

ATTACHMENT C

Contract No. 01-2022-AC

AGREEMENT

THIS AGREEMENT made and entered into this ___ day of _____, 2022, between Sutter Butte Flood Control Agency, a joint exercise of powers agency established pursuant to the laws of the State of California, hereinafter referred to as SBFCA, and _____, hereinafter referred to as "Contractor."

WITNESSETH:

WHEREAS, the Governing Board of said SBFCA heretofore caused plans and specifications for the work hereinafter mentioned to be prepared, and did approve and adopt said plans and specifications; and

WHEREAS, the Governing Board of SBFCA did cause to be published for the time and in the manner required by law, a Notice inviting sealed bids for the performance of said work; and

WHEREAS, the Contractor, in response to such Notice, submitted to the Governing Board of said SBFCA within the time specified in said Notice, and in the manner provided for therein, a sealed bid for the performance of the work specified in said plans and specifications, which said bid and proposal, and the other bids and proposals submitted in response to said Notice, the Governing Board of SBFCA publicly opened and canvassed in the manner provided by law; and

WHEREAS, the Contractor was the lowest responsible bidder for the performance of said work, and said Governing Board of SBFCA, as a result of the canvass of said bids, did determine and declare Contractor to be the lowest responsible bidder for said work and award to a contract therefor.

NOW, THEREFORE, in consideration of the promises herein, it is mutually agreed between the parties hereto as follows:

1. CONTRACT DOCUMENTS

The following documents are by this reference incorporated in and made a part of this Agreement: the Agreement Form; the Plans; the Standard Forms; Supplemental Drawings; all addenda; the Notice to Contractors; the Proposal; all required bonds; and all supplemental Agreements covering alterations, amendments, or extensions to the Contract. The documents which describe the work to be performed are sometimes collectively referred to herein as the Plans and Specifications.

2. SCOPE OF WORK

The Contractor will furnish all labor, materials, services, transportation, appliances, and mechanical workmanship required for Contract No. 01-2022-AC, pipe gate and pipe fence fabrication and installation; installation of wire mesh fence; installation of concrete barriers; miscellaneous removals and disposal, as provided for and set forth in the Contract Documents.

All of the said work done under this Agreement shall be under the supervision of and performed to the satisfaction of the Engineer of SBFCA, or the Engineer's authorized agent or assistant, who shall have the right to reject any and all materials and supplies furnished by the Contractor which do not comply with the Contract Documents, together with the right to require the Contractor to replace any and all work furnished by the Contractor which shall not either in workmanship or material be in strict accordance with the Contract Documents.

3. DEFINITIONS

Unless otherwise specifically provided herein, all words and phrases defined in the General Specifications shall have the same meaning and intent in this Agreement.

4. COMPLETION

Said work shall be completed and ready for acceptance by April 22, 2022.

Time is of the essence in this Agreement and the Contract Documents. Failure of Contractor to complete the Work by the completion date and in the manner provided for by the Contract Documents shall subject Contractor to liquidated damages as provided in the Contract Documents.

5. PAYMENT

Attached hereto as Exhibit "A" and by reference made a part hereof, is the bid and proposal of Contractor. Said bid and proposal containing, as required by the terms of said specifications, the full and complete schedule of the different items with the lump sums or unit prices as so specified.

SBFCA agrees, in consideration of the work to be performed herein and subject to the terms and conditions hereof, to pay Contractor all sums of money which may become due to Contractor in accordance with the terms of the aforesaid bid and proposal, and this Agreement, to wit: _____

Said sum shall be paid in accordance with Section 8 of these Specifications. With respect to that portion of the above sum as is based upon the estimated quantities specified for the general scope of the work to be performed herein, actual payment will be based upon the quantities as measured upon completion. No payment made under this Agreement shall be construed to be an acceptance of defective work or improper materials.

6. RETENTION OF SUMS CHARGED AGAINST CONTRACTOR

When, under this provision of the Contract Documents, SBFCA shall charge any sum of money against Contractor, SBFCA shall deduct and retain the amount of such charge from the amount of the next succeeding progress payment, or from any other monies due or that may become due to Contractor from SBFCA. If, on completion or termination of the Contract, sums due Contractor are insufficient to pay SBFCA's charges against Contractor, SBFCA shall have the right to recover the balance from Contractor or its sureties.

7. PREVAILING WAGES

Pursuant to the provisions of Articles 1 and 2 of Chapter 1, Part 7, Division II, of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work contemplated under this Agreement shall be paid to all workers, laborers, and mechanics employed in the execution of said work by Contractor, or by any subcontractor doing or contracting to do any part of said work. The appropriate determination of the Director of the California Department of Industrial Relations is filed with, and available for inspection, at the office of the Clerk of the Governing Board.

This is a construction project in accordance with Section 1771.5 of the California Labor Code. This Contract is subject to: (1) Federal Labor Standards Provisions as required by the Davis-Bacon Act and other applicable Federal requirements, (2) Equal Employment Opportunity requirements pursuant to Executive Order 11246, and (3) Minority Business Enterprise (MBE) development pursuant to Executive Order 12432.

