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8 Attorneys for Plaintiff
9 SHIMMICK CONSTRUCTION COMPANY, INC.

10 **Per local Rule, This case is assigned to
11 Judge Devine, John P, for all purposes.**

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF CONTRA COSTA**

14 SHIMMICK CONSTRUCTION
15 COMPANY, INC., a California
16 corporation,
17
18 Plaintiff,
19
20 v.
21 CITY OF ANTIOCH, a public entity; and
22 DOES 1 through 20, inclusive,
23
24 Defendants.

Case No. C25-01690

Unlimited Jurisdiction

**SHIMMICK CONSTRUCTION COMPANY,
INC.’S COMPLAINT FOR:**

- 1. **BREACH OF CONTRACT;**
- 2. **BREACH OF IMPLIED WARRANTY OF CORRECTNESS OF PLANS AND SPECIFICATIONS; and**
- 3. **DECLARATORY RELIEF**

SUMMONS ISSUED

25 Plaintiff SHIMMICK CONSTRUCTION COMPANY, INC., a California corporation
26 (“Shimmick”), on behalf of itself and no other party, submits this Complaint against Defendant
27 CITY OF ANTIOCH (the “City”), and DOES 1 through 20, inclusive, and alleges as follows:

PARTIES

28 1. Shimmick is now, and at all times mentioned herein was, a corporation organized
and existing under the laws of the State of California, doing business in the County of Contra Costa,
State of California at the time of the events herein sued upon. Shimmick was and is at all times
relevant to this matter was, a contractor licensed by the Contractors State License Board contractor
license number 594575.

1 copy of the Contract is attached hereto as **Exhibit “A,”** excluding the attachments, which are too
2 voluminous for convenient attachment to this complaint, but are incorporated by reference.

3 8. The work of improvement which is the subject of the Contract is a brackish water
4 desalination system. Shimmick is informed and believes that City Defendants are, and at all times
5 mentioned herein were, the owner of the construction project, which generally consists of the
6 construction of a new river intake station to replace the existing San Joaquin river intake pump
7 station; construction of a new 3,000 foot pipeline connecting the City Defendants’ existing raw
8 water pipeline to the City Defendants’ Water Treatment Plant; construction of a new 6 mgd
9 desalination facility (reverse osmosis, post-treatment systems, chemical fee and storage facilities),
10 brine conveyance facility and other associated non-process facilities; and approximately 4.3 miles
11 of a new brine disposal pipeline to convey brine discharge (the “Project”). In exchange for
12 Shimmick’s services as general contractor for the Project, the City Defendants agreed to pay
13 Shimmick the original contract amount of \$86,689,000, subject to certain provisions and
14 adjustments as specified in the Contract.

15 9. Shimmick attempted to perform certain work in accordance with the Contract
16 documents that were prepared and provided by the City Defendants to Shimmick. During
17 construction, Shimmick was directed by the City Defendants and/or its representatives to perform
18 extra work. In addition, due to factors unrelated to Shimmick’s work, and at no fault of Shimmick,
19 Shimmick incurred additional costs and damages due to, *inter alia*, the City Defendants directing
20 Shimmick to perform extra work, delays to the Project schedule caused by the City Defendants
21 and/or its representatives, differing site conditions, material price escalation, and inefficiencies on
22 the Project caused by the City Defendants and/or its representatives.

23 10. During the Project, Shimmick submitted various requests for additional
24 compensation, which proceeded through the Contract’s claims and dispute resolution process
25 relating to:

26 A. Claim No. 1 – RPS Differing Site Condition Request for Equitable Adjustment,
27 Notice of Claim transmitted to the City on or about May 9, 2023;

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1 B. Claim No. 2, LN0108 – Pervasive Changes and Cumulative Impacts, Notice of
2 Claim transmitted to the City on June 1, 2023, and January 15, 2024;

3 C. Claim No. 3 – Lone Tree RAW Material Escalation, Notice of Claim transmitted to
4 the City on February 6, 2023;

5 D. Claim No. 4 – Temporary Power for Construction Trailers, Notice of Claim
6 transmitted to the City on or about February 19, 2024;

7 E. Claim No. 5 – Underdrain Construction Grout Intrusion, Notice of Claim
8 transmitted to the City on or about February 19, 2024;

9 F. Claim No. 6 – Electrical Equipment Delays and Time Related Overhead, Notice of
10 Claim transmitted to the City on or about February 19, 2024;

11 G. Claim No. 7 – Switchgear Material Escalations, Notice of Claim transmitted to the
12 City on or about February 19, 2024; and

13 H. Claim No. 8 – Material Escalations, Notice of Claim transmitted to the City on or
14 about February 19, 2024.

15 (Claim Nos. 1-8 are collectively referred to as “Claims.”)

