



August 29, 2017

Reference No. 8618690

Ms. Sharon Lynn  
City of Rehoboth Beach  
P.O. Box 1163  
229 Rehoboth Avenue  
Rehoboth Beach, DE 19971

Dear Ms. Lynn:

**Re: City of Rehoboth Beach, DE: Force Main Project  
City Contract: 2017-002  
Contract Agreements**

The signed contract Agreement for the Rehoboth Beach Force Main Project has been returned by A-Del Construction Co., Inc. (A-Del) in accordance with the Contract Documents. Enclosed are one (1) copy of the complete Contract and two (2) separate copies of the Agreement for the City of Rehoboth to execute. An electronic copy of the agreement package, including the agreement, bonds, and insurance requirements has been sent to the City for review. Pending approval by the City, please sign and complete all details for 'Owner' in the Agreement, page 00520-7.

When complete, keep the complete copy of the Contract for the City's records and return the two (2) separate copies of the Agreement to GHD, addressed as follows:

Steven Clark  
GHD  
16701 Melford Boulevard, Suite 330  
Bowie, MD 20715

If you have any questions regarding these instructions, please feel free to contact me at 240-206-6865.

Sincerely,

GHD

Steven Clark  
Project Engineer

SPC/kab

Enclosures: Two (2) copies of the Agreement (executed by A-Del)  
One (1) copy of the complete Contract (executed by A-Del)

## AGREEMENT

THIS AGREEMENT is by and between The City of Rehoboth Beach ("Owner") and A-Del Construction Co., Inc. ("Contractor").

Owner and Contractor, hereby agree as follows:

### ARTICLE 1 - WORK

- 1.01. Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:
  - A. Construction of a new 11,300 linear foot 24-inch force main to convey treated effluent from the City of Rehoboth Beach WWTP Effluent Pump Station to the City of Rehoboth Beach Outfall project connection point located near the Deauville Beach parking lot.
- 1.02. Contractor shall perform a minimum of 50% of the Work, excluding material and equipment purchases, with its own labor force.

### ARTICLE 2 - THE PROJECT

- 2.01. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: The City of Rehoboth Beach Force Main Project.

### ARTICLE 3 - ENGINEER

- 3.01. The Project has been designed by GHD Inc. (Engineer), which is 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 the completion of the Work in accordance with the Contract Documents.

### ARTICLE 4 - CONTRACT TIMES

- 4.01. Time of the Essence
  - A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02. Dates for Substantial Completion and Final Payment
  - A. The Work shall be substantially completed within 240 days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 300 days after the date when the Contract Times commence to run.
  - B. Substantial Completion date shall be **no later** than Monday, May 14th, 2018. Substantially completed Work includes the complete installation of functional force main and appurtenances so that it may be operated as intended by Owner.
- 4.03. Liquidated Damages
  - A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above of this Agreement and that Owner will suffer financial loss if the Work is not completed

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within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. 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), Contractor shall pay Owner \$2,500 for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$1,500 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

#### **ARTICLE 5 - CONTRACT PRICE**

- 5.01. Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the amounts determined pursuant to the following:
- A. For all Work other than Unit Price Work, at the amount equal to the sum shown on the Bid Form and attached hereto as an exhibit.
  - B. For all Unit Price Work, an amount equal to the sum of the established unit price shown on the Bid Form for each separately identified item of Unit Price Work times the actual quantity of that item:

#### **ARTICLE 6 - PAYMENT PROCEDURES**

- 6.01. Submittal and Processing of Payments
- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- 6.02. Progress Payments; Retainage
- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 20th day of each month during performance of the Work as provided in the following subparagraph. All such payments will be measured by the Schedule of Values established as provided in Paragraph 2.07.A of 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 in the General Requirements.
    - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
      - a. 95% of the Work completed (with the balance being retained) and 95% of the value of undamaged materials and equipment not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to Owner in accordance with Paragraph 14.02 of the General

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Conditions and Supplementary Conditions, less in each case the aggregate of payments previously made, and less such amounts which may be lawfully deducted.

- 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 as Engineer shall determine in accordance with Paragraph 14.02.B.5 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 tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

#### 6.03. Final Payment

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

### ARTICLE 7 - INTEREST

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

### ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

- 8.01. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
  - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) , if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data", and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data".
  - E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, or performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; (3) Contractor's safety precautions and programs.

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- F. Based on the information and observations referred to in the previous paragraph , 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.
- G. Contractor is aware of the general nature of work to be performed by others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## ARTICLE 9 - CONTRACT DOCUMENTS

### 9.01. Contents

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 1 to 7, inclusive).
  - 2. Performance Bond (pages 1 to 3, inclusive).
  - 3. Payment Bond (pages 1 to 3, inclusive).
  - 4. General Conditions (pages 1 to 63, inclusive).
  - 5. Supplementary Conditions (pages 1 to 19, inclusive).
  - 6. Specifications as listed in the table of contents of the Project Manual.
  - 7. Drawings consisting of 29 sheets with each sheet bearing the following general title:  
City of Rehoboth Beach Force Main
  - 8. Addenda (No. 1, inclusive).
  - 9. Exhibits to this Agreement (enumerated as follows):
    - a. Bid Form (pages 1 to 12, inclusive) and the Bid Form Attachments.
    - a. Exhibit D to the Agreement, Requirements and Contract Provisions for the Project Financed Through the Delaware Water Pollution Control Revolving Loan Fund, Department of Natural Resources and Environmental Control, State of Delaware.
    - b. Exhibit E to the Agreement, State and Federal Wage Determinations
    - c. Notice of Award
  - 10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

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- a. Notice to Proceed
  - b. Field Orders
  - c. Work Change Directives
  - d. Change Orders
- B. There are no Contract Documents other than those listed herein.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## ARTICLE 10 - MISCELLANEOUS

### 10.01. Terms

- A. Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions unless specifically identified otherwise herein.

### 10.02. Assignment of Contract

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

### 10.03. Successors and Assigns

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

### 10.04. Severability

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

### 10.05. Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;

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2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

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

This Agreement will be effective on 31 August, 2017, (which is the Effective Date of the Agreement).

Owner City of Rehoboth Beach

Contractor A-Del Construction Co., Inc.

By [Signature]

By [Signature]

Title: City Manager

Title: Pres.

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

Attest \_\_\_\_\_

Attest [Signature]

Title \_\_\_\_\_

Title Contract Administrator

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_

10 Adel Drive  
Newark DE 19702

License No. DE Bus. Lic 1989021636  
(where applicable)

END OF SECTION

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