

CITY OF BLOOMINGTON

2024 - 061

**AN ORDINANCE AUTHORIZING A CONSTRUCTION AGREEMENT WITH HOERR
CONSTRUCTION, INC., FOR THE FISCAL YEAR 2025 SEWER REHABILITATION & CCTV
INSPECTION PROGRAM (BID #2025-07), IN THE AMOUNT OF \$1,773,299.60**

**Adopted by the City Council
of the City of Bloomington
on August 12, 2024**

Published in pamphlet form by the authority of the City Council of the
City of Bloomington, McLean County, Illinois, on August 13, 2024.

STATE OF ILLINOIS)
) ss.
COUNTY OF MCLEAN)

CERTIFICATE

I, Leslie Smith-Yocum, certify that I am the duly appointed and qualified municipal clerk of the City of Bloomington, County of McLean, Illinois.

I further certify that on the Corporate Authorities of the above municipality passed and approved Ordinance No. 2024 - 061, entitled, an Ordinance Authorizing a Construction Agreement with Hoerr Construction, Inc., for the Fiscal Year 2025 Sewer Rehabilitation & CCTV Inspection Program (Bid #2025-07), in the Amount of \$1,773,299.60, which provided by its terms that it should be published in pamphlet form.

The pamphlet form of this Ordinance, including the Ordinance and cover sheet thereof, was prepared, and a copy of the Ordinance was posted in the municipal building, commencing on August 13, 2024, and continuing for at least ten days thereafter. Copies of the Ordinance were also available for public inspection upon request in the office of the municipal clerk.

Dated at Bloomington, Illinois, on 08/13/2024



Leslie Smith-Yocum
City Clerk



ORDINANCE NO. 2024 - 061

AN ORDINANCE AUTHORIZING A CONSTRUCTION AGREEMENT WITH HOERR CONSTRUCTION, INC., FOR THE FISCAL YEAR 2025 SEWER REHABILITATION & CCTV INSPECTION PROGRAM (BID #2025-07), IN THE AMOUNT OF \$1,773,299.60

WHEREAS, the City of Bloomington (“City”) is a home rule unit of local government with authority to legislate in matters concerning its local government and affairs; and

WHEREAS, subject to the provisions of the City Code, City staff recommend approval of an agreement with Hoerr Construction, Inc., for the Fiscal Year 2025 Sewer Rehabilitation & CCTV Inspection Program (“PROJECT”) in the amount of \$1,773,299.60; and

WHEREAS, PROJECT consists of work necessary to install approximately 20,000 feet of sanitary sewer cured-in-place pipe lining of sizes between 8-48 inches and a contingency; and

WHEREAS, City Council finds it in the best interest of the City to approve the agreement; and

WHEREAS, City Council has the power to adopt this Ordinance and award the agreement.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, MCLEAN COUNTY, ILLINOIS:

SECTION 1. The above recitals are incorporated by reference as if specifically stated in full.

SECTION 2. The City Manager, or designee, are authorized to execute the agreement, and any other necessary documents to effectuate the purchase. The City Manager, or designee, is further authorized to approve work changes or increase the contract amount, up to the contingency set in the contract, to the extent the City Manager finds it to be in the best interests of the City.

SECTION 3. The City Clerk is hereby authorized to publish this Ordinance in pamphlet form as provided by law.

SECTION 4. This Ordinance is enacted pursuant to the home rule authority of the City of Bloomington granted by Article VII, Section 6 of the 1970 Illinois Constitution.

SECTION 5. This Ordinance shall take effect immediately after its approval and publication as required by law.


PASSED this 12th day of August 2024.

APPROVED this 13th day of August 2024.

CITY OF BLOOMINGTON


Mboka Mwilambwe, Mayor

ATTEST


Leslie Smith-Yocum, City Clerk



CITY OF BLOOMINGTON AGREEMENT WITH
Hoerr Construction, Inc.

FOR

FY2025 Sewer Rehabilitation & CCTV Inspection

THIS AGREEMENT, dated this 13th day of August, 2024, is between the City of Bloomington, IL (hereinafter "CITY") and Hoerr Construction, Inc. (hereinafter "VENDOR"). CITY and VENDOR may hereinafter collectively be referred to as the "PARTIES" and individually as the "PARTY".

