

AGREEMENT

THIS AGREEMENT is by and between The City of Rehoboth Beach ("Owner") and Manson Construction Co. ("Contractor").

Owner and Contractor, hereby agree as follows:

ARTICLE 1 - WORK

- 1.01. Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:
- A. Construction of 6,000 linear feet of ocean outfall pipe in Rehoboth Beach, Delaware. A minimum of 3,000 linear feet of 24 inch pipeline is proposed for installation via horizontal directional drilling including shore landing, and the remaining 3,000 linear feet via marine open-cut trench to an outfall diffuser assembly. The proposed staging area is near the north end of the City at an area known as Deauville Beach.
 - B. Pipe material includes either high density polyethylene (HDPE) or fusible polyvinyl chloride (FPVC) installed by horizontal directional drilling at a depth of 30 to 40 feet below the sea floor, and trench excavation at an average of ten feet below the sea floor. The pipeline will be terminated at a diffuser assembly placed on piles, and anchored by concrete pillow blocks. Off-shore excavation will be accomplished by the use of clam shell bucket or hydraulic cutter dredging and marine barges.
- 1.02. Prime Contractor shall perform a minimum of 35% of the Work, excluding material and equipment purchases, with its own labor force.

ARTICLE 2 - THE PROJECT

- 2.01. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: City of Rehoboth Beach Ocean Outfall

ARTICLE 3 - ENGINEER

- 3.01. The Project has been designed by GHD Inc. (Engineer), which is to 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.

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. Dates for Substantial Completion and Final Payment
- A. The Work shall be substantially completed on or before April 1, 2018, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before April 30, 2018.

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4.03. Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$3,500 for each day that expires after the time specified 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 above for completion and readiness for final payment until the Work is completed and ready for final payment.

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 amounts determined pursuant to the following:
- A. For all Work other than Unit Price Work, at the amount equal to the sum shown on the Bid Form and attached hereto as an exhibit.
- B. For all Unit Price Work, an amount equal to the sum of the established unit price shown on the Bid Form for each separately identified item of Unit Price Work times the actual quantity of that item:

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 about the 20th day of each month during performance of the Work as provided in the following subparagraph. All such payments will be measured by the Schedule of Values established as provided 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, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

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- a. 95% of the Work completed (with the balance being retained) and 95% of the value of undamaged materials and equipment not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to Owner in accordance with Paragraph 14.02 of the General Conditions and Supplementary Conditions, less in each case the aggregate of payments previously made, and less such amounts which may be lawfully deducted.
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100% 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 200% 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 in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

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 rate of 3% per annum.

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 relating to existing surface or subsurface structures at the Site (except Underground Facilities) , if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data", and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-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, or performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by

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Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; (3 Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in the previous paragraph , 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 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.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01. Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 10, inclusive).
 - 2. Performance Bond (pages 1 to 3, inclusive).
 - 3. Payment Bond (pages 1 to 3, inclusive).
 - 4. General Conditions (pages 1 to 63, inclusive).
 - 5. Supplementary Conditions (pages 1 to 20, inclusive).
 - 6. Specifications as listed in the table of contents of the Project Manual.
 - 7. Drawings consisting of 24 sheets with each sheet bearing the following general title:
City of Rehoboth Beach Ocean Outfall.
 - 8. Addenda (Nos. 1 to 4, inclusive).
 - 9. Exhibits to this Agreement (enumerated as follows):
 - a. Bid Form (pages 1 to 10, inclusive) and the Bid Form Attachments.
 - b. Exhibit D to the Agreement, Requirements and Contract Provisions for the Project Financed Through the Delaware Water Pollution Control Revolving Loan Fund, Department of Natural Resources and Environmental Control, State of Delaware
 - c. Exhibit E to the Agreement, State and Federal Wage Determinations
 - d. Notice of Award

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10. 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.
 - b. Field Orders.
 - c. Work Change Directives.
 - d. Change Orders.
- B. There are no Contract Documents other than those listed herein.
- 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 have the meanings stated in the General Conditions and the Supplementary Conditions unless specifically identified otherwise herein.

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. Contractor's Certifications

- A. 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 10.05:

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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, or (c) to deprive Owner of the benefits of free and open competition;
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.

(continued)

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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 31 August, 2017, (which is the Effective Date of the Agreement).

Owner City of Rehoboth Beach

Contractor Manson Construction Co.

By [Signature]

By [Signature]

Title: City Manager

Title: Eric V. Haug, President

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

Attest [Signature]

Attest [Signature]

Title Executive Assistant

Title John A. Holmes, EVP and Secretary

Address for giving notices: Address for giving notices:

5209 E. Marginal Way S.

Seattle, WA 98134

License No. 2013603314
(where applicable)

END OF SECTION

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CERTIFIED COPY OF CORPORATE RESOLUTION

I, John A. Holmes, Secretary of Manson Construction Co., a Washington corporation, do hereby certify that the following is a true and correct copy of a resolution that was unanimously adopted at a Meeting of the Board of Directors of Manson Construction Co., held at the office of the corporation in Seattle, Washington, on March 9, 2017, at which meeting a quorum was present at all times; and further certify that said resolution has not been repealed or amended and is still in full force and effect.

"RESOLVED, that Frederick P. Paup, Chairman of the Board and Executive Vice President; Eric V. Haug, President; James G. McNally, Chief Operating Officer and Executive Vice President; John A. Holmes, Executive Vice President and Secretary; Gary L. Hendricks, Treasurer and Chief Financial Officer; John A. Roques, Senior Vice President; Robert D. Reller, Vice President; Ryan M. King, Vice President; Henry R. Schorr Jr., Vice President; Mark F. Openshaw, Vice President; Daniel L. Hussin, Vice President; Shawn L. Hillis, Vice President; Michael F. Warwick, Vice President; David M. Howard, Vice President; George H. Atkinson, Vice President; Mark O. Stuessy, Assistant Secretary; Terry M. Hammerwold, Assistant Secretary; Robert A. LeBlanc, Assistant Secretary; John D. Heckel, Assistant Secretary; Larry J. DaVico, Assistant Secretary; Kyle B. Howell, Assistant Secretary; and Nancylee A. Oczkowski, Assistant Secretary be authorized on behalf of Manson Construction Co. to sign Bids and Bid Bonds and to execute Contracts, Performance and Payment Bonds, and all other documents necessary for the execution and progress of contracts."

IN WITNESS WHEREOF, I have signed this instrument and caused the corporate seal of said corporation to be affixed this 9th day of March 2017.

CORPORATE SEAL

John A. Holmes
Executive Vice President and Secretary
MANSON CONSTRUCTION CO.

STATE OF WASHINGTON)
COUNTY OF KING)

Subscribed and sworn to before me this 9th day of March 2017.

Notary Public in and for the State of
Washington, residing in Lake Stevens.



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