All labor on the project shall be paid no less than the minimum wage rates as established by the U.S. Secretary of Labor or as determined by the Director of the California Department of Industrial Relations. The higher of the two rates will be paid in accordance with the following acts and codes:

- (1) The Davis-Bacon Act, and
- (2) Section 1770, and following, of the California Labor Code.

A copy of the minimum wage rates, as established by the U.S. Secretary of Labor, and copies of the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations, are on file at the office of the Clerk of the Sutter County and Butte County Boards of Supervisors, at the addresses provided in the Notice to Contractors or on the internet at <http://www.dir.ca.gov/OPRL/PWD>.

Contractor shall post, at each job site, a copy of such prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations and by the U.S. Secretary of Labor.

8. INSURANCE

The Contractor shall carry and maintain at all required times such public liability, property damage and contractual liability, auto, Workers' Compensation, Builders' Risk Insurance, and such other insurance as required by the General Specifications and Special Provisions, including in the specified coverages, amounts and durations.

9. WORKERS' COMPENSATION CERTIFICATION

By execution of this Agreement, the Contractor certifies as follows: "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. INDEMNIFICATION

The Contractor shall defend, indemnify, and save harmless SBFCA and the Engineer (including their officers, agents, members, employees, affiliates, and representatives) as set forth in Section 6 of the General Specifications.

11. NO WAIVER OF REMEDIES

Neither the inspection by SBFCA or its agents, nor any order or certificate for payment of money, nor any payment for, nor acceptance of the whole or any part of the Work by SBFCA, nor any extensions of time, nor any position taken by SBFCA or its agents shall operate as a waiver of any provision of this Agreement or the Contract Documents or of any power herein reserved to SBFCA or any right to damages herein provided, nor shall any waiver of any breach of this Agreement or of the Contract Documents be held to be a waiver of any other or subsequent breach. All remedies provided in this Agreement and in the Contract Documents shall be taken and construed as cumulative; that is, in addition to each and every other remedy provided in this Agreement and/or the Contract Documents, and SBFCA shall have any and all equitable and legal remedies, which it would in any case have.

12. NON-DISCRIMINATION IN EMPLOYMENT

A. CONTRACTOR shall not discriminate against any employee, applicant for employment, or volunteer because of race, color, creed, religion, national origin, sex, age, or physical or mental handicap. CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, national origin, age, or physical or mental handicap. Such action shall include, but not be

limited to, the following: employment, promotion, demotion or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation; or selection for training, including apprenticeship. CONTRACTOR agrees to post, in conspicuous places, available to employees and applicants for employment, notices that CONTRACTOR shall provide an atmosphere free of sexual harassment for employees, clients, volunteers and the general public.

B. CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, national origin, ancestry, age, or physical or mental handicap.

13. CERTIFICATION OF NON-DEBARMENT

Reference Government Debarment and Suspension (49 CFR Part 29)

The Contractor certifies, by acceptance of this contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a Federally funded contract by any Federal department or agency. It further agrees by executing this contract that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts.

14. UNFAIR COMPETITION

The following provision is included in this Agreement pursuant to California Public Contract Code section 7103.5.

“In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the 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. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 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 subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.”

15. CHILD AND FAMILY SUPPORT OBLIGATIONS

It is the policy of the State of California, as stated in Public Contract Code Section 7110, that anyone who enters into a contract with a state agency shall recognize the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code. In compliance with Section 7110, the Contractor,

by his or her signature on this Agreement: 1) acknowledges that the Contractor is aware of the state policy identified herein; and 2) the Contractor, to the best of his or her knowledge, is fully complying with, and will continue to fully comply with, the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the State Employment Development Department.

16. ASSIGNMENT

Neither this Agreement nor any rights herein of Contractor shall be assigned without the written consent of SBFCA first obtained.

17. NO THIRD-PARTY BENEFICIARIES

This Agreement is entered into solely between SBFCA and Contractor. There are no third-party beneficiaries, intended, unintended, or otherwise to this Agreement.

18. MISCELLANEOUS PROVISIONS

This Agreement shall bind and inure to the heirs, devisees, assignees, and successors in interest of Contractor and to the successors in interest of SBFCA in the same manner as if such parties had been expressly named herein.

As used in this instrument the singular includes the plural, and the masculine includes the feminine and the neuter.

This Agreement may create a possessory interest subject to property taxation, and Contractor may be subject to the payment of property taxes levied on such interest.

IN WITNESS WHEREOF, SBFCA and Contractor have caused this Agreement to be executed as of the day and year first above written.

Sutter Butte Flood Control Agency
a Joint Powers Agency of the
State of California

By: _____
Executive Director

Forms Approved by SBFCA Counsel

Scott Shapiro
Agency Counsel

CONTRACTOR

By: _____
Authorized Representative

Print

Title