NOW THEREFORE, the PARTIES agree as follows:

Section 1. Recitals. The recitals set forth above are incorporated into this Section 1 as if specifically stated herein.

Section 2. Description of Services. VENDOR shall provide the services/work identified on Exhibit A, attached hereto and incorporated herein.

Section 3. Incorporation of Bid/RFP/RFQ & Proposal Terms. The following shall apply to this Agreement:

This Agreement was not subject to a formal solicitation process by the CITY.

This Agreement was subject to the following procurement initiative by the CITY:

(Bid #2025-07) FY2025 Sewer Rehabilitation & CCTV Inspection (hereinafter "REQUEST").

Accordingly, the provisions of the REQUEST and the proposal submitted by VENDOR (hereinafter collectively referred to as "PROCUREMENT DOCUMENTS"), shall be incorporated into this Agreement by reference and made a part thereof and shall be considered additional contractual requirements that must be met by VENDOR. In the event of a direct conflict between the provisions of this Agreement and the incorporated PROCUREMENT DOCUMENTS, the provisions of this Agreement shall prevail. All PROCUREMENT DOCUMENTS are kept on file by CITY Legal Department and shall be made available upon request.

Section 4. Payment. For the work performed by VENDOR under this Agreement, the CITY shall pay VENDOR the fees as set forth in the Payment Terms, attached hereto as Exhibit B and incorporated herein.

Section 5. Requirement for Payment & Performance Bond. The following shall further apply to this Agreement:

This Agreement does not require the furnishment of any bonds by the VENDOR.

This Agreement is subject to bonding requirements.

- i. It is therefore understood that the VENDOR will furnish, at no expense to the CITY, Payment and Performance Bonds to the CITY in the amount of the contract as stated in Exhibit B executed by the VENDOR and at least two sureties as set forth under the Laws of the State of Illinois, as a guarantee that the VENDOR will timely and faithfully perform the work outlined herein.
- ii. Said bond shall be conditioned to save and keep harmless the CITY from any and all claims, demands, losses, suits, costs, expenses, and damages which may be brought, sustained,

or recovered against the CITY by reason of any negligence, default, or failure of the said VENDOR in designing, building, constructing, or completing said improvement and its appurtenances, or any part thereof, and that said improvement when constructed shall be free from all defects and remain in good order and condition for one year from its completion and acceptance by the CITY, ordinary wear and tear, and damage resulting from accident or willful destruction excepted; which bond is attached hereto and made a part hereof.

Section 6. Default. Either PARTY shall be in default if it fails to perform all or any part of this Agreement. If either PARTY is in default, the other PARTY may terminate this contract upon giving written notice of such termination to the PARTY in default. Such notice shall be in writing and provided thirty (30) days prior to termination. The non-defaulting PARTY shall be entitled to all remedies as set forth in Section 9 herein, upon the default or violation of this Agreement.

Section 7. Termination for Cause. The CITY may, at any time, terminate this Agreement, in whole or in part, for any of the following reasons effective immediately:

- i. VENDOR is found to be in violation of any term or condition of this Agreement.
- ii. VENDOR engages in any fraudulent, felonious, grossly negligent, or other illegal acts or behavior.
- iii. VENDOR declares bankruptcy or becomes insolvent.
- iv. CITY determines, in its sole discretion, that VENDOR is no longer able to fulfill VENDOR's obligations under this Agreement or PROCUREMENT DOCUMENTS.

Upon such termination, CITY shall be entitled to all remedies laid out in Section 9, as well as reimbursement of reasonable attorney's fees and court costs.

Section 8. Force Majeure. The CITY shall not be in default of this Agreement and shall not be held liable for any losses, failure, or delay in performance of its obligations under this Agreement or any Agreement, Amendment, Exhibit, or Attachment hereto arising out of or caused, directly or indirectly, by an event of Force Majeure. Force Majeure is defined as circumstances beyond the CITY's reasonable control, including, without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; acts of terrorism; sabotage; strikes; epidemics; pandemics; riots; power failures; computer failure and any such circumstances beyond its reasonable control as may cause interruption, loss or malfunction of utility, transportation, computer (hardware or software) or telephone communication service; accidents; labor disputes; acts of civil or military authority; governmental actions; or inability to obtain labor, material, equipment or transportation.

