

DOCUMENT 00520

AGREEMENT

THIS AGREEMENT is made for the convenience of the parties this _____ day of _____, 2014 by and between NTK Construction, Inc., located at 501 Cesar Chavez Street, Suite #123, San Francisco, CA 94124 (“CONTRACTOR”), and the City and county of San Francisco, State of California (the “CITY”), acting through the General Manager (the “GENERAL MANAGER”) of the San Francisco Public Utilities Commission (the “SFPUC”), under and by virtue of the Charter and Administrative Code of the City and County of San Francisco.

WHEREAS, on the 18th day of November, 2013 the GENERAL MANAGER, in accordance with Section 6.60 of the San Francisco Administrative Code, declared an emergency to replace the hazardous gas monitoring system at Southeast Water Pollution Plant (SEP) which experienced a catastrophic failure of the atmospheric monitoring system at the Southeast Plant Influent Lift Station and Headworks; and

WHEREAS, the Declaration of Emergency was approved by the President of the San Francisco Public Utilities Commission on November 18, 2013, a copy of the Declaration is attached hereto; and

WHEREAS, the CITY retained the CONTRACTOR to perform the emergency work described above; and

WHEREAS, the San Francisco Public Utilities Commission issued a Notice to Proceed to CONTRACTOR on November XX, 2013 for

**Southeast Water Pollution Control Plant (SEP) Fixed Gas Monitoring Emergency Repairs
Contract No. WW-596(E) (Not to Exceed \$225,000)**

NOW, THEREFORE, CONTRACTOR, in consideration of the mutual covenants set forth in this AGREEMENT, promises and agrees to provide all services to construct the Project in accordance with the requirements of the Contract Documents, to perform the Work in good and workmanlike manner to the satisfaction of the GENERAL MANAGER, to prosecute the Work with diligence from day to day to Final Completion, to furnish all construction work, labor and materials to be used in the execution and completion of the Work in accordance with the Contract Documents, and to otherwise fulfill all of CONTRACTOR's obligations under the Contract Documents, as and when required under the Contract Documents to the satisfaction of the GENERAL MANAGER.

CONTRACTOR's execution of this AGREEMENT signifies its acceptance of the Contract Time and Contract Sum as being sufficient for completion of the Work, as well as acceptance of the other terms and conditions of the Contract Documents.

ARTICLE 1 – CONTRACT DOCUMENTS; CONTRACTOR'S GENERAL RESPONSIBILITIES

1.01 Contract Documents. CONTRACTOR shall Provide all Work according to the Contract Documents, which are incorporated into and made a part of this AGREEMENT by this reference, and all labor and materials used in providing the Work shall comply with the Contract Documents. The Contract Documents, which comprise the entire agreement between

CONTRACTOR and the CITY concerning the Provision of the Work, are defined in the General Conditions (Document 00700). Any undefined term used in this AGREEMENT shall be given the definition set forth in the General Conditions (Document 00700).

- 1.02 Contractor's General Responsibilities. CONTRACTOR shall provide a fully functional, complete and operational Project constructed in accordance with the Contract Documents, including but not limited to, all investigations, analyses, surveys, engineering, procurement, materials, labor, workmanship, construction and erection, commissioning, equipment, shipping, subcontractors, material suppliers, permits, insurance, bonds, fees, taxes, duties, documentation, spare parts, materials for initial operation, security, disposal, startup, testing, training, warranties, guarantees, and all incidentals.

ARTICLE 2 - CONTRACT TIME

- 2.01 Completion Dates. As set forth in Document 00802, the Work shall be Substantially Complete within 180 days, beginning with and including the official date of Notice to Proceed as established by the GENERAL MANAGER, and Finally Complete in accordance with Article 9 of the General Conditions (Document 00700) within 30 consecutive calendar days after the date the CITY issues a Notice of Substantial Completion.
- 2.02 Liquidated Damages. It is understood and agreed by and between CONTRACTOR and the CITY that time is of the essence in all matters relating to the Contract Documents and that the CITY will suffer financial loss if the Work is not completed within the above-stated Contract Times, plus any extensions thereof allowed in accordance with Article 7 of the General Conditions (Document 00700). The CITY and CONTRACTOR further understand and agree that the actual cost to CITY which would result from CONTRACTOR's failure to complete the Work within the Contract Time is extremely difficult, if not impossible, to determine. Accordingly, CONTRACTOR and the CITY agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay the CITY the amounts set forth in Document 00802 (Contract Time and Liquidated Damages) for each calendar day that expires after the above Contract Times and the Work remains incomplete.

ARTICLE 3 – CONTRACT SUM

- 3.01 Contract Sum.
 - A. CONTRACTOR and the CITY agree that, upon performance and fulfillment of the mutual covenants set forth herein, the CITY will, in the manner provided by law and as set forth in the Contract Documents, pay or cause to be paid to CONTRACTOR the following price(s), as indicated in the Schedule of Bid Prices (Document 00410):
 1. Lump sums for specified portions of the Work.
 2. The total of all Unit Price Items bid.
 3. The allowance(s) specified.
 4. Selected additive/deductive Alternate Bid Items.

Total awarded contract amount: _____

The price(s) and amount set forth above shall be adjusted during performance or upon final completion of the Work in accordance with the Contract Documents.

