

SECTION 00 50 00 - AGREEMENT

THIS AGREEMENT is by and between the City of San Mateo (Owner)
and JMB Construction Inc. (Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1. WORK

1.1. Contractor shall complete the Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

1.1.1 Installation of sanitary sewer main, manholes and services, including, but not limited to, temporary facilities and controls; sewers installed by microtunneling, sewers installed by open cut, removal and replacement of emergency vehicle access bridge, microtunneling launching shafts and receiving pits, manholes, testing and monitoring, bioswale, sidewalk, irrigation, planting and retaining wall installation, surface restoration of pavement and necessary appurtenant work to complete the construction as shown in the Contract Documents.

2. THE PROJECT

2.1 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows

2.1.1 Delaware Street Relief Sewer

3. ENGINEER

3.1 Engineer means the licensed Engineer and its consultants, retained by the Owner to perform design services for the Project.

4. CONTRACT TIMES

4.1 Time of the Essence: 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.

4.2 Days to Achieve Substantial Completion and Final Payment:

4.2.1 The Work shall be substantially completed within 260 working days from 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 280 working days after the date when the Contract Times commence to run.

4.3 Liquidated Damages:

4.3.1 Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph Contract Times above, plus any extensions thereof allowed in accordance with Article 11 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 \$5,000 for each day that expires after the time specified herein for Substantial Completion until the Work is substantially complete.

4.3.2 After Substantial Completion, if Contractor neglects, refuses, or fails to complete remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$3,000 for each day that expires after the time specified herein for completion and readiness for final payment until the Work is completed and ready for final payment.

4.4 Fines

4.4.1 Any fines assessed to the Owner as a result of sewage spills caused by the Contractor's failure to maintain operation of sewage bypass pumping equipment will be deducted from the Contractor's progress payments.

5. CONTRACT PRICE

5.1 For all Work, at the prices stated in Contractor's Bid, incorporated herein by reference, a lump sum of \$ 8,448,375.00.

6. PAYMENT PROCEDURES

6.1 Submittal and Processing of Payments: Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.2 Progress Payments and Retainage: Owner will make progress payments on account of the Contract Price on the basis of Contractor's Application for Payment on the date of each month as established in the preconstruction conference during performance of the Work as provided herein. All such payments will be measured by the Schedule of Values established as provided in Paragraph 2.05 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.

6.2.1 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 15.01 of the General Conditions:

6.2.1.1 Ninety five percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and

6.2.1.2 Ninety five percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

6.2.2 Contractor may elect to substitute securities of equivalent value in accordance with requirements and procedures of Sections 22300 or 10263 of the California Public Contract Code.

6.3 Final Payment:

6.3.1 Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner will pay the remainder of the Contract Price as recommended by Engineer as provided in Paragraph 15.06.

7. INTEREST

7.1 Monies not paid when due as provided in Article 15 of the General Conditions shall bear interest at the legal rate unless otherwise specified according to California law.

8. CONTRACTOR'S REPRESENTATIONS

8.1 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

8.1.1 Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

8.1.2 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.

- 8.1.3 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.
- 8.1.4 Contractor has carefully studied: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, which have been identified in Paragraph 5.03 of the Supplementary Conditions as containing reliable "technical data", and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site which have been identified in Paragraph 5.06 of the Supplementary Conditions as containing reliable "technical data."
- 8.1.5 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 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, and 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; and 3) Contractor's safety precautions and programs.
- 8.1.6 Based on the information and observations referred to above, 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.
- 8.1.7 Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- 8.1.8 Contractor has given Engineer written notice of conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- 8.1.9 The Contract Documents are generally sufficient to indicate and convey understanding of terms and conditions for performance and furnishing of the Work.
- 8.1.10 Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception, all prices in the

Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

9. CONTRACT DOCUMENTS

9.1 Contents:

9.1.1 The Contract Documents consist of the following:

9.1.1.1 This Agreement (pages 1 to 9, inclusive).

9.1.1.2 Performance bond (pages 1 to 4, inclusive).

9.1.1.3 Payment bond (pages 1 to 4, inclusive).

9.1.1.4 General Conditions (pages 1 to 52, inclusive).

9.1.1.5 Supplementary Conditions (pages 1 to 46, inclusive).

9.1.1.6 Specifications as listed in the table of contents of the Project Manual.

9.1.1.7 Sewer Construction Drawings consisting of 20 sheets with each sheet bearing the following general title: "Delaware Street Relief Sewer" by Stantec.

