

**DOCUMENT 00 52 00
AGREEMENT**

THIS AGREEMENT, dated this **20th** day of **July, 2020**, by and between **Shimmick Construction Company, Inc.** whose place of business is located at **1 Harbor Center, Suite 200, Suisun City, CA 94585 (Contractor)**, and **CITY OF FOSTER CITY**, a California municipal corporation (**Owner**), acting under and by virtue of the authority vested in Owner by the laws of the State of California.

WHEREAS, Owner, by its Resolution No. **2020-76** adopted on the **20th day of July, 2020** awarded to Contractor the following Contract:

CONTRACT NUMBER CIP 301-657

**LEVEE IMPROVEMENTS
at
FOSTER CITY, CALIFORNIA 94404**

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

ARTICLE 1 – SCOPE OF WORK OF THE CONTRACT

1.1 Work of the Contract

- A. Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Plans and all other terms and conditions of the Contract Documents (**Work**).

1.2 Price for Completion of the Work

- A. Owner shall pay Contractor the following Contract Sum of \$60,218,000 (Sixty Million, Two Hundred Eighteen Thousand Dollars) for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto.
- B. The Contract Sum includes all allowances (if any).

[ATTACH COPY OF BID]

1.3 Commencement of Work

- A. Contractor shall commence Work on the date established in the Notice to Proceed (**Commencement Date**).
- B. Owner reserves the right to modify or alter the Commencement Date.

1.4 Completion of Work

- A. Contractor shall achieve Substantial Completion of the entire Work within 1,100 calendar Days from the Commencement Date.

- B. Contractor shall achieve Final Completion of the entire Work 1,200 calendar Days from the Commencement Date.
- C. Contractor shall furnish escrow in lieu of retention for the one-year maintenance period that begins at Final Completion.

ARTICLE 1 – PROJECT REPRESENTATIVES

2.1 Owner's Project Manager

- A. Owner has designated Tanner Pacific, Inc. as its Project Manager to act as Owner's representative in all matters relating to the Contract Documents. If Project Manager is an employee of Owner, Project Manager is the beneficiary of all Contractor obligations to Owner including, without limitation, all releases and indemnities.
- B. Project Manager shall have final authority over all matters pertaining to the Contract Documents and shall have sole authority to modify the Contract Documents on behalf of Owner, to accept Work, and to make decisions or actions binding on Owner, and shall have sole signature authority on behalf of Owner.
- C. Owner may assign all or part of the Project Manager's rights, responsibilities and duties to a Construction Manager, or other Owner representative.

2.2 Contractor's Project Manager and Other Key Personnel

- A. Contractor has designated **Craig Orr** as its project manager to act as Contractor's Representative in all matters relating to the Contract Documents.
- B. Contractor has designated the following other Key Personnel for the Project:

<u>Name</u>	<u>Position</u>
<u>Miles Hamilton</u>	<u>Superintendent [See \$00 72 00 Para. 8.01.B]</u>
_____	_____
_____	_____

2.3 Engineer

- A. **Schaaf & Wheeler Consulting Civil Engineers** furnished the Plans and Specifications and shall have the rights assigned to Engineer in the Contract Documents.
- B. Engineer has designated **Charles D. Anderson, P.E.** as its project manager, to act as its representative for receiving and making communications authorized under the Contract Documents.

ARTICLE 1 – Liquidated Damages FOR DELAY IN COMPLETION OF WORK**3.1 Liquidated Damage Amounts**

- A. As liquidated damages for delay Contractor shall pay Owner five thousand dollars (\$5,000.00) for each day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.
- B. As liquidated damages for delay Contractor shall pay Owner one thousand five hundred dollars (\$1,500.00) for each say that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

3.2 Scope of Liquidated Damages

- A. Measures of liquidated damages shall apply cumulatively.
- B. Limitations and stipulations regarding liquidated damages are set forth in Document 00 7200 (General Conditions).

ARTICLE 1 – NOT USED**ARTICLE 1 – DOCUMENTS****5.01 Contract Documents**

- A. Contract documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Document 00 51 00	Notice of Intent to Award for Construction
Document 00 52 00	Agreement
Document 00 55 00	Notice to Proceed
Document 00 61 13.13	Construction Performance Bond
Document 00 61 13.16	Construction Labor and Material Payment Bond
Document 00 62 90	Escrow Agreement for Security Deposits
Document 00 63 25	Substitution Request Form
Document 00 65 30	Release of Claims
Document 00 65 36	Guaranty
Section 00 72 00	General Conditions
Section 00 73 01	Supplementary Conditions
Section 00 73 16	Supplementary Conditions – Insurance and Indemnification
Document 00 73 49	Labor Stabilization Agreement
Document 00 73 80	Apprenticeship Program
Document 00 91 13	Addenda
Specifications	Divisions 01 through 35
Section 01 14 00	Regulatory Requirements
Drawings listed in Drawing No. 301-657	
City/District Standard Specifications and Standard Details	

- B. There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified or supplemented as provided in Section 00 72 00 (General Conditions).

ARTICLE 1 – MISCELLANEOUS**6.1 Terms and Abbreviations**

- A. Terms and abbreviations used in this Agreement are defined in Section 00 72 00 (General Conditions) and Section 01 42 00 (References and Definitions) and elsewhere in the text of the Contract Documents and will have the meaning indicated therein.

6.2 Owner's Liability

- A. It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of Owner or acting as an employee, agent, or representative of Owner, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise.
- B. It is further understood and agreed that liability of Owner is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

6.3 Contractor Responsibilities

- A. Pursuant to Labor Code Section 1771(a), Contractor represents that it and all of its Subcontractors are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor covenants that any additional or substitute Subcontractors will be similarly registered and qualified.
- B. In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders final payment to Contractor, without further acknowledgment by the parties.
- C. Contractor is solely responsible for the payment of prevailing rates of per diem wages. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at the City's Public Works Department, may be obtained from the California Department of Industrial Relations website [<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>] and are deemed included in the Contract Documents, and shall be made available to any interested party on request. Pursuant to Labor Code Sections 1860 and 1861, in accordance with Labor Code Section 3700, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Labor Code Section 3700 that 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 Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

6.4 Location and Venue

- A. This Agreement and the Contract Documents shall be deemed to have been entered into in the County in which the Project is located, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for San Mateo County.

IN WITNESS WHEREOF the parties have executed this Agreement in duplicate the day and year first above written.

CONTRACTOR: Shimmick Construction Company

DocuSigned by:
 By: John White
 882CDA3EAD594A1
 (Signature)

Its: Executive Vice President
 Title (If Corporation: Chairman, President or Vice President)

OWNER: CITY OF FOSTER CITY

DocuSigned by:
 By: Catherine Mahanpour
 69C626F2CB4D44A
 (Signature)

Catherine Mahanpour

Mayor

DocuSigned by:
 Attest: Priscilla Schaus
 6131E59FA63B4AB
 City Clerk

Priscilla Schaus

APPROVED AS TO FORM AND LEGALITY

DATE: 8/17/2020 | 8:09:13 AM PDT

DocuSigned by:
 By: Jean Savaree
 EE111547A490448
 Attorney for Owner

Jean B. Savaree

RESOLUTION NO. 2020-76

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