

CONTRACT

CITY OF MANHATTAN BEACH CONTRACT FOR UNDERGROUNDING UTILITY ASSESSMENT DISTRICT 4

THIS CONTRACT ("Contract") is made and entered this 7th day of January, 2020 ("Effective Date"), by and between the CITY OF MANHATTAN BEACH, a California municipal Corporation ("City") and Asplundh Construction, a New York State limited liability company ("Contractor"). The Contractor's California State Contractor's license number is 1028802.

In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Contract Documents. The Contract Documents consist of this Contract, the Notice Inviting Bids, Instructions to Bidders, Bid (including documentation accompanying the Bid and any post-Bid documentation submitted before the Notice of Award), the Bonds, permits from regulatory agencies with jurisdiction, General Provisions, Special Provisions, Plans, Standard Plans, Standard Specifications, Reference Specifications, Addenda, Change Orders, and Supplemental Agreements. The Contract Documents are attached hereto and incorporated herein by reference.

2. Scope of Services. The Contractor shall perform and provide all materials, tools, equipment, labor, and services necessary to complete the Work in a good and workmanlike manner for the project identified as Undergrounding Utility Assessment District 4 ("Project"), as described in the Contract Documents.

3. Compensation.

3.1 Contract Price and Basis for Payment. In consideration for the Contractor's full, complete, and timely performance of the Work required by the Contract Documents, the City shall pay the Contractor for the actual quantity of Work required under the Bid Items awarded by the City performed in accordance with the lump sum prices and unit prices for Bid Items, set forth in the Bidder's Proposal submitted with the Bid. The sum of the unit prices and lump sum prices for the Bid Items, awarded by the City is \$3,998,090 ("Contract Price"). It is understood and agreed that the quantities set forth in the Bidder's Proposal for which unit prices are fixed are estimates only and that the City will pay and the Contractor will accept, as full payment for these items of work, the unit prices set forth in the Bidder's Proposal multiplied by the actual number of units performed, constructed, or completed as directed by the Engineer.

3.2 Payment Procedures. Based upon applications for payment submitted by the Contractor to the City, the City shall make payments to the Contractor in accordance with Section 9 of the Standard Specifications, as modified by Section 9 of the General Provisions.

4. Contract Time.

4.1 Notice to Proceed #1. The City shall issue the "Notice to Proceed #1 (Submittals). The time for completion to provide submittals to the City for critical path items and materials is 10 total working days from the date specified in Notice to Proceed #1.

4.2 Notice to Proceed #2 (Materials Order and Deliver). The time for completion to order the critical path items materials needed to complete the work is 10 working days from the

date specified in Notice to Proceed #2; and an additional 40 working days is provided to receive all materials needed to commence the work.

The Notice to Proceed #2 shall further specify that the Contractor must complete the preconstruction requirements including, but are not limited to, the following:

- ☐ Submitting and obtaining approval of Traffic Control Plans
- ☐ Submitting and obtaining approval of the Stormwater Pollution Prevention Plan (SWPPP)/Water Pollution Control Plan (WPCP)
- ☐ Submitting and obtaining approval of critical required submittals
- ☐ Installation of the approved Project Identification Signs
- ☐ Obtaining an approved no fee Right-of-Way Permit
- ☐ Notifying all agencies, utilities, residents, etc., as outlined in the Contract Documents

4.3 Notice to Proceed #3 (Start of Construction). After all preconstruction requirements are met and materials have been ordered in accordance with the Notice to Proceed #1 and Notice to Proceed #2, the City shall issue the "Notice to Proceed #3," at which time the Contractor shall diligently prosecute the Work, including corrective items of Work, day to day thereafter, within the remaining Contract Time. The time for completion of the total contracted work is 160 days from the date specified in Notice to Proceed #3.

5. Liquidated Damages for Delay and Control of Work.

5.1 Liquidated Damages. The Contractor and the City have agreed to liquidate damages pursuant to Section 6-9 of the General Provisions.

6. Early Completion.

6.1 City Not Liable for Contractor Failure to Achieve Early Completion. While the Contractor may schedule completion of all of the Work, or portions thereof, earlier than the Contract Time, the City is exempt from liability for and the Contractor will not be entitled to an adjustment of the Contract Sum or to any additional costs, damages, including, but not limited to, claims for extended general conditions costs, home office overhead, jobsite overhead, and management or administrative costs, or compensation whatsoever, for use of float time or for the Contractor's inability to complete the Work earlier than the Contract Time for any reason whatsoever.

7. Work after Stop Work Notice. Any work completed by the Contractor after the issuance of a Stop Work Notice by the City shall be rejected and/or removed and replaced as specified in the applicable Section of the Special Provisions.

8. Antitrust Claims. In entering into this Contract, the Contractor offers and agrees to assign to the City 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 (Business and Professions Code Section 16700 *et seq.*) arising from purchases of goods, services, or materials pursuant to

the Contract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor without further acknowledgment by the parties.

9. Prevailing Wages. The City and the Contractor acknowledge that the Project is a public work to which prevailing wages apply.

10. Workers' Compensation. Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of Labor Code Section 1861, by signing this Contract, 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.”

11. Titles. The titles used in this Contract are for convenience only and shall in no way define, limit or describe the scope or intent of this Contract or any part of it.

12. Authority. Any person executing this Contract on behalf of the Contractor warrants and represents that he or she has the authority to execute this Contract on behalf of the Contractor and has the authority to bind the Contractor to the performance of its obligations hereunder.

13. Entire Agreement. This Contract, including the Contract Documents and any other documents incorporated herein by specific reference, represents the entire and integrated Contract between the City and the Contractor. This Contract supersedes all prior oral or written negotiations, representations or agreements. This Contract may not be modified or amended, nor any provision or breach waived, except in a writing signed by both parties that expressly refers to this Contract.

14. Counterparts. This Contract may be executed in counterpart originals, duplicate originals, or both, each of which is deemed to be an original for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

CITY OF MANHATTAN BEACH

By: _____
City Manager

ATTEST:

APPROVED AS TO FORM:

By: _____
City Clerk

By: _____
City Attorney

Dated: _____

("CONTRACTOR")

By: _____
NAME TITLE

By: _____
NAME TITLE

PROOF OF AUTHORITY TO BIND
CONTRACTING PARTY REQUIRED