

AGREEMENT WITH D'ARCY & HARTY CONSTRUCTION, INC
FOR PUBLIC IMPROVEMENT
FOR
BASIN E SANITARY SEWER IMPROVEMENT PROJECT
CITY PROJECT NO. 46S091

THIS AGREEMENT FOR PUBLIC IMPROVEMENTS ("Agreement"), made and entered into in the City of San Mateo, County of San Mateo, State of California, 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'ARCY & HARTY CONSTRUCTION, a corporation, with offices at 1300 Carroll Avenue, San Francisco, CA 94124 (hereinafter called "Contractor"), entered into this day of _____.

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 Agreement.
- (b) A notice was duly published for bids for the contract for the improvement hereinafter 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:

Basin E Sanitary Sewer Improvement Project

CITY PROJECT NO. 46s091

2. Contract Price. City shall pay, and the Contractor shall accept, the sum of \$6,486,711.00 in full payment for the work set forth above.

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 Agreement; the Notice Inviting Sealed Proposals; the Accepted Proposal; the Contract Book which includes the Special Provisions and Contract Drawings, Addendum Number 1 issued to the Contract Book, the APWA-AGC Standard Specifications for Public Works Construction, 2015 Edition, the Faithful Performance Bond, and the Labor and Material Bond (hereinafter referred to as the "contract documents").

All rights and obligations of City and Contractor are fully set forth and described in the contract documents. The contract documents constitute the entire contract between the parties hereto pertaining to the subject matter hereof, fully supersede any and all prior understandings, representations, warranties and agreements between the parties hereto, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all of the parties hereto.

All of the above-named documents are complementary and are intended to operate in harmony, 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. In the event of any variation or discrepancy between any portion of this Agreement and any portion of the contract documents, this Agreement shall prevail. The precedence of the remaining contract documents will be as specified in the Contract Book.

4. Schedule. All work shall be performed in accordance with the schedule provided pursuant to the Contract Book.
 - 4.2.1 The Work shall be substantially completed within **280** 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 **320** working days after the date when the Contract Times commence to run.
 - 4.2.2 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 \$500 for each day that expires after the time specified herein for Substantial Completion until the Work is substantially complete.
 - 4.2.3 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 \$2,500 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.
5. 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 Agreement, 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.

6. Legal Work Day - Penalties for Violation. Eight hours of labor shall constitute a legal day's work. Contractor shall not require more than 8 hours labor in a day and 40 hours in a calendar week from any person employed by Contractor in the performance of such work unless such excess work is compensated for at not less than 1-1/2 times the basic rate of pay. Contractor shall forfeit as a penalty to City the sum of \$25.00 for each laborer, workman or mechanic employed in the execution of this contract by Contractor, or by any subcontractor for each calendar day during which such laborer, workman or mechanic is required or permitted to labor more than 8 hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Sections 1810 and 1816, inclusive, of the Labor Code of the State of California.
7. Prevailing Wage Scale. The prevailing wage scale as determined by the Director of Industrial Relations of the State of California, in force on the day the bid was announced, will be the minimum paid to all craftsmen and laborers working on this project. Contractor shall also require any subcontractors who work or provide any services related to the project to pay all persons performing labor or rendering service under said subcontract or other arrangement at least the general prevailing rate of wages, determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work. A copy of the correct determination will be posted at the job site. It is understood that it is the responsibility of Contractor to determine the correct scale. Copies of the prevailing wage rates are on file at the City Clerk's office, however, 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. Contractor must submit certified payrolls to the Department of Industrial Relations in accordance with Labor Code Section 1776.

Contractor agrees to comply with the City's minimum wage ordinance as codified in Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator.

8. Senate Bill 854 Compliance Required. In accordance with Labor Code Sections 1725.5 and 1771.1, all contractors and subcontractors must be registered with the Department of Industrial Relations. In accordance with Labor Code Section 1771.4 the contractor must post job site notices as required by regulation and this project will be subject to compliance monitoring and enforcement by the Department of Industrial Relations.
9. Insurance. The Contractor shall procure and maintain for the duration of the contract and five years thereafter the insurance as specified in Exhibit A of this agreement.
10. Indemnity. Contractor agrees to hold harmless and indemnify City, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of Contractor's performance of this Agreement, except for those claims arising out of City's sole negligence or willful misconduct. Contractor agrees to defend City, its elected and

appointed officials, employees, and agents against any such claims. The Contractor's duty to indemnify shall survive expiration or early termination of this Agreement.

