

ORDINANCE NO. _____

AN ORDINANCE WAIVING FORMAL BIDDING REQUIREMENTS AND AUTHORIZING PAYMENT TO JCON, INC. FOR THE REPLACEMENT OF A STORMWATER PIPE AT 7th STREET, EXTENDING FROM ORANGE STREET TO MAPLE STREET; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock (“City”) solicited bids for improvements to 7th Street and entered into a contract with the low bidder, JCON, Inc. to repair and improve 7th Street in the amount of \$354,488.00 on or about May 7, 2020 (see contract attached hereto as Exhibit A); and

WHEREAS, during construction, a 16” diameter stormwater clay pipe extending from Orange Street to Maple Street was found to be 95% blocked with sediment, and the North Little Rock Street Department could not completely clear the pipe without compromising the pipe; and

WHEREAS, localized flooding is common on 7th Street, Orange Street, and Maple Street, and the conditions of these streets will continue to deteriorate if the pipe is not replaced; and

WHEREAS, Ark. Code Ann. § 14-58-303 requires City purchases exceeding the amount of \$20,000 to follow statutory procedures of local advertisement and opening of sealed bids which may only be waived in exceptional situations where bidding is deemed not feasible or practical; and

WHEREAS, it was not apparent until extensive work had been completed by JCON that the stormwater pipe requires replacement; and

WHEREAS, the City wishes to waive bids to amend its contract with JCON with a Change Order to replace the clay pipe with an 18” diameter reinforced concrete pipe at a cost of \$98,711.50.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That formal bidding is hereby waived in connection with the replacement of the stormwater pipe at 7th Street, extending from Orange Street to Maple Street, and the City is authorized to amend the contract with a Change Order and to pay JCON, Inc. the additional amount of \$98,711.50.

SECTION 2: That the additional cost in the amount of \$98,711.50 for said Change Order is hereby appropriated from the Street Fund.

SECTION 3: That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 4: That the provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall be declared or held invalid, such invalidity shall not affect the remainder of the sections, phrases or provisions.

SECTION 5: That it is hereby found and determined that it is in the best interest of the City of North Little Rock to waive formal bidding and to pay JCON, Inc. for replacement of a stormwater pipe at 7th Street, and is necessary for the immediate preservation of the public health, safety and welfare; THEREFORE, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage and approval.


PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSOR:

ATTEST:



Mayor Joe A. Smith

Diane Whitbey, City Clerk

APPROVED AS TO FORM:



Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kt

FILED	10:50	A.M.	_____	P.M.
By	A. Fields			
DATE	9-8-20			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	J. L. Sney			



Revised 5-2020

CONTRACT
FOR
7TH STREET IMPROVEMENTS

THIS CONTRACT, by and between THE CITY OF NORTH LITTLE ROCK ("City"), acting herein through its Mayor, Joe A. Smith, and JCON, INC. ("Contractor"), is effective on the date signed by City.

In consideration of the mutual covenants herein, the parties agree as follows:

ARTICLE 1. SCOPE OF WORK

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: 7TH Street Improvements. All Contract Documents, including plans and specifications, are included in the Project Manual, which is incorporated by reference in a separate document, Exhibit "A," as though fully set forth herein (the "Contract Documents").

ARTICLE 2. CONTRACT DOCUMENTS

2.01 The Contract Documents shall consist of:

- (a) The fully executed Contract;
- (b) The entire Bid Documents, excluding the bidding requirements, but including any Specifications and Drawings, dated: February 2020;
- (c) The Contractor's Bid dated February 2020 all of which documents are incorporated herein;
- (d) EJCDC C-700, Standard General Conditions of the Construction Contract, as modified;
- (e) If applicable, any Supplementary Conditions identifying modifications to the General Conditions, as modified;
- (f) Performance and Payment Bond;
- (g) Addenda, if any;
- (h) Exhibits to this Contract.

The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- (i) Notice to Proceed;
- (j) Written Amendments;
- (k) Work Change Directives;
- (l) Change Order(s).

