

**CITY OF SAN MATEO, CALIFORNIA  
WASTEWATER TREATMENT PLANT  
PUMP PIT STAIRCASE REPLACEMENT  
July 1, 2019 TO SEPTEMBER 29, 2019**

CONTRACT TO SUPPLY EQUIPMENT, LABOR AND MATERIAL FOR  
PUMP PIT STAIRCASE REPLACEMENT  
CITY OF SAN MATEO

CITY COUNCIL AWARD

THIS CONTRACT, made and entered into this \_\_\_\_\_, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California, hereinafter called "City," and D.W. Nicholson Corporation, a Corporation with offices at 24747 Clawiter Road, PO BOX 4197, Hayward, CA 94540 hereinafter called "CONTRACTOR".

***RECITALS:***

- (a) City has taken appropriate proceedings to authorize construction of the public work and improvements or other matters herein provided, and execution of this contract.
- (b) A notice was duly published for bids for the supply of equipment, labor, and materials as described.
- (c) After notice duly given, on the date hereof, the City awarded the contract for the construction of the improvements hereinafter described to Contractor.

IT IS AGREED, as follows:

- 1. Scope of Work. Contractor shall perform the work according to the Contract Book entitled: Pump Pit Stairs Replacement, July 1, 2019 to September 29, 2019.
- 2. Contract Price. City shall pay and the Contractor shall accept, in full payment for the work above agreed to be performed the sum of \$168,675.00.

Said price is determined by the prices contained in Contractor's bid, and shall be paid as described in the Contract Book. In the event work is performed or materials furnished in addition to or a reduction of those set forth in Contractor's bid and the specifications herein, such work and materials will be paid for as described in the Contract Book.

- 3. The Contract Documents. The complete contract consists of the following documents: This Contract; the Notice Inviting Sealed Proposals; the Accepted Proposal; the Contract Book; and Addendum Number 1 and 2 issued to the Contract Book.

All rights and obligations of City and Contractor are fully set forth and described in the contract documents.

All of the above-named documents are intended to cooperate, so that any work called for in one, and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. The documents comprising the complete contract will hereinafter be referred to as "the contract documents." In the event of any variation or discrepancy between any portion of this contract and any portion of the other contract documents, this contract shall prevail. The precedence of the remaining contract documents will be as specified in the Contract Book.

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4. Termination. The City may terminate this contract immediately in the event of Contractor's default or breach of the contract and upon 60 days written notice without cause.

5. Schedule. All work shall be performed in accordance with the schedule provided pursuant to the Contract Book.

6. Performance by Sureties. In the event of any termination as hereinbefore provided, City shall immediately give written notice thereof to Contractor and Contractor's sureties, and the sureties shall have the right to take over and perform the contract, provided, however, that if the sureties, within 5 days after giving them said notice of termination, do not give City written notice of their intention to take over the performance thereof within 5 days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method it may deem advisable, for the account, and at the expense of Contractor, and the sureties shall be liable to City for any excess cost or damages occasioned City thereby; and, in such event, City may, without liability for so doing, take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Contractor as may be on the site of the work and necessary therefor.

7. Prevailing Wage Scale. In general, the prevailing wage scale, as determined by the Director of Industrial Relations of the State of California, in force on the day this bid was announced, will be the minimum paid to all craftsmen and laborers working on this project. In some cases, prevailing wage determinations have either a single asterisk (\*) or double asterisks (\*\*) after the expiration date in effect on the date of advertisement for bids.

In cases where the prevailing wage determinations have a single asterisk (\*) after the expiration date which are in effect on the date of advertisement for bids, such determinations remain in effect for the life of the project. Prevailing wage determinations which have double asterisks (\*\*) after the expiration date indicate that the basic hourly wage rate, overtime, and holiday pay rates, and employer payments to be paid for work performed after this date have been predetermined. If work is extended past this date, the new rate must be paid and should be incorporated in contracts the Contractor enters into.

