



OFFICE OF THE DIRECTOR OF FINANCE
THE CITY OF WATERBURY
CONNECTICUT

Date: July 9, 2020

To: Paul Pernerewski, President, Board of Aldermen
Members, Board of Aldermen
Board of Education Commissioners
Mayor Neil M. O'Leary
Dr. Verna Ruffin, Superintendent of Schools
William Clark, Waterbury Public Schools Chief Operating Officer

From: Michael LeBlanc, Director of Finance *MIL*

Subject: Amendment No. 2 to Agreement with Newfield Construction Group, LLC for Construction Manager at Risk Services for the Wendell L. Cross Pre-K to 8th Grade School Construction Project

Kindly give favorable consideration by approving the attached Amendment No. 2 to the Agreement with Newfield Construction Group, LLC to provide construction manager at risk services for the construction of the Pre-K to 8th Grade School Wendell L. Cross School.

The current approved Project Budget of \$46,213,082 provides funding for the Construction GMP of \$40,686,638, Project Soft Costs of \$4,302,112 and a Project Management Contingency of \$1,224,332 or 3% of the Construction GMP. The approved Project Budget is not changing as a result of this Amendment No. 2.

This Amendment No. 2 adds a City-Controlled Contingency Fund to the Newfield Agreement which will be subject to the formal change order process contained in the Agreement and shall be funded from the available uncommitted funding within the bond authorization and appropriation. This City-Controlled Contingency Fund will provide a mechanism for payment for additional unanticipated tasks and requirements as needed to complete the Project.

As noted above, the uncommitted funding currently available within the \$46,213,082 Project Budget is currently \$1,224,332. A significant portion of this uncommitted funding will be committed this summer via a Project Change Order to fund unanticipated costs attributable to the discovery of unsuitable soils and additional rock during the excavation for the building footings. It is necessary for the unsuitable soils and additional rock to be removed and replaced with compacted suitable soils to support the building footings. The change order to address these unanticipated costs is projected to be \$950,000.

**AMENDMENT NO. 2 TO
AGREEMENT**

BETWEEN

THE CITY OF WATERBURY, CONNECTICUT

AND

NEWFIELD CONSTRUCTION GROUP, LLC

**FOR CONSTRUCTION MANAGER AT RISK SERVICES FOR THE CONSTRUCTION OF
WENDELL L. CROSS PRE-K TO 8TH GRADE SCHOOL**

This Amendment No. 2, effective on the date signed by Mayor, is by and between the **City of Waterbury**, City Hall Building, 235 Grand Street, Waterbury, Connecticut 06702 (the "City") and **Newfield Construction Group, LLC** located at 225 Newfield Avenue, Hartford, Connecticut 06106, a duly registered limited liability company in the State of Connecticut (the "Construction Manager") (the City and the Construction Manager each being a "Party" and collectively, the "Parties").

WHEREAS, on or about May 24, 2019 the City entered into an Agreement with the Construction Manager (the "Agreement") to perform construction manager at risk services for the Wendell L. Cross Pre-K to 8th grade school construction project as described in the Agreement, (the "Project");

WHEREAS, there are and may be additional tasks and requirements needed to complete the Project which were unknown to the Parties at the time the Agreement was executed;

WHEREAS, additional funding is required for these unanticipated additional tasks and requirements;

WHEREAS, the City has uncommitted funding within the \$46,250,000 Wendell L. Cross school construction project bond authorization and; and

WHEREAS, this Amendment No. 2 shall add a City-Controlled Contingency Fund to the Agreement which will be subject to the formal change order process contained in the Agreement and shall be funded from the available uncommitted funding within the bond authorization and appropriation as may change throughout the duration of the Project. The uncommitted funding available within the bond authorization and appropriation is currently \$1,224,332. The City-Controlled Contingency Fund shall provide a mechanism for payment for additional unanticipated tasks and requirements as needed to complete the Project in accordance with the terms contained in the Agreement as may be modified and all applicable laws and regulations.

NOW THEREFORE, THE PARTIES AGREE AND COVENANT AS FOLLOWS:

- 1. Section 1.2 of the Agreement is hereby amended to include the following additional definition:**

1.2.61 City-Controlled Contingency Fund. City-Controlled Contingency Fund shall mean funds controlled exclusively by the City. Such funds shall not be considered to be used or held for the benefit of the Construction Manager and are not accessible to the Construction Manager without:

(a) Prior written approval of the City specifying that the City-Controlled Contingency Fund may be utilized for an unanticipated additional task and/or requirement; and

(b) A formal Change Order Proposal requesting payment from the City-Controlled Contingency Fund submitted and approved pursuant to this Agreement.

2. Section 6.1.1 b) of the Agreement shall be amended to include the following additional provision:

(4) payments made from the City-Controlled Contingency Fund.

3. Section 6.1.2 of the Agreement shall be replaced in its entirety as follows:

6.1.2 There shall be no Fee paid on approved Changes in the Work with an aggregate total value less than \$500,000 or any Changes in the Work which are approved for payment from the City-Controlled Contingency Fund or on any Changes in the Work solely attributed to unanticipated disposal fees associated with Hazardous Materials. Thereafter, the Construction Manager's Fee shall be adjusted on account of approved Changes in the Work by an amount equal to one and one fifth percent (1.2 %) of the Cost of the Change as determined in accordance with Subparagraph 7.3.3. of the General Conditions.

The City shall pay Construction Manager in current funds for the Trade Contractor Costs as described in Section 7.3 of this Agreement and the Materials and Equipment Costs as described in Section 7.5 of this Agreement as are required for the Work of the Construction Services.

