

## **RESOLUTION 2022 – 120**

### **A RESOLUTION OF THE MAYOR AND COUNCIL OF THE BOROUGH OF MOUNT ARLINGTON, COUNTY OF MORRIS, STATE OF NEW JERSEY, ACCEPTING THE BID, AND AWARDING THE CONTRACT FOR, SCHMITZ TERRACE STAND PIPE REHABILITATION, TO ALLIED PAINTING, INC. PURSUANT TO THE AUGUST 11, 2022 ORDER OF THE SUPERIOR COURT OF NEW JERSEY, AND RESCINDING THE AWARD OF THE SAME MADE TO DYNAMIC SANDBLASTING AND PAINTING, LLC PURSUANT TO RESOLUTION 2022 - 100**

**WHEREAS**, the Borough of Mount Arlington ("Borough") had previously determined that it is necessary to undertake the rehabilitation of the Schmitz Terrace Stand Pipe within the Borough (the "Project" or "Schmitz Terrace Stand Pipe Rehabilitation"); and

**WHEREAS**, the Borough thereafter advertised for and accepted bids for the Project, and on June 23, 2022, opened and reviewed the five (5) bids received to perform the Schmitz Terrace Stand Pipe Rehabilitation. The lowest responsive and responsible bidder, pursuant to the bid tabulation prepared by the Borough Engineer, was determined to be Dynamic Sandblasting and Painting, LLC ("Dynamic"); and

**WHEREAS**, the Borough, by Resolution 2022 – 100 adopted on July 5, 2022, which is incorporated herein by reference as if set forth at length, consequently made an award for the Project work to Dynamic, all consistent with the forgoing, Resolution 2022 – 100, and the determination of the New Jersey Department of Environmental Protection ("NJDEP"); and

**WHEREAS**, subsequent to the July 5, 2022 award to Dynamic for the Project work, Allied Painting, Inc. ("Allied"), one of the five bidders for the Project work, filed suit in the Superior Court of New Jersey, Morris Vicinage, under the caption *Allied Painting, Inc. v. Borough of Mt. Arlington and Dynamic Sandblasting and Painting, LLC*, Docket No. MRS-L-1159-22 (the "Litigation"), challenging the award to Dynamic, chiefly due to the fact that Dynamic met SSRP QP-1 and QP-2 certification requirements set forth in the Project bid through a subcontractor, and not in its own right; and

**WHEREAS**, despite the Borough aggressively defending against the Litigation, the Superior Court of New Jersey, by Order and Decision entered on August 11, 2022, agreed with Allied, enjoined the Project award to Dynamic, and directed that the Borough award the Project to the next responsive and responsible bidder, which in this case is in fact Allied; and

**WHEREAS**, having considered the matter, the need to get the Project work done, and the need to preserve NJDEP funding for the Project, the Borough has determined to abide by the August 11, 2022 Order and Decision entered in the Litigation, and to make an award for the Project work to Allied, all consistent with the Court's said Order and Decision; and

**WHEREAS**, commensurate with the desire to make an award to Allied consistent with the forgoing, the Borough is also constrained by the Court's August 11, 2022 Order and Decision to rescind the July 5, 2022 award made to Dynamic in Resolution 2022 – 100; and

**WHEREAS**, notwithstanding this change of events, an award to Allied consistent with the Court's directive within the Litigation is still within cost estimates and budget for the Project, and remains consistent with the availability of NJDEP funding for the same; and

**WHEREAS**, the Chief Financial Officer has certified the availability of funds for the Allied contract amount of \$468,400.00, inclusive of the anticipated NJDEP funding for the Project; and

**WHEREAS**, the Borough now desires to adopt this Resolution memorializing the forgoing.

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Borough Council of the Borough of Mount Arlington, County of Morris, State of New Jersey, as follows:

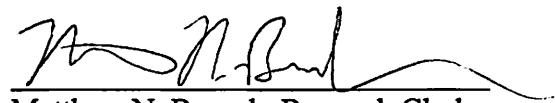
No. 1. The forgoing Recitals, along with Resolution 2022 – 100, be and hereby are incorporated herein by reference as if set forth at length.

No. 2. Pursuant to and consistent with the Court's August 11, 2022 Order and Decision entered in the Litigation, the Contract for the Schmitz Terrace Stand Pipe Rehabilitation Project be and is hereby awarded to Allied Painting, Inc., in the amount of \$468,400.00. The Mayor, Clerk and all other necessary Borough personnel, be and hereby are directed and authorized to enter into a Contract with Allied for the Project, and to in all other ways carry out and effectuate the purposes thereof.

No. 3. Pursuant to and consistent with the Court's August 11, 2022 Order and Decision entered in the Litigation, Resolution 2022 – 100, which had previously made an award to Dynamic for the Project work, be and hereby is rescinded, along with any Contract entered into with Dynamic for the Project work.

No. 4. This Resolution shall take effect immediately.

**I HEREBY CERTIFY** this to be a true and correct Resolution of the Mayor and Borough Council of the Borough of Mount Arlington, and adopted on September 6, 2022.



Matthew N. Bansch, Borough Clerk