seeking payment for work and/or services performed in connection with this contract.

ARTICLE XII: GUARANTEE AND CORRECTION OF DEFECTIVE WORK

- a. The CONTRACTOR warrants and guarantees to the OWNER that all Work will be performed in accordance with all applicable federal, state, and local laws, standards and regulations and these Contract Documents; and that the Work will not be defective.
- b. If within two (2) years after the acceptance date, any Work is found to be defective, the CONTRACTOR must promptly correct the defective Work, or remove and replace it with non-defective Work; as directed by the OWNER, and at no additional cost to the OWNER.

ARTICLE XIII: AFFIRMATIVE ACTION

During the performance of this contract, the contract agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action will include, but not be limited to the following: employment, up-grading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees place by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex;

The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding,

a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and must post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the applicable employment goal established in accordance with N.J.A.C. 17:27-7.3. The contractor or subcontractor agrees that a good faith effort will include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor must, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to attempt to hire or schedule minority and women workers directly, consistent with the applicable employment goal. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with the applicable employment goal, the contractor or subcontractor agrees to be prepared to hire or schedule minority and women workers directly, consistent with the applicable employment goal, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines or is so notified by the Division that the union is not referring minority and women workers consistent with the applicable employment goal.

(B) If the hiring or scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a

construction trade, the contractor or subcontractor agrees to take the following actions consistent with the applicable county employment goals:

- (1) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
- (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
- (3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
- (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal;
- (5) If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and women employees remain on the site consistent with the employment goal; and to employ any minority and women workers laid off by the contractor on any other construction site on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing N.J.S.A. 10:5-31 et. seq.;
- (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
 - (i) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor must determine the qualifications of such individuals and if the contractor's or subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it must hire or schedule those individuals who satisfy appropriate qualification standards. However, a contractor or subcontractor must determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the contractor or subcontractor must hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

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- (ii) If the contractor's or subcontractor's workforce is consistent with the applicable employment goal, the name of any interested women or minority individual must be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.
 - (iii) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor must inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.
- (7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division and submitted promptly to the Division upon request.
- (C) The contractor or subcontractor agrees that nothing contained in (B) above must preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it must send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the county employment goal, the contractor or subcontractor must consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor will not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it must, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor must submit to the public agency compliance officer and the Division an initial project workforce report (Form AA 201) provided to the public agency by the Division for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27:7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

- (D) The contractor and its subcontractors must furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies must furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code (NJAC 17:27)**.

ARTICLE XIV: AGREEMENT BINDING

This Contract must bind the heirs, executors, administrators, successors and assigns of the respective parties hereto.

ARTICLE XV: MANDATORY CONTRACT DISPUTE PROCEDURES

The Contractor agrees to Mandatory Contract Dispute Procedures required by N.J.S.A. 40A:11-50, as described below.

In an effort to resolve any disputes that arise during the construction of the project or following the completion of the project, the Bidder and Owner agree that all disputes between them arising out of or relating to the performance of the work described in the Contract Documents must be submitted to nonbinding mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation must be filed in writing with the other party to the Contract and with the American Arbitration Association.

The parties must share the mediator's fee and any filing fees equally. The mediation must be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation must be enforceable as settlement agreements in any court having jurisdiction thereof.

The Bidder further agrees to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

Nothing in this section will prevent the Owner from seeking injunctive or declaratory relief in court at any time. The alternative dispute resolution practices required by this section

will not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts to be entered into pursuant to P.L. 1971, c. 198 (C:40A:11-1 et seq.).

ARTICLE XVI: GOVERNING LAW

The laws of the State of New Jersey will govern the validity of this Contract, its interpretation and performance.

ARTICLE XVII: PREVAILING WAGE RATE

The Contractor agrees to comply with the provisions of the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et. seq. and all corresponding rules and regulations. The Contractor must pay all workers employed in the performance of this contract the prevailing wages determined pursuant to the above cited law.

ARTICLE XVIII: AMERICANS WITH DISABILITIES ACT

The Contractor and the Owner do hereby agree that the provision of Title II of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. 12101 et. seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereto, are made a part of this Agreement. In providing any aid, benefit, or service on behalf of the Owner pursuant to this Agreement, the Contractor agrees to the performance will be in the strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this Agreement, the Contractor must defend the Owner in any action or administrative proceeding commenced pursuant to this Act. The Contractor must indemnify, protect, and save harmless the Owner and engineer, its agents, servants and employees from and against any and all suits, claims, losses, demands or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Contractor will, at its own expense, appear, defend and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the Owner's grievance procedure, the Contractor agrees to abide by any decision of the Owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the Owner or if the Owner incurs any expense to cure a violation of the Act which has been brought pursuant to its grievance procedure, the Contractor must satisfy and discharge the same at its own expense.

The Owner must, as soon as practicable after a claim has been made against it, give written notice thereof to the Contractor along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the Owner or engineer or any of its agents, servants, and employees, the Owner must expeditiously forward or have forwarded to the Contractor every

demand, complaint, notice, summons, pleading or other process received by the Owner or its representatives.

It is expressly agreed and understood that any approval by the Owner or engineer of the services provided by the Contractor pursuant to this Agreement will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the Owner pursuant to this Paragraph.

It is further agreed and understood that the Owner and engineer assume no obligation to indemnify or save harmless the Contractor, its agents, servants, employees and subcontractors for any claims made under the Act.

IN WITNESS WHEREOF, the parties hereto have there unto set their hands and seals.

ATTEST:

John Rianoski

Craig S. Dunwell 2/23/22

Borough of Alpha
Craig S. Dunwell, Mayor

ATTEST:

Raymond Lindsley

Raymond Lindsley - Secretary/Treasurer

Salvatore F. Perri

(CONTRACTOR)

Salvatore F. Perri - President