2.02 To the extent of any direct conflict or inconsistency between any of the Contract Documents, the Contractor shall immediately seek clarification from the Engineer and notify the City that

clarification has been requested. In the event that the Engineer fails to clarify such discrepancy within a reasonable time under the circumstances, the Contractor shall proceed with the Work and give precedence to the Contract Documents in the following order of priority:

- i. Modifications issued after execution of the Agreement;
- ii. This Agreement;
- iii. Addenda issued prior to the execution of the Agreement, with the Addenda bearing the latest date taking precedence;
- iv. Standard General Conditions of the Contract for Construction, as modified;
- v. The Supplementary Conditions identifying modifications made to The General Conditions;
- vi. The Drawings and Specifications; and
- vii. The Schedule of Contractor's Qualifications, Clarifications, and Assumptions.

2.03 The Contract Documents may only be amended, modified, or supplemented as provided in Article 11 of the Standard General Conditions of the Construction Contract, as modified.

ARTICLE 3. CONTRACT PRICE

Contractor hereby agrees to commence and complete the Work for the sum of **Three Hundred Fifty-Four Thousand Four Hundred Eighty-Eight and 00/100 DOLLARS (\$354,488.00)** and any additional services in connection therewith, under the terms stated in the Standard General Conditions, as modified and identified in the Supplementary General Conditions.

Further, in accordance with the Contract Documents, Contractor agrees, at its own proper cost and expense, to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the Project in accordance with the Bid Documents and General Conditions, as modified, and prices stated in these specifications, which include any maps, plats, blue prints, and other drawings and printed or written explanatory matter thereof, all of which are made a part hereof and collectively constitute the Contract.

City agrees to pay the Contractor in current funds for the Project performed under the Contract, subject to additions and deductions, as provided in the Standard General Conditions, as modified and identified in the Supplementary General Conditions.

ARTICLE 4 ENGINEER or ARCHITECT

3.01 The Project will be coordinated by:

HALFF+MARLAR

NORTH LITTLE ROCK, AR

Who is hereinafter called ENGINEER and who is to act as City'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 APPROPRIATION OF FUNDS

4.01 Notwithstanding any other provision of this Contract, with respect to any financial obligation of City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Contract at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any sub-agreement attachment, schedule, or exhibit thereto, by City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and/or the award of a federal grant which contain(s) an allocation of sufficient funds for the performance of fiscal obligations arising under this Contract.

ARTICLE 5 CONTRACT TIMES, DATES FOR SUBSTANTIAL COMPLETION, AND LIQUIDATED DAMAGES

5.01 Contractor hereby agrees to commence the work on the Project on or before a date to be specified in a written Notice to Proceed of City, incorporated by reference as set forth herein, and to fully complete the project on a mutually agreed upon schedule thereafter. Contractor further agrees to pay, as liquidated damages, the sum of \$250.00 for each consecutive calendar day thereafter as hereinafter provided.

ARTICLE 6 PAYMENT PROCEDURES

6.01 Contractor shall submit Applications for Payment in accordance with Article 15 of the Standard General Conditions of the Construction Contract, as modified. Applications for Payment will be processed by ENGINEER as provided in the Standard General Conditions of the Construction Contract, as modified.

ARTICLE 7 CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

7.01 In order to induce City to enter into this Agreement Contractor makes the following representations:

7.02 Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

7.03 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.

7.04 Contractor is familiar with and is satisfied as to all federal, state and local laws, regulations, and ordinances that may affect cost, progress, and performance of the Work. All Work shall be completed in accordance with all applicable federal, state, and local laws, regulations, and ordinances.

7.05 Contractor has carefully studied all: (1) drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities), if applicable, which have been provided as described in paragraph 5.03 of the Standard General Conditions of the Construction Contract, as modified and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions, if applicable, as provided in paragraph 5.06 of the Standard General Conditions of the Construction Contract, as modified.

7.06. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by Contractor, and safety precautions and programs incident thereto.

7.07 Contractor does not consider that any 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.

7.08 Contractor is aware of the general nature of work to be performed by City and others at the Site that relates to the Work as indicated in the Contract Documents.

7.09 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.