9.1.1.8 Surface Improvement Drawings consisting of 29 sheets with each sheet bearing the following general title: "Delaware Street Relief Sewer" by HDR.

9.1.1.9 Addenda (numbers ___ 1 ___ to ___ 8 ___, inclusive).

9.1.2 Exhibits to this Agreement (enumerated as follows):

9.1.2.1 Contractor's Bid (pages ___ 1 ___ to ___ 90 ___, inclusive).

9.1.3 The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

9.1.3.1 Notice to Proceed (pages _____ to _____, inclusive).

9.1.3.2 Work Change Directives.

9.1.3.3 Change Order(s).

9.2 There are no Contract Documents other than those listed above in this Article.

9.3 The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

10. MISCELLANEOUS

10.1 Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.2 Successors and Assigns: 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.

10.3 Attorney Fees:

10.3.1 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 the 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.

10.4 In accordance with Section 1775, California Labor Code, Contractor shall forfeit to Owner, as a penalty, not more than \$50 for each calendar day, or portion thereof, for each worker paid, either by Contractor or any subcontractor, less than the prevailing rates as determined by the Director of California Department of Industrial Relations for the Work.

10.5 10.5. Contractor Registration:

10.5.1 Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations (DIR)."

10.6 In the performance of the Work, a day's work shall be 8 hours of labor in any workday and 40 hours in any work week and any other work as required by Section 510, California Labor Code, and Contractor shall further conform to the requirements of Section 1813, California Labor Code, or forfeit to Owner, as a penalty, the sum of \$25 for each worker employed in the execution of the Work by Contractor or any subcontractor, for each day during which any worker is required or permitted to labor more than 8 hours in any workday or more than 40 hours in any 1 calendar week in violation of Section 510.

10.7 Contractor shall carry workers' compensation insurance and require subcontractors to carry workers' compensation insurance as required by Section 3700, California Labor Code."

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- 10.8 Pursuant to California Labor Code Section 6705, excavation of any trench or trenches 5 feet or more in depth, involving estimated expenditures in excess of \$25,000 shall require, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection prepared by a registered civil or structural engineer.
- 10.9 Pursuant to Section 1770 et seq., California Labor Code, the successful Bidder shall pay not less than the prevailing rate of per diem wages as determined by the Director of California Department of Industrial Relations. A copy of such prevailing rate is on file at the offices of the Owner, which copy will be made available for examination during business hours to any party on request."
- 10.10 Contractor, by signing this Agreement, certifies the following: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract."
- 10.11 Nothing in this Agreement shall prevent Contractor or any Subcontractor from employing properly registered apprentices in the execution of the Agreement. Contractor shall have responsibility for compliance with California Labor Code Section 1777.5 for all apprenticeable occupations."
- 10.12 10.12. During the performance of Work under this Agreement, Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and Subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and Subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing Council implementing Government Code section 12990, set forth in Subchapter 5 of Division 4.1 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement."
- 10.13 Severability: Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree 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.

10.14 Assignment of Contract:

10.14.1 No assignment by a party hereto of any rights under or interests in the Contract shall be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies 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 shall release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.15 Contractor's Certifications:

10.15.1 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:

10.15.1.1 "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in Contract execution;

10.15.1.2 "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 Price at artificial noncompetitive levels, or (c) to deprive Owner of the benefits of free and open competition;

10.15.1.3 "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, noncompetitive levels; and

10.15.1.4 "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 in triplicate. One counterpart each has been delivered to Owner, Contractor, and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

CITY OF SAN MATEO:

CONTRACTOR: JMB Construction Inc.

By: Azalea Mitch

By: Margaret Burke

Title: Public Works Director

Title: President

APPROVED AS TO FORM:

ATTEST:

Linh P. Nguyen
Assistant City Attorney

Title: _____

Address for giving notices:

132 South Maple Avenue

South San Francisco, CA 94080

License No. 715324
(Where applicable)

Agent for service or process: _____

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

END OF SECTION

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