16 11. To date, the City Defendants have failed and refused to pay Shimmick for the
17 Shimmick’s additional costs arising from the Claims. Shimmick currently has additional claims
18 that are proceeding through the Contract’s claims process and Shimmick intends to amend its
19 complaint to seek payment for these additional claims at a later date if these Claims are not
20 satisfactorily resolved.

21 12. Shimmick substantially complied with all Contract claim requirements, including
22 those that were a pre-requisite to filing a lawsuit relating to the Claims, and has performed all of
23 the conditions of its Contract with the City Defendants pertaining to the Claims, except for those
24 excused by the prior material breaches of Contract by the City Defendants and/or compliance with
25 the Contract claims provisions was waived by the actions of the City Defendants.

26 13. Before filing a lawsuit, Shimmick submitted a Government Code claim to the City
27 Defendants pursuant to California Government Code sections 910, *et seq.* (“Government Code
28 Claim”) notifying the City Defendants of its intent to file a lawsuit and providing general details of

1 the underlying claim against it. Under the law, the City Defendants had 45 days to respond to the
2 Government Code Claim. Shimmick timely submitted a Government Code Claim on or about
3 October 30, 2024. That Government Code Claim was denied by the City Defendants by operation
4 of law.

5 **FIRST CAUSE OF ACTION**

6 **(Breach of Contract Against the City Defendants, and DOES 11-20, Inclusive)**

7 14. Shimmick incorporates by reference as though set forth in full herein all allegations
8 contained in the previous paragraphs of this Complaint.

9 15. The Contract between Shimmick and the City Defendants contains certain express
10 and implied terms, covenants and conditions, and provides among other things: a duty of good faith
11 and fair dealing; neither party to the Contract would act in any manner or in any way hinder the
12 performance of the other; that the City Defendants would properly conduct, coordinate and
13 supervise its work under the Contract; that the City Defendants would timely provide the necessary
14 items within their control; and that the City Defendants would diligently prosecute its obligations
15 under the Contract including making payments to Shimmick.

16 16. Shimmick has performed all conditions, covenants, obligations and promises
17 required on its part to be performed, or the same have been waived, excused or prevented by the
18 City Defendants.

19 17. Within the last four years, the City Defendants have breached the Contract as set
20 forth below:

21 a. The City Defendants breached the implied covenants of good faith and fair dealing
22 contained in the Contract;

23 b. the City Defendants failed, neglected and refused to properly and timely pay for the
24 work performed by Shimmick under the Contract;

25 c. the City Defendants provided defective and/or incomplete plans and specifications;

26 d. the City Defendants failed to provide time extensions and compensable time
27 extensions even though the City Defendants prevented work; delayed and interfered with work and
28 made numerous design changes to the Project;

1 e. the City Defendants demanded extra, changed and additional work and refused and
2 failed to pay therefor; and

3 f. the City Defendants failed to timely and properly coordinate the Contract work with
4 third party utilities and other third parties necessary for the construction of the Project.

5 18. As a proximate result of the City Defendants' breaches, Shimmick has been
6 damaged in an amount in excess of \$30,000,000 and is entitled to interest prescribed by law for late
7 payments by the City Defendants and nonpayment by the City Defendants. Shimmick is also
8 entitled to interest costs from the City Defendants. Shimmick will establish at trial, according to
9 proof, the precise amount of such damages.

10 19. Shimmick alleges on information and belief that Does 11 through 20, inclusive, were
11 agents, employees, representatives, subcontractors, materials suppliers, affiliated, successor or
12 predecessor entities of the City Defendants and were in some manner responsible for and/or
13 contributed to the City Defendants' acts or omissions giving rise to the City Defendants' breach of
14 the Contract.

15 **WHEREFORE**, plaintiff Shimmick prays for judgment as set forth below.

16 **SECOND CAUSE OF ACTION**

17 **(Breach of Implied Warranty of Correctness of Plans and Specifications against the**
18 **City Defendants and DOES 1-20, inclusive)**

19 20. In or about December 2020, the City Defendants provided Shimmick with plans and
20 specifications for the Project.

21 21. Pursuant to the Contract, Shimmick was required to follow said plans and
22 specifications in constructing the Project.

