

DOCUMENT 00520

**AGREEMENT**

THIS AGREEMENT, dated this \_\_\_\_\_, 2022, by and between the STOCKTON PORT DISTRICT, a California Port District with municipal powers organized pursuant to Harbors and Navigations Code Sections 6200 et seq. ("Port") and \_\_\_\_\_ whose place of business is located at \_\_\_\_\_ ("Contractor").

WHEREAS, Port, by its Board Resolution No. \_\_\_\_\_ adopted on \_\_\_\_\_ awarded to Contractor the following Contract:

**CONTRACT NUMBER 4-22-1**

**PORT OF STOCKTON  
BERTHS 7 & 8 FENDER REPLACEMENT AND STRUCTURAL IMPROVEMENTS  
at  
EAST COMPLEX  
STOCKTON, CA**

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

**Article 1. Work**

- 1.1 Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents. Unless otherwise specified, Contractor shall furnish all labor, materials, tools, equipment, and incidentals, and do all the work involved in executing the Work in a satisfactory and workmanlike manner.

**Article 2. Architect/Engineer and Authorized Representative(s)**

- 2.1 Dillon & Murphy Consulting Civil Engineers designed the Project and furnished the Plans and Specifications. Port shall have the rights assigned to Architect/Engineer in the Contract Documents.
- 2.2 Port has designated Juan G. Villanueva to act as Port's Authorized Representative. Port may change the individual(s) acting as Port's Authorized Representative(s), or delegate one or more specific functions to one or more specific Port's Representatives, including without limitation engineering, architectural, inspection and general administrative functions, at any time with notice and without liability to Contractor. Each Port's Representative is the beneficiary of all Contractor obligations to Port, including without limitation, all releases and indemnities.
- 2.3 All notices or demands to Port under the Contract Documents shall be to Port's Authorized Representative at: 2201 W. Washington Street, Stockton, CA 95203 - P.O. Box 2089, Stockton, CA, 95201.

### Article 3. Contract Time and Liquidated Damages

#### 3.1 Contract Time

Contractor shall commence Work on the date established in the Notice to Proceed. Port reserves the right to modify or alter the commencement date of the Work.

3.1.1 Contractor shall achieve Final Completion of the entire Work **within one hundred eighty (180) calendar days** from the date when the Contract Time commences to run as provided in Document 00700 (General Conditions).

#### 3.2 Liquidated Damages

Port and Contractor recognize that time is of the essence of this Agreement and that Port will suffer financial loss in the form of Contract administration expenses (such as Project management and consultant expenses), if all or any part of the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with the Contract Documents. Contractor and Port agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by Port because of a delay in completion of all or any part of the Work. Accordingly, Port and Contractor agree that as liquidated damages for delay Contractor shall pay Port:

3.2.1 Five Thousand Dollars (\$5,000.00) for each Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

These measures of liquidated damages shall apply cumulatively and except as provided below, shall be presumed to be the damages suffered by Port resulting from delay in completion of the Work.

Liquidated damages for delay shall only cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by Port as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from Port (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

### Article 4. Contract Sum

4.1 Port shall pay Contractor the Contract Sum for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid (Document 00400):

## **Article 5. Contractor's Representations**

In order to induce Port to enter into this Agreement, Contractor makes the following representations and warranties:

- 5.1 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- 5.2 Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, products specifications or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, which have been made available for Bidders or which may appear in the Drawings. Contractor accepts the determination set forth in these Documents and Document 00700 (General Conditions) of the limited extent of the information contained in such materials upon which Contractor may be entitled to rely. Contractor agrees that except for the information so identified, Contractor does not and shall not rely on any other information contained in such reports and drawings.
- 5.3 Contractor has obtained and has understood all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Section 5.2 of this Document 00520) that pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00700 (General Conditions); and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.
- 5.4 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 5.5 Contractor has given Port prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by Port is acceptable to Contractor.
- 5.6 Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.
- 5.7 Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Contractor.

5.8 Contractor has listed the following Subcontractors pursuant to the Subcontractor Listing Law, California Public Contracting Code §4100 *et seq.*:

Name of Subcontractor and Location of Mill or Shop	Description of Work: Reference To Bid Items	Subcontractor's License No.

**Article 6. Contract Documents**

6.1 Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

- Document 00510 Notice of Award
- Document 00520 Agreement
- Document 00550 Notice to Proceed
- Document 00610 Construction Performance Bond
- Document 00620 Construction Labor and Material Payment Bond
- Document 00630 Guaranty
- Document 00650 Agreement and Release of Any and All Claims
- Document 00660 Substitution Request Form
- Document 00680 Escrow Agreement (if applicable)
- Document 00700 General Conditions
- Document 00800 Supplementary General Conditions
- Document 00821 Insurance and Indemnification
- Document 00822 Apprenticeship Program
- Document 00910 Addenda
- Division 1 General Requirements
- Division II Requirements
- Specifications City of Stockton
- Drawings

6.2 There are no Contract Documents other than those listed in this Document 00520, Article 6. Document 00320 (Geotechnical Data and Existing Conditions) and Document 00335 (Hazardous Material Survey), and the information supplied or referenced therein, are not Contract Documents. The Contract Documents may only be amended, modified or supplemented as provided in Document 00700 (General Conditions).

**Article 7. Miscellaneous**

- 7.1 Terms and abbreviations used in this Agreement are defined in Document 00700 (General Conditions) and will have the meaning indicated therein.
- 7.2 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of Port or acting as an employee, agent, or representative of Port, liable on

this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the Port is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

- 7.3 Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*
- 7.4 The Contract Sum includes all allowances (if any).
- 7.5 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 Port tenders final payment to Contractor, without further acknowledgment by the parties.
- 7.6 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 deemed included in the Contract Documents and on file at Port's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code §1861, Contractor represents that it is 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 Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 7.7 Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- 7.8 This Agreement and the Contract Documents shall be deemed to have been entered into in the County of San Joaquin, 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 San Joaquin County Superior Court. Contractor accepts the terms of Document 00700, Article 12 as a claims procedure by agreement under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5.

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

**CONTRACTOR:** \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

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

By: \_\_\_\_\_  
(Signature)

Its: \_\_\_\_\_  
Title (If Corporation: Secretary,  
Assistant Secretary, Chief Financial  
Officer or Assistant Treasurer)

**PORT: PORT OF STOCKTON**

By: \_\_\_\_\_  
Port Director

END OF DOCUMENT