Section 9. Remedies. In the event of a default or a violation of this Agreement, the non-defaulting PARTY shall be entitled to all remedies, whether in law or equity.

Section 10. Indemnification. To the fullest extent permitted by law, VENDOR shall indemnify and hold harmless CITY, its officers, officials, agents, and employees from claims, demands, causes of action, and liabilities of every kind and nature whatsoever arising out of or in connection with VENDOR's operations performed under this Agreement, except for loss, damage, or expense arising from the sole gross negligence or willful misconduct of the CITY or the CITY's agents, servants, or independent vendors who are directly responsible to CITY. This indemnification shall extend to all claims occurring after this Agreement is terminated as well as while it is in force. The indemnity shall apply regardless of any concurrent negligence, whether active or passive, of the CITY or CITY's officers, officials, agents, employees, or any other persons or entities. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

Section 11. Reuse of Documents. All documents, including but not limited to, reports, drawings, specifications, and electronic media furnished by VENDOR pursuant to this Agreement are instruments of the VENDOR's services. Nothing herein, however, shall limit the CITY's right to use the documents for municipal purposes, including but not limited to the CITY's right to use documents in an unencumbered manner for purposes of remediation, remodeling, and/or construction. VENDOR further acknowledges any such documents may be subject to release under the Illinois Freedom of Information Act.

Section 12. Standard of Care. Services performed by VENDOR under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the same or similar profession currently practicing under the same or similar conditions.

Section 13. Time is of the Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence. If no time period is set forth, the work must be pursued and completed in a commercially reasonable timeframe.

Section 14. Representations of VENDOR. VENDOR hereby represents it is legally able to perform the work that is subject to the Agreement.

Section 15. Use of Name. VENDOR shall have no right, express or implied, to use in any manner the name or other designation of the CITY or any other name or trademark, or logo of the CITY for any purpose in connection with the performance of this Agreement.

Section 16. Compliance with Local, State, and Federal Laws. VENDOR agrees that any and all work by VENDOR shall at all times comply with all laws, ordinances, statutes, and governmental rules, regulations and codes.

Section 17. Compliance with Prevailing Wage. The following shall apply to this Agreement:

This Agreement is not for a "Public Work" and therefore Prevailing Wage does not apply.

This Agreement calls for the construction of "public works," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130.01 et seq. (hereinafter "ACT"). The ACT requires contractors and subcontractors to pay laborers, workers, and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus an amount for fringe benefits) in the county where the work is performed. The Illinois Department of Labor (hereinafter "DEPARTMENT") publishes the prevailing wage rates on its website at <http://labor.illinois.gov/>. The DEPARTMENT revises the prevailing wage rates and the contractor/subcontractor has an obligation to check the DEPARTMENT's website for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the DEPARTMENT's website. All contractors and subcontractor rendering services under this Agreement must comply with all requirements of the ACT, including but not limited to all wage requirements and notice and record keeping duties.

Section 18. Equal Opportunity Employment. During the performance of this Agreement, the VENDOR agrees as follows:

- i. The VENDOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The VENDOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, 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 VENDOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- ii. The VENDOR will, in all solicitations or advertisements for employees placed by or on behalf of the VENDOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- iii. The VENDOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the VENDOR's legal duty to furnish information.
- iv. The VENDOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the VENDOR's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Section 19. Access to Records. The following access to records requirements apply to this Agreement:

- i. The VENDOR agrees to provide CITY, or any of their authorized representatives access to any books, documents, papers, and records of the VENDOR which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- ii. The VENDOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Section 20. Compliance with FOIA Requirements. VENDOR further explicitly agrees to furnish all records related to this Agreement and any documentation related to CITY required under the Illinois Freedom of Information Act (ILCS 140/1 et seq.) (hereinafter "FOIA") request within five (5) business days after CITY issues notice of such request to VENDOR. VENDOR agrees to not apply any costs or charge any fees to the CITY regarding the procurement of records required pursuant to a FOIA request. VENDOR agrees to defend, indemnify, and hold harmless CITY, and agrees to pay all reasonable costs connected therewith (including, but not limited to, reasonable attorney's and witness fees, filing fees, and any other expenses) for CITY to defend any and all causes, actions, causes of action, disputes, prosecutions, of conflicts arising from VENDOR actual or alleged violation of FOIA, or VENDOR failure to furnish all documentation related to a request within five (5) business days after CITY issues notice of request. Furthermore, should VENDOR request that CITY utilize a lawful exemption under FOIA