7.10 Contractor has given Engineer or 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 is acceptable to Contractor.

7.11 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

7.12 The Contractor further represents and warrants that:

- a. Contractor has full power and authority to enter into this Contract and to carry out the Project contemplated by this Contract.
- b. Contractor represents and warrants that Contractor will comply with all laws applicable to the performance of the Project under this Contract.
- c. Contractor represents and warrants that Contractor's execution, delivery, and performance of this Contract will not constitute: (i) a violation of any judgment, order, or decree binding on Contractor; (ii) a breach under any contract by which Contractor is bound; or (iii) an event that would, with notice or lapse of time, or both, constitute such a breach.
- d. Contractor represents and warrants that the Project will be performed with the degree of skill and care that is required by current, good, and sound professional procedures and practices, and in conformance with generally accepted professional procedures and industry standards prevailing at the time the Project is performed, and that all work on the Project meet the specifications set forth herein. Contractor further represents and warrants that Contractor and all personnel used to perform the Project, including permitted subcontractors, possess the knowledge, skill, and experience necessary to perform the Project.
- e. Contractor represents and warrants that Contractor has, and shall maintain in effect for the duration of this Contract, all licenses, permits qualifications, and approvals of whatsoever nature which are legally required for Contractor to complete the Project. Contractor shall also ensure that all permitted subcontractors are similarly licensed and qualified.

ARTICLE 8 CHANGE ORDERS

8.01 Contractor and City agree and acknowledge as a part of this Contract that no change order, as defined in Section 1.01.A.8 of the General Conditions of the Construction Contract, as modified, or other form or order or directive is authorized without written assurance by City that lawful appropriations to cover the costs of the additional work have been made, and without the change order being signed by City and Contractor. It is Contractor's sole responsibility to know, determine, and ascertain the authority of City representative signing any change order under this Contract.

ARTICLE 9 SUSPENSION OF WORK AND TERMINATION

9.01 Suspension of Work and Termination of this Contract will be in accordance with Article 16 of the Standard General Conditions of the Construction Contract, as modified.

9.02 Notwithstanding any other provision of this Contract, with respect to any financial obligation of City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Contract at such time as the then-existing and available appropriations are

depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any sub-agreement, attachment, schedule, or exhibit thereto, by City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of availability of sufficient funds for the performance of fiscal obligations arising under this Contract.

ARTICLE 10 INSURANCE AND BOND

10.01 Contractor shall, at Contractor's sole cost and expense, procure and maintain for the duration of this Contract proper and complete liability insurance in the amount of \$1,000,000, and Workers Compensation Insurance in accordance with the laws of the State of Arkansas. City shall not be responsible in case of accident.

10.02 Contractor shall provide a Performance and Payment/Surety Bond equaling the total amount of the bid, (pursuant to Act 351 of 1953 as amended by Act 539 of 1979).

10.03 Additionally, a 2 year maintenance bond shall be furnished by the Contractor to cover all construction and improvements in the public right of way. Contractors shall furnish a Maintenance Bond to the Department of Public Works covering any defects in materials and workmanship for the required improvements installed by that Contractor in the amount of 50 percent of the total cost of those improvements. The bond(s) shall be in full force and effect for not less than 2 year from the date of the letter from the Department of Public Works certifying that all improvements have been completed and approved, and further stating that any and all defects in materials and workmanship shall be corrected by the Contractor by the end of the bond period. Work performed under the terms of the Maintenance Bond shall be approved by the Department of Public Works.

ARTICLE 11 INDEMNIFICATION

11.01 Contractor shall indemnify and hold City its officers, employees, and agents harmless from any loss, lawsuit, liability, damage, cost and expense (including reasonable attorneys' fees) which may arise out of or result from (i) claims by third persons against City that the Project has caused damage to property or bodily injury (including death); or (ii) the acts or omissions of Contractor, its agents or employees in connection with this Contract; or (iii) any defects in any equipment used by Contractor; or (iv) any breach or default in the performance of the obligations of Contractor hereunder including any breach of warranties. Contractor's indemnification obligations hereunder shall not apply to the extent that any claim is caused by the gross negligence or misconduct of City.

11.02 The invalidity, in whole or in part, of any of the foregoing paragraph will not affect the remainder of such paragraph.