23 22. During the Project, Shimmick reasonably relied on the plans and specifications for
24 its work on the Project.

25 23. However, the plans and specifications provided by the City Defendants were
26 defective, incomplete and not correct.

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1 B. Due to the City Defendants' actions and/or inactions, including delays caused by
2 the City Defendants to the Project's completion date, the Contract's claims process was not strictly
3 followed and Shimmick's further compliance with these provisions has been excused;

4 C. The City Defendants' failure to timely review and consider Shimmick's Claims,
5 including the City Defendants' failure to comply with the Contract claims process results in a
6 waiver of the Contract's claim requirements;

7 D. The City Defendants have unreasonably impeded and/or prevented Shimmick from
8 fully complying with and completing the contractual claims process thereby frustrating its purpose
9 and waiving strict compliance;

10 E. The City Defendants' Contract improperly altered the requirements of Public
11 Contract Code section 9204 and Government Code Claim requirements; and

12 F. Shimmick is entitled to pursue its Claims under the contract and applicable law.

13 31. A judicial determination is necessary and desirable at this time so that Shimmick
14 and the City Defendants, and each of them, know their respective rights and obligations, and to
15 avoid a multiplicity of actions.

16 **WHEREFORE**, plaintiff Shimmick prays for judgment as set forth below.

17 **PRAYER**

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19 **FIRST CAUSE OF ACTION:**

20 1. That Shimmick is entitled to damages in the amount of \$30,000,000, but subject to
21 proof at trial, for breach of contract from the City and DOES 1 through 20, inclusive, and each of
22 them.

23 **SECOND CAUSE OF ACTION:**

24 2. That Shimmick is entitled to damages in the amount of \$30,000,000, but subject to
25 proof at trial, for breach of implied warranty of correctness of plans and specifications from the
26 City and DOES 1 through 20, inclusive, and each of them.

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THIRD CAUSE OF ACTION:

- 3. For a declaration that Shimmick has properly followed the contractual and statutory claims process.
- 4. For a declaration that Shimmick is excused from further compliance with contractual claims process.

AS TO ALL CAUSES OF ACTION:

- 5. For interest, including pre-judgment interest, at a rate and for a time allowed by law; and
- 6. For such other and further relief as the Court deems just and proper.

Dated: June 13, 2025

Respectfully Submitted,

SMTD LAW LLP

By: 

Christopher Morrow
Brian Junginger
Attorneys for Plaintiff
SHIMMICK CONSTRUCTION
COMPANY, INC.

EXHIBIT “A”

AGREEMENT

AGREEMENT FOR THE CONSTRUCTION OF

CITY OF ANTIOCH BRACKISH WATER DESALINATION PROJECT

P.W. 694

THIS AGREEMENT made and entered into this 18th day of December, 2020, between the CITY OF ANTIOCH, a municipal corporation of the State of California, hereinafter referred to as the "City" or "Owner" and , SHIMMICK CONSTRUCTION COMPANY, INC. , hereinafter referred to as the "Contractor";

RECITALS

WHEREAS, the City Council heretofore caused Drawings and Specifications for the Work hereinafter mentioned to be prepared, and therefore did approve and adopt the Drawings and Specifications; and

WHEREAS, the City Council did cause to be published for the time and in the manner required by law, a Notice inviting sealed Bids for the performance of the Work; and

WHEREAS, the Contractor, in response to such Notice, submitted to the City Council within the time specified in the Notice, and in the manner provided for therein, a sealed Bid for the performance of the Work specified in the Contract Documents, which the Bid, and the other Bids submitted in response to the Notice, the City publicly opened and canvassed in the manner provided by law; and

WHEREAS, the Contractor was the lowest responsible Bidder for the performance of the Work, and the City Council, as a result of the canvass of the Bids, did determine and declare Contractor to be the lowest responsible Bidder for the Work and award a Contract to Contractor to do the Work referred to in the aforementioned plans and specifications; and

WHEREAS, Contractor is ready, willing and able to complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings and all other terms and conditions of the Contract Documents; and

NOW, THEREFORE, in consideration of the mutual covenants hereinafter, the City and Contractor agree as follows:

ARTICLE 1 – SCOPE OF WORK

1.1 **The Work**. The Contractor shall furnish all labor, materials, tools, apparatus, equipment, transportation, insurance, bonds, special services and skill to construct and complete in good workmanlike and substantial manner to the satisfaction of the City all the Work called for, and in the manner designated in, and in strict conformity with the Contract Documents for the project entitled: **City of Antioch Brackish Water Desalination Project**. All incidental work not shown on the Plans or specified herein which is necessary to complete the Work so as to provide the project described, or shown, shall be furnished and installed as part of this Contract at no additional cost to the City.