in relation to any FOIA request, thereby denying that request, VENDOR agrees to pay all costs connected therewith (such as reasonable attorney's and witness fees, filing fees, and any other expenses) to defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction. VENDOR agrees to defend, indemnify, and hold harmless CITY, and agrees to pay all costs connected therewith (such as reasonable attorney's and witness fees, filing fees, and any other expenses) to defend any denial of a FOIA request by VENDOR request to utilize a lawful exemption to CITY.

Section 21. Notices. All legal notices given in connection with this Agreement shall be made in writing and deemed complete by way of (a) hand delivery; (b) registered mail, postage prepaid; or (c) electronic mail with notice of receipt by the other PARTY at the following addresses or at such other address for a PARTY as shall be specified by like notice:

If to VENDOR:

Hoerr Construction, Inc.
1416 County Road 200 North
Goodfield, IL 61742
smartin@hoerr.com

Copy to:

If to CITY:

City of Bloomington
Attn: City Manager
115 E. Washington St., Suite 400
Bloomington, IL 61701
admin@cityblm.org

Copy to:

City of Bloomington
Attn: Legal Department
115 E. Washington St., Suite 403
Bloomington, IL 61701
legal@cityblm.org

Section 22. Insurance. VENDOR shall, at a minimum, maintain insurance as required in the PROCUREMENT DOCUMENTS and at or above the limits stated on the Certificate of Insurance, where CITY shall be named as additional insured under the policy(ies), which is attached hereto as Exhibit C and incorporated herein.

Section 23. Assignment. No PARTY may assign this Agreement, or the proceeds thereof, without prior written consent of the other PARTY.

Section 24. Changes or Modifications. This Agreement, its method of completion, its scope of work, nor its pricing may be modified or changed in any manner without the express written consent of both PARTIES via an Amendment fully executed by both PARTIES.

Section 25. Governing Law. This Agreement shall be governed by and interpreted pursuant to the laws of the State of Illinois, County of McLean.

Section 26. Joint Drafting. The PARTIES expressly agree that this Agreement was jointly drafted, and that both had the opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either PARTY but shall be construed in a neutral manner.

Section 27. Attorney's Fees. In the event that any action is filed in relation to this Agreement, the unsuccessful PARTY in the action shall pay to the successful PARTY, in addition to all the sums that either PARTY may be called on to pay, a reasonable sum for the successful PARTY's attorney's fees (including expert witness fees).

Section 28. Paragraph Headings. The titles to the paragraphs of this agreement are solely for the convenience of the PARTIES and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

Section 29. Term. The term of this Agreement shall be as set forth on the attached Exhibit A, Description of Services. Notwithstanding anything herein, the provisions in Sections 10 and 19 shall survive termination.

Section 30. Counterparts. This Agreement may be executed in any number of counterparts, including electronically, each of which shall be deemed to be an original, but all of which together shall constitute the same instrument.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the date first above written.

CITY OF BLOOMINGTON

By: Jeff Jurgens
Its City Manager

ATTEST:

By: Lacie Smith-Yang
Its City Clerk



VENDOR

By: [Signature]
Its vice President

By: [Signature]
Its president

EXHIBIT A
DESCRIPTION OF SERVICES/WORK PROVIDED

This project consists of the following major work items:

1. Sewer Lining with Cured-in-Place Pipe (CIPP) Various Sizes up to 20,093 Linear Feet (LF)
2. Point Repairs ----- and other necessary items and incidentals.
3. CCTV Inspection Various Sizes 11,796 Linear Feet (LF)

Start: Date provided on Notice to Proceed

Completion: 300 days following the date provided on Notice to Proceed

Additional terms and procedures documented in the Special Provisions as part of the incorporated Procurement Documents.

EXHIBIT B
COSTS/FEES

The City will be awarding the Base Bid and Alternates 1-3 for a total of **\$1,773,229.60**. Line item unit costs and totals are included in the Evaluation Tabulation which has been incorporated in this Agreement as part of the Procurement Documents.

Additional payment terms are included in the Special Provisions as part of the Procurement Documents.