11.03 The foregoing indemnification by the Contractor is not a waiver of the City's tort of immunity.

ARTICLE 12 DISPUTE RESOLUTION

12.01 Dispute resolution shall be in accordance with the process set forth in the Standard General Conditions of the Construction Contract, as modified. Except that, any dispute subject to, but not resolved by, mediation pursuant to the Standard General Conditions of the Construction Contract, as modified, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.

ARTICLE 13 MISCELLANEOUS

13.01 *Terms.* Terms used in this Agreement will have the meanings indicated in the Standard General Conditions of the Construction Contract, as modified.

13.02 *Restrictions on Public Improvement Contracts.* In accordance with the Bid Documents, all bid documents related to public improvements exceeding \$75,000 in value must include a statement that encourages participation of small, minority, and women's business enterprises.

13.03 Contractor, in accordance with Ark. Code Ann. §§ 18-44-503 and 22-9-401, must furnish a surety bond in an amount equal to the contract price.

13.04. In accordance with Ark. Code Ann. § 22-9-601, et seq., Contractor is subject to the retainage provisions of which allows City to retain five percent (5%) of payments until final project completion. Ark. Code Ann. § 22-9-601, et seq., does not prohibit City from withholding retainage throughout the project.

13.05 City may forego withholding retainage of the progress payment if:

- (a) The construction contract is fifty percent (50%) complete;
- (b) The contractor has provided the work in a satisfactory manner; and
- (c) The design professional and public agency agree with and approve of subdivisions (a)(1)(B)(i)(a) and (b).

13.06 Contractor acknowledges that a public right-of-way is an easement used for ingress and egress to property. These easements are held by the City for the benefit of the public at large. As part of any public improvement contract performed in or about public rights-of-way, the City requires and Contractor agrees that such rights-of-way will be repaired, to the extent possible, to the condition prior to the performance of work.

13.07 *Choice of Law; Venue.* The parties hereto agree that this Contract shall be construed under Arkansas law, excluding its conflict of laws rules. The parties further agree that proper jurisdiction and venue for any cause of action arising from this Contract shall be vested in either the U.S.

District Court for the Eastern District of Arkansas or the Circuit Court of Pulaski County, Arkansas.

13.08 *Non-Waiver*. No delay or failure to exercise any right under this Contract shall impair any such right or be construed to be a waiver thereof. No waiver shall be effective unless in writing signed by the party waiving. A waiver of a right on one occasion shall not be deemed to be waiver of such right on any other occasion. A waiver of a right on one occasion shall not be deemed to be a waiver of any other right on that occasion.

13.09 *No Assignment*. The Project to be performed pursuant to this Contract is personal in nature, and Contractor may not, voluntarily or by operation of law, assign or transfer any of its rights or obligations under this Contract without the prior written consent of City.

13.10 *Merger*. This Contract constitutes the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement, related to the services provided hereunder. All prior agreements, negotiations, dealings and understandings, whether written or oral, regarding the subject matter hereof, are superseded by and merged into this Contract.

13.11 *Modification*. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary the terms or conditions of the Contract shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be effected by the acknowledgment or acceptance of any forms containing terms or conditions or variance with or in addition to those set forth in this Contract.

13.12 *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 City 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.

13.13 *No Presumption against Drafter*. Each of the parties hereto has jointly participated in the negotiation and drafting of this Agreement. In the event an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by each of the parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any provisions of this Agreement.


13.14 *Counterpart Execution*. This Contract may be executed in two or more counterparts, each of which is deemed as original but all constitute one and the same instrument. An original signature transmitted by facsimile or other electronic means shall be deemed to be original.

13.15 *Filing*. This document shall be filed in the official records of the City Clerk of the City of North Little Rock, Arkansas. Either party may additionally file this document in any other governmental office deemed appropriate; however, the parties waive all claims and defenses in law or equity based upon such additional filing.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

City of North Little Rock

JCON, INC.

By: 
Joe A. Smith, Mayor

By: 

Date: 5-7-2020

BRIAN HENLEY VICE PRESIDENT
Print Name/Title

ATTEST:

Diane Whitbey, City Clerk

5-7-2020

Contract reviewed and approved by:

Amy Beckman Fields
North Little Rock City Attorney

BY: 
Deputy City Attorney May 7, 2020