11. Attorney Fees. Attorney fees in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5000 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 of this provision that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.
12. Mediation. Should any dispute arise out of this Agreement, 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 agreement, 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 blind draw.

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 agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.
13. Provisions Cumulative. The provisions of this agreement are cumulative, and in addition to and not in limitation of, any other rights or remedies available to City.
14. Notices. All notices shall be in writing, and delivered in person or transmitted by certified mail, postage prepaid.

- a. 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.
16. Governing Law and Venue. This Agreement, the contract documents, and the performance hereon shall be governed, interpreted, construed, and regulated by the laws of the State of California. The

parties agree that any action related to this Agreement or the contract documents will be venued in the County of San Mateo.

17. Headings. The title and headings of the various sections of this Agreement and the contract documents are intended solely for convenience of reference and are not intended to explain, modify, or place any construction on any provisions.
18. No Partnership or Agency. Nothing in this Agreement nor the contract documents shall be deemed to constitute a partnership in law between City and Contractor, or any sub-contractor, to constitute either party as an agent of the other for any purpose; or to entitle either party to commit or bind the other in any manner unless expressly agreed upon in the contract documents.
19. Severability. If any part or provision of the contract documents is determined by any court to be illegal, invalid, or unenforceable, in whole or in part, the contract documents shall continue to be valid as to its other provisions and the remainder of the affected provision, unless it can be concluded from the circumstances that, in the absence of the provisions found to be null and void, the parties would not have entered into the contract documents. The parties shall use all reasonable efforts to replace any and all provisions or parts found to be null and void with provisions that are valid under the applicable law and come closest to their original intention.
20. Waiver. None of the following shall operate as a waiver of any provision of the contract documents, or of any power herein reserved by the City, or any right to damages herein provided: 1) inspection by the City or its authorized agents or representatives; 2) any order or certificate for payment, or any payment for, or acceptance of the whole or any part of the work by the City; 3) an extension of time; or 4) any position taken by the City or its authorized agents or representatives.
21. Warranty. Contractor warrants and guarantees that the materials and equipment provided shall be at least of the quality specified and new unless otherwise required or permitted by the contract documents, and, if no quality is specified, then the materials and equipment shall be of commercial grade, suitable for heavy public use in facilities of similar size and complexity, that the work performed hereunder will be free from defects, and that the work will conform to the requirements of the contract documents.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this agreement between the CITY OF SAN MATEO and D'Arcy & Harty Construction, Inc. has been duly executed by the parties hereinabove named, as of the day and year first above written.

CITY OF SAN MATEO

CONTRACTOR

Matt Fabry
Interim Director of Public Works

Mike D'Arcy
Its Authorized Agent
President

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

ADDITIONAL CORPORATE OFFICER
(if necessary per the above)

Linh Nguyen
Assistant City Attorney

Attachments:

Exhibit A: Insurance Requirements

Exhibit A

Insurance Requirements for Construction Contracts

Contractor shall procure and maintain for the duration of the contract, *and for x years thereafter*, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability**: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Builder's Risk** (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
5. **Surety Bonds** as described below.
6. **Professional Liability** (if Design/Build), with limits no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
7. **Contractors' Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
- 8.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. At the option of the Entity, either: the contractor shall cause the insurer shall to reduce or eliminate such self-insured retentions as respects the Entity, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).
2. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity.

Builder's Risk (Course of Construction) Insurance

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall **name the Entity as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the Entity, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the Entity's site.

Claims Made Policies – (If at all possible avoid and require occurrence type CGL policies)

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the Entity for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the Entity.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire

from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the Entity for all work performed by the Contractor, its employees, agents and subcontractors.

Verification of Coverage

Contractor shall furnish the Entity with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

Surety Bonds

Contractor shall provide the following Surety Bonds:

1. Bid bond
2. Performance bond
3. Payment bond
4. Maintenance bond

The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.