1.2 **Location of Work.** The Work will be performed at the following location: City of Antioch and Contra Costa County as shown on the Contract Drawings.

ARTICLE 2 – CONTRACT DOCUMENTS

2.1 Contract Documents.

The Contract Documents consist of the following documents:

- Bidding Requirements (Sections 00100 through 00400. Does not include Section 00300, Supplemental Project Information Available to Bidders);
- Contracting Requirements (Sections 00510 through 00800);
- General Requirements (Division 1);
- Technical Specifications (Division 2 and all other Divisions following);
- City Standard Specifications
- Contract Drawings;
- Addenda (numbers 1 to 8, inclusive);
- Permits from other agencies as may be required by law; and
- All other documents incorporated by reference into these Contract Documents.
- The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - Notice to Proceed (Section 00600);
 - Field Directive(s);
 - Change Order(s);
 - Construction Change Directive; and
 - Field Order(s).

2.2 **Not Contract Documents.** There are no Contract Documents other than those listed in this Section 00510, Article 2, Contract Documents, Section 00300, Supplemental Project Information Available to Bidders, and the information supplied therein, are not Contract Documents. The Contract Documents may only be amended, modified or supplemented as provided for in Section 00700, General Conditions and Section 00800, Supplemental General Conditions.

2.3 **Definitions and Terms.** Unless otherwise specifically provided herein, all terms, words and phrases defined in Section 00700- 1.02, Definitions of Words and Terms, shall have the same meaning and intent in this Agreement.

2.4 **Entire Contract; Interpretation.** This Agreement, together with the Contract Documents, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto (including without limitation, City's award of the Contract to Contractor and any applicable letter of intent), unless such agreement is expressly incorporated herein. City makes no representations or warranties, express or implied, not specified in this Agreement or the Contract Documents. This Agreement and the Contract Documents are the product of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code §1654) that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this Agreement or the Contract Documents.

2.5 **Severability.** 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 City 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.

2.6 **Amendments.** The terms of this Agreement or the Contract Documents shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except as authorized by the Contract documents or by a written instrument signed by the Parties.

2.7 Further Assurances. The Parties shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement and the Contract Documents.

ARTICLE 3 – CONTRACT PRICE

3.1 Contract Price Breakdown. Subject to additions and deductions by Change Order(s) as provided in the Contract Documents, the City agrees to pay and Contractor agrees to accept, in full payment for completion of the Work in accordance with the Contract Documents as follows:

BID SCHEDULE

Bid Items				
Item	Description	Approx. quantity	Unit	Total bid item price, dollars
1.	Mobilization/Demobilization (not to exceed 6% of Total Bid Price)	1 Job	L.S.	\$5,000,000.00
2.	Sheeting, shoring, and bracing, or equivalent method for the protection of life and limb in trenches and open excavations, pursuant to California Labor Code Sections 6705 and 6707.	1 Job	L.S.	\$350,000.00
3	Water Treatment Plant Work	1 Job	L.S.	\$60,179,000.00
4.	Wonderware SCADA operating system	1 Job	L.S.	\$150,000.00
5.	River Pump Station Non-Marine Work	1 Job	L.S.	\$10,000,000.00
6.	River Pump Station Marine Work	1 Job	L.S.	\$4,000,000.00
7.	Work at Delta Diablo WWTP	1 Job	L.S.	\$300,000.00
8.	Brine Disposal Pipeline Work Outside of Water Treatment Plant	1 Job	L.S.	\$3,000,000.00
9.	Raw Water Pipeline Work Outside of Water Treatment Plant	1 Job	L.S.	\$2,000,000.00
10.	Allowance for Additional Concrete Basin Repairs	1 Job	All	\$50,000.00
11.	Allowance for Unforeseen Underground Utility Conflicts	1 Job	All	\$500,000.00
12.	Subsurface Utility Engineering	1 Job	L.S.	\$50,000.00
13.	Disposal of Contaminated Soil at River Pump Station Site	1 Job	L.S.	\$10,000.00
14.	Disposal of Contaminated Groundwater at River Pump Station Site	1 Job	L.S.	\$200,000.00
15.	Chemical Flow Meters	1 Job	L.S.	\$90,000
16.	Video Inspection and Injection of CLSM in Void Under Slab Near Plant A Filters	1 Job	L.S.	\$10,000.00
17.	All Work in accordance with the Contract Documents, with the exception of work included under bid Items 1 through 16.	1 Job	L.S.	\$800,000.00

TOTAL BID AWARD PRICE (Items 1 through 17) **\$86,689,000.00**

TOTAL BID AWARD PRICE (in words) Eighty-six million, six hundred eighty-nine thousand dollars.

