

DOCUMENT 00510

NOTICE OF AWARD

April 17, 2012.

To: Auburn Constructors, INC.
(Bidder)

Address: 730 West Stadium Lane
Sacramento CA, 95834

Project: Main Plant Rehabilitation Project

Owner Project Number: 224

Contract for Construction of: Main Plant Rehabilitation Project

You are hereby notified that your Bid dated April 4, 2012, for the above Contract has been considered. You are the apparent successful Bidder and are being considered for the award of a contract for the above-named Project.

The Bid Price of your contract is \$ Eight million, nine hundred, twenty-two thousand and three hundred (\$8,922,300) Dollars

Two copies of the Agreement Form accompany this Notice of Award.

Unless otherwise indicated, you must respond within 14 days of the date of this Notice of Award; that is, by May 1, 2012. We plan to award this Project at the Owner's meeting April 17, 2012.

1. You must deliver to the Owner two fully executed Agreement forms.
2. You must deliver with the executed Agreement such Bonds and certificates of insurance as specified in paragraphs 2.01 and 5.03 of the General Conditions.
3. To comply with the insurance requirements to endorse the Owner, the Engineer, and the Owner's Consultant as additional insureds, the following statement must appear on each of the insurance certificates:

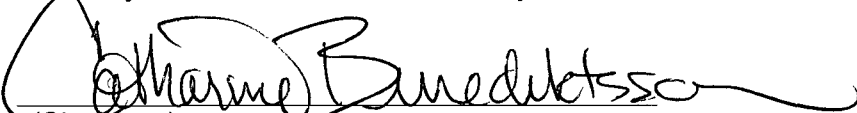
"The Owner, its officials, employees, agents, Carollo Engineers, Engineer and Consultant are named as additional insureds as regards Owner Project Number 224."

4. You must also deliver with the executed Agreement, copies of all current Business Licenses for you as General Contractor and for all Subcontractors working on the Project.

Failure to comply with these conditions within the time specified will entitle the Owner to consider your Bid abandoned, to annul this Notice of Award, and to declare your Bid security forfeited.

After award of contract by the Owner's Board, the Owner will return to you one fully signed Agreement Form.

Sanitary District No. 5 of Marin County


(Signature)

Catharine Benediktsson

Board President

April 17, 2012

(Date)

Sanitary District No. 5 of Marin County
2011 Paradise Drive
Tiburon, California 94920

END OF DOCUMENT

DOCUMENT 00520

AGREEMENT FORM

THIS AGREEMENT is by and between **Sanitary District No. 5 of Marin County** (hereinafter called Owner) and **Auburn Constructors, Inc.** (hereinafter called Contractor).

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

ARTICLE 1 - THE PROJECT

1.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: The construction of Main Plant Rehabilitation Project, including, but not limited to, replacement of mechanical, electrical and control equipment, concrete repair and demolition, repair and reconstruction of existing improvements affected by the Work, and incidentals for complete and usable facility. Project includes all architectural, civil, mechanical, structural, electrical and instrumentation elements for a complete installation.

ARTICLE 2 - WORK

2.01 Contractor shall complete all Work as specified or indicated in the Contract Documents for completion of the Project.

ARTICLE 3 - ENGINEER

3.01 The Engineer, Carollo Engineers, Inc. will act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents, unless otherwise modified in the Supplementary Conditions.

ARTICLE 4 - CONTRACT TIMES

4.01 Time of the Essence:

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Days to Achieve Substantial Completion and Final Payment:

- B. The Work shall be substantially completed by Contractor within the following number of calendar days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and finally completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within the following number of calendar days after the date when the Contract Times commence to run.

	Substantial Completion	Final Completion
Office renovation/restroom modification	456 days	486 days
Final completion of all Work	517 days	548 days

4.03 Liquidated Damages:

- A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize that it will be impracticable to determine actual damages that Owner will sustain in the event of or by reason of the delay. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) or as damages for any other breach than delay Contractor shall pay Owner **\$2,000** for each day that expires after the specified time in paragraph 4.02 for substantial completion until the Work is substantially complete. After substantial completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the contract time or any proper extension thereof granted by Owner, Contractor shall pay Owner **\$1,500** for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment. It is further agreed that the amount stipulated for liquidated damages per day of delay is a reasonable estimate of the damages that would be sustained by Owner, and Contractor agrees to pay such liquidated damages as herein provided. In case the liquidated damages are not paid, Contractor agrees that Owner may deduct the amount thereof from any money due or that may become due to Contractor by progress payments or otherwise under the Agreement, or if said amount is not sufficient, recover the total amount.

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 5.01.A below:

- A. For all Work other than Unit Price Work, a Lump Sum of:

**\$ Eight million, Nine hundred Twenty-Two thousand,
Three hundred**

(words)

\$ 8,922,300

(figure)

All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.02 of the General Conditions.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments:

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage:

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or before the 1st day of each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, in accordance with paragraph 14.02 of the General Conditions:
 - a. 90% of Work completed (with the balance being retainage).
 - b. 90% of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95% of the Work completed, less such amounts as Engineer shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 125% of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment:

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price as recommended by Engineer in accordance with paragraph 14.07 of the General Conditions.

ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the legal rate unless otherwise specified according to California law.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in paragraph 4.02 of the Supplementary Conditions as containing reliable "technical data" and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in paragraph 4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

8.02 Independent Contractor:

- A. In performing Services under this Agreement, Contractor shall operate as and have the status of an independent contractor and shall not act as or be an agent or employee of Owner.
- B. Contractor represents that it is fully experienced, properly qualified, registered, licensed (as required by law), equipped, organized, and financed to perform the Work under this Contract.
- C. All of Contractor's activities will be at its own risk, and Contractor shall not be entitled to Workers Compensation or similar benefits or other insurance protection provided by Owner.
- D. Contractor shall maintain complete control over its employees and all of its suppliers and subcontractors of any tier. Nothing contained in this contract or any lower-tier purchase order or subcontract awarded by Contractor shall create any contractual relationship between any supplier or subcontractor of any tier and Owner.
- E. As an independent contractor, Contractor will be solely responsible for determining the means and methods for performing the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents:

- A. The Contract Documents consist of the following:
 - 1. This Agreement, Document 00520;
 - 2. Construction Performance Bond, Document 00612;
 - 3. Construction Payment Bond, Document 00614;
 - 4. Guaranty Bond, Document 00618;
 - 5. General Conditions, Document 00700;
 - 6. Supplementary Conditions, Document 00800;
 - 7. Specifications;
 - 8. Drawings;
 - 9. Addenda (numbers 1, inclusive);
 - 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid Form, Document 00410;
 - b. Escrow Bid Documents, Document 00823;
 - 11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed, Document 00550;
 - b. Work Change Directives;
 - c. Change Order(s).
- B. There are no Contract Documents other than those listed above in this Article 9.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 Terms:

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 Assignment of Contract:

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and

moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns:

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability:

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 Procurement Contract(s):

- A. None.

10.06 Contractor's Certifications

- B. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.06:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, (c) to deprive Owner of the benefits of free and open competition, or (d) omission to state a material fact;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.07 Entire Agreement

- A. This Agreement embodies the entire agreement between Owner and Contractor and supersedes all over writings. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding not set forth herein.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____, 2012 (which is the Effective Date of the Agreement).

Owner:

Contractor:

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.) _____

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

2001 Paradise Drive
Tiburon, CA 94920

License No. _____

(Where applicable)

Agent for service of process: _____

END OF DOCUMENT