All payments will be made as Progress Payments in accordance with Sections 9.3, 9.4, 9.5 and 9.6 of the General Conditions and as provided in this Agreement Sections 6.5 & 6.6.

Construction Manager shall be responsible for obtaining all authorizations, licenses, permits and approvals required for the Construction Services including but not limited to DAS-OSCG&R approvals prior to proceeding with the work. Copies of all such materials will be provided to the City and the Architect upon receipt by the Construction Manager.

4. Section 6.2. of the Agreement shall be replaced in its entirety as follows:

6.2 GUARANTEED MAXIMUM PRICE, CONSTRUCTION CONTINGENCY, AND CITY-CONTROLLED CONTINGENCY FUND

6.2.1 The Sum of the Cost of the Work, a Construction Contingency as provided for in Section 6.2.2 of this Agreement, and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in the Guaranteed Maximum Price Amendment, subject to additions and deductions for Changes in the Work and other adjustments as provided for in the Contract Documents. Such maximum sum as adjusted by approved Changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs, which would cause the Guaranteed Maximum Price to be exceeded, shall be paid by Construction Manager without reimbursement by the City, unless Construction Manager is entitled to an adjustment therefor in the Guaranteed Maximum Price, as provided for in this Agreement.

6.2.2 A Construction Contingency in an amount of one (1%) percent of the Trade Contractor Costs (the "Construction Contingency") will be established. Use of the Construction

Contingency by Construction Manager will be for purposes of paying for items included in the Cost of the Work and other items necessary for Construction Manager to meet its obligations under this Agreement, as specifically set forth herein.

Construction Manager shall advise the City, in writing, a minimum of five (5) business days in advance of making any expenditure from the Construction Contingency in the amount of ten thousand dollars (\$10,000) or more. Failure of the City to object, in writing, within five (5) business days following notice by Construction Manager shall be deemed acceptance by the City. For subcontract changes less than \$10,000 the City's prior approval is not required. Construction Manager shall account to the City for the allocation of the Construction Contingency as part of each monthly cost report. Except to the extent such work qualifies as a Cost of the Work, the Construction Contingency shall not be used to pay for remedial work for which Construction Manager or a Trade Contractor or Subcontractor is responsible, or claims (or the defense thereof) made by a Trade Contractor or Subcontractor. The Construction Contingency shall not be used to pay for work that qualifies for a Change Order.

The City may utilize a reasonable share of any anticipated savings in the Construction Contingency for its use to pay for out of scope changes or cost increases due to unforeseen conditions. Any amount of the Construction Contingency remaining at the completion of the Project shall belong to the City.

6.2.3 A City-Controlled Contingency Fund is hereby established. Use of the City-Controlled Contingency Fund by Construction Manager will be for the purpose of paying for unanticipated additional tasks and requirements needed to complete the Project and only upon full compliance with Section 6.3 of this Agreement.

Construction Manager shall account to the City for the allocation of the City-Controlled Contingency Fund as part of each monthly cost report. Except to the extent such work qualifies as a Cost of the Work, the City-Controlled Contingency Fund shall not be used to pay for remedial work for which Construction Manager or a Trade Contractor or Subcontractor is responsible, or claims (or the defense thereof) made by a Trade Contractor or Subcontractor. Any amount of the City-Controlled Contingency Fund remaining at the completion of the Project shall belong to the City.

6.2.4 Construction Manager shall keep a current accounting of any expenditure of the Construction Contingency and the City-Controlled Contingency Fund and shall report monthly to the City on the status of these accounts.

5. Section 6.3 of the Agreement, Changes in the Work, shall be replaced in its entirety as follows:

6.3 CHANGES IN THE WORK.

6.3.1 The City may, at any time, without invalidating this Agreement, make additions, deletions, or changes in the Services or Work within the general scope of this agreement, as provided in the General Conditions. The City may change or issue additional instructions, specifications, and/or drawings, and change, omit, or require additional Work to be performed by Construction Manager. In such event, the City has full authority to specify the amount and kind of Work to be performed or omitted, the materials to be used, and the equipment to be furnished as fully as though such changes had been originally incorporated in the Agreement.

6.3.2 Adjustments to the Guaranteed Maximum Price on account of Changes in the Work subsequent to the execution of the GMP Amendment may be determined by any of the methods listed in the General Conditions. Notwithstanding the foregoing or any provision in the General Conditions to the contrary, changes in the work which are approved for payment from the City-Controlled Contingency Fund, shall not result in any increase in the Construction Manager's Fee.

6.3.3 In calculating adjustments to Subcontracts (except those awarded with the City's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in the General Conditions and the terms "costs" and "a reasonable allowance for overhead and profit" as used in the General Conditions shall have the meanings assigned to them in that document and shall not be modified by this Article 6. Adjustments to Subcontracts awarded with the City's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those Subcontracts.

6. The Parties do hereby agree that any references in the Initial Agreement to "Agreement" or "Term" shall apply with equal force and effect to this Amendment; unless specifically addressed in this Amendment.
7. The Parties do hereby agree that except as herein specifically modified by this Amendment, all the terms, provisions, covenants, conditions, warranties and representations of the Agreement shall remain in full force and effect as valid and binding obligations of the Parties according to their terms.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY; SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto execute this Second Amendment to the Agreement on the dates signed below.

WITNESS:

CONSTRUCTION MANAGER

Newfield Construction Group, LLC

Damien T. Davis, Managing Partner

Date: _____

WITNESS:

CITY OF WATERBURY

Mayor Neil M. O'Leary

Date: _____

Approved as to Form:

Gary B. O'Connor