- B. CONTRACTOR understands and agrees that the CONTRACTOR shall be solely responsible for providing all resources that may be necessary to provide the Work, and that the CITY shall have no obligation whatsoever to finance any part of such costs except with respect to those amounts which become due under the terms and conditions of the Contract Documents.

- 3.02 Certification by Controller. This AGREEMENT is subject to the budget and fiscal provisions of the CITY's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of the CITY's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

ARTICLE 4 – LABOR REQUIREMENTS

- 4.01 Applicable Laws and Agreements. Compensation and working conditions for labor performed or services rendered under this AGREEMENT shall be in accordance with the Contract Documents, the San Francisco Charter, and applicable sections of the San Francisco Administrative Code, including section 6.22(E). In addition, this Project is subject to the requirements of the San Francisco Local Hiring Policy for Construction, San Francisco Administrative Code section 6.22(J). Refer to Document 00820 for further information.

- 4.02 Prevailing Wages. The latest Wage Rates for Private Employment on Public Contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, and, when federal funds are involved, the current General Wage Determination Decisions, as determined by the U.S. Secretary of Labor, as same may be changed during the term of this AGREEMENT, shall be included in this AGREEMENT and are hereby incorporated by this reference. CONTRACTOR agrees that any person performing labor in the provision of the Work shall be paid not less than the highest general prevailing rate of wages as so determined. If federal funds are involved, where the minimum rate of pay for any classification differs among State, City and Federal wage rate determinations, the highest of the three rates of pay shall prevail. CONTRACTOR shall include, in any contract or subcontract relating to the Work, a requirement that all persons performing labor under such contract or subcontract shall be paid not less than the highest prevailing rate of wages for the labor so performed. CONTRACTOR shall require any contractor to provide, and shall deliver to CITY every month during any construction period, certified payroll reports with respect to all persons performing labor in the Provision of the Work.

- A. Copies of the latest prevailing wage rates are on file at the San Francisco Public Utilities Commission, City and County of San Francisco, Contract Administration Bureau, 525 Golden Gate Avenue, 8th Floor, San Francisco, CA 94102.

- 4.03 Penalties. CONTRACTOR shall forfeit to the CITY back wages due plus fifty dollars (\$50.00) for:

- A. Each laborer, workman, or mechanic employed in the provision of the Work, for each calendar day or portion thereof during which such laborer, workman, or mechanic is not paid the highest general prevailing rate of wage for the work performed; or
- B. Each laborer, mechanic or artisan employed in the provision of the Work, for each

calendar day or portion thereof during which such laborer, mechanic or artisan is compelled or permitted to work for a longer period than five days (Monday-Friday) per calendar week of eight hours each, and not compensated in accordance with the prevailing overtime standard and rate.

ARTICLE 5 – NOTICES TO PARTIES

5.01 Unless otherwise indicated in the Contract Documents, all written communications sent by the Parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To CITY: Contact the designated City Representative

To CONTRACTOR: NTK Construction, Inc.
(Contractor’s name)

(Contractor’s mailing address)

(Contractor’s e-mail address)

(Contractor’s fax no.)

5.02 From time to time, the parties may designate new address information by notice in writing, delivered to the other Party.

5.03 The delivery to CONTRACTOR at the legal address listed above, as it may be amended upon written notice, or the depositing in any post office or post office box regularly maintained by the United States Postal Service in a postage paid wrapper directed to CONTRACTOR at such address, of any drawing, notice, letter or other communication shall be deemed legal and sufficient service thereof upon CONTRACTOR.

ARTICLE 6 - PROJECT-SPECIFIC PROPRIETARY OR CONFIDENTIAL INFORMATION

6.01 When CONTRACTOR received the Bid Documents for this Project, it executed a Confidentiality Agreement in which it agreed to maintain the confidentiality of the plans, specifications and related documents for the Project. That Confidentiality Agreement is attached to this AGREEMENT as Attachment A and is hereby incorporated into the Contract Documents.

ARTICLE 7 – TERMINATION AND SURVIVAL

7.01 This AGREEMENT and the other Contract Documents shall terminate when all obligations required to be performed by CONTRACTOR and the CITY have been fulfilled, unless sooner terminated as set forth in Article 14 of the General Conditions (Document 00700).

7.02 The provisions of the Contract Documents which by their nature survive termination of the Contract, including without limitation all warranties, indemnities, payment obligations, and the

City's right to audit Contractor's books and records, shall remain in full force and effect after termination of the Contract.

[Emergency Contracts Only]

Executed on _____, 201_____

Telephone Number

S.F. Business Tax Registration Certificate Number

NTK Construction, Inc.
Name of Firm or Corporation

(signed) Bidder or Authorized Representative

Position in Firm or Corporation

Address of Firm or Corporation Zip Code

Contractor's California License No.

License Expiration Date

IN WITNESS WHEREOF, the CONTRACTOR and the CITY have hereunto set their hands and seals, and have executed this AGREEMENT in duplicate, the day and year first above written.

CONTRACTOR:

By my signature hereunder, as CONTRACTOR, I certify that I have read and understand the section captioned MacBride Principles – Northern Ireland including in Document 00822, the CITY's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

I further certify that I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for worker's 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.

NTK Construction, Inc.
Principal
By _____

Title

CITY
Awarded:

Approved as to form:
DENNIS J. HERRERA
City Attorney

By: _____
General Manager, San Francisco Public Utilities
Commission

By: _____
Deputy City Attorney

END OF DOCUMENT

DRAFT