A copy of the correct determination will be posted at the job site. It is understood that it is the responsibility of the bidder to determine the correct scale. The City will keep a copy of the wage scale in the City Clerk's office for the convenience of bidders. Any errors or defects in the materials in the City Clerk's office will not excuse a bidder's failure to comply with the actual scale then in force.

8. Insurance. The Contractor shall provide and maintain:

- A. Commercial General Liability Insurance, occurrence form, with a limit of not less than \$2,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Contract or be no less than two (2) times the occurrence limit.
- B. Automobile Liability Insurance, occurrence form, with a limit of not less than \$1,000,000 each occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles.
- C. Workers Compensation in at least the minimum statutory limits.
- D. General Provisions for all insurance. All insurance shall:

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- i. Include the City of San Mateo and The Estero Municipal Improvement District, their elected and appointed officials, employees, and agents as additional insureds with respect to this Contract and the performance of services in this Contract. The coverage shall contain no special limitations on the scope of its protection to the above-designated insureds.
- ii. Be primary with respect to any insurance or self-insurance programs of City, its officials, employees, and agents.
- iii. Be evidenced, prior to commencement of services, by properly executed policy endorsements in addition to a certificate of insurance.
- iv. No changes in insurance may be made without the written approval of the City Attorney's office.
- v. NOTICE OF CANCELLATION: The City requires 30 days written notice of cancellation. Additionally, the notice statement on the certificate should not include the wording "endeavor to" or "But failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives".

9. Hold Harmless and Indemnity Provision. Contractor agrees to hold harmless and indemnify City of San Mateo and Estero Municipal Improvement District, their elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising from performance of this contract, including claims, loss, liability, damage, and expense caused or claimed to be caused by passive negligence of City of San Mateo or Estero Municipal Improvement District, their elected and appointed officials, employees, and agents; provided, however that this provision does not apply to claims, loss, liability, damage or expense arising from (a) the sole negligence or willful misconduct of City of San Mateo or Estero Municipal Improvement District or (b) the active negligence of City of San Mateo or Estero Municipal Improvement District; further provided, that this provision shall not affect the validity of any insurance contract, workers compensation or contract issued by an admitted insurer as defined by the Insurance Code. Contract will defend City of San Mateo and Estero Municipal Improvement District, their elected and appointed officials, employees, and agents, against any such claims.

10. Attorney Fees. Attorney fees in amount not exceeding \$85 per hour per attorney, and in total amount not exceeding \$5,000 shall be recoverable as costs (that is, by the filing of a cost bill) by prevailing party in any action or actions to enforce the provisions of this contract. The above \$5,000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals or actions. It is the intent that neither party to this contract shall have to pay the other more than \$5,000 for attorney fees arising out of an action, or actions, to enforce the provisions of this contract. The parties expect and hope there will be no litigation and that any differences will be resolved amicably.

11. Mediation. Should any dispute arise out of this Contract, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an contract, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a "blindfolded" process.

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The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until contract is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

12. Provisions Cumulative. The provisions of this contract are cumulative, and in addition to and not in limitation of, any other rights or remedies available to City.

13. Notices. All notices shall be in writing, and delivered in person or transmitted by certified mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

Director of Public Works  
City of San Mateo  
330 West 20th Avenue  
San Mateo, CA 94403

Notices required to be given to Contractor shall be addressed as appears in the signature block as shown on the Bidder's Statement.

15. Interpretation. As used herein any gender includes each other gender, the singular includes the plural and vice versa.

IN WITNESS WHEREOF, this contract has been duly executed by the parties hereinabove named, as of the day and year first above written.

CONTRACTOR

CITY OF SAN MATEO,  
a municipal corporation

\_\_\_\_\_

\_\_\_\_\_

Thomas S. Reed, President / C.E.O

Brad Underwood, Director of Public Works

\*If a Corporation, can be either 1) President or  
2) Vice President plus an additional corporate  
Officer (i.e. Secretary, Treasurer) who shall  
Sign below

APPROVED AS TO FORM:

\_\_\_\_\_

Caio Arellano, Assistant City Attorney

ADDITIONAL CORPORATE OFFICER

\_\_\_\_\_  
Gonzalo Allende, Vice President