The above Total Contract Price includes all allowances, if any, provided for in the Contract Documents. Progress and final payments shall be in accordance with the General Conditions.

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

Compensation for Unit Price Items shall be based upon the unit prices stated in above schedule times the actual quantities or units of work and materials performed or furnished. Unit prices paid by the City may change depending on actual quantities or units or work completed in accordance with Section 00700-9.04, Increased or Decreased Quantities.

3.2 Substitution of Securities for Money Withheld. At any time prior to final payment, Contractor may request substitution of securities for any money withheld by the City to ensure performance of the Agreement in the manner as provided by California Public Contract Code §22300. At the expense of the Contractor, securities equivalent to the money withheld may be deposited with the City or with an approved financial institution as escrow agent according to a separate Security Agreement. Securities eligible for substitution shall include those listed in §16430 of the California Government Code or bank or savings and loan certificates of deposit.

ARTICLE 4 – CONTRACT TIMES

4.1 Time is of the Essence. 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 this Agreement.

4.2 Commence Work. Contractor shall commence execution of the Work on the date established in the Notice to Proceed. The City reserves the right to modify or alter the Commencement Date of the Work.

4.3 Days to Achieve Contract Times. The Contractor shall diligently execute the Work to complete each Milestone listed below within the following number of consecutive calendar days from the date established in the Notice to Proceed for the commencement of the Contract Time.

Times Allowed for Completion

Contractual Completion Event	Completion Time (# of calendar days from Notice to Proceed date) or Seasonal Dates
Milestone #1	April 30, 2021
Milestone #2	October 31, 2021
Milestone #3	March 31, 2022
Milestone #4	April 30, 2022
Milestone #5	July 31, 2022
Substantial Completion	810
Final Completion	850

Milestones – Milestones are further defined in Section 01140, Work Restrictions and Section 00800, Supplementary Conditions.

4.4 Liquidated Damages. The City and Contractor recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not completed within the contract times specified in 4.3, **Days to Achieve Contract Times**. The actual fact of the occurrences of damages and the actual amount of the damages which City would suffer if the Work were not completed within the specified times set forth above are dependent upon many circumstances and conditions which could prevail in various combinations, and, from the nature of the case, it would be impracticable and extremely difficult to fix the actual damages.

Damages which City would suffer in the event of delay include loss of the use of the Project, and, in addition, expenses of prolonged employment of an architectural and engineering staff; costs of administration, construction management, inspection, and supervision; the loss suffered by the public within the City’s constituent cities by reasons of the delay in the completion of the project to serve the public at the earliest possible time; and, costs associated with ongoing and extended permit compliance.

Accordingly, the City and the Contractor agree that as liquidated damages for delay, in accordance with California Government Code Section 53069.85, the Contractor will forfeit and pay to the City liquidated damages in the amounts set forth in the table below, per day for each and every calendar day that expires after the time for completion specified in the above section 4.3, Days to Achieve Contract Times, except as otherwise provided by extension of time pursuant to Section 00700-8.04, Time Extensions, of the General Conditions.

It is further understood and agreed in accordance with California Government Code Section 53069.85 that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time this Contract was made, and that the City may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor.

Damages for Delays

Milestone	Contractual Completion Event	Dollars Per Day Liquidated Damages (Amount in Dollars)
1	Project Completion Deadline 1 (Milestone 1)	\$10,000
2	Project Completion Deadline 2 (Milestone 2)	\$10,000
3	Project Completion Deadline 3 (Milestone 3)	\$10,000
4	Project Completion Deadline 4 (Milestone 4)	\$10,000
5	Project Completion Deadline 5 (Milestone 5)	\$10,000
	Substantial Completion	\$1,600
	Final Completion	\$800

4.6 Damages for Violations of Environmental Impact Mitigation Requirements. The Contractor recognizes that the City has defined environmental controls for the Work to promote compliance with the environmental impact mitigation requirements identified in the City’s certified Final Initial Study / Mitigated Negative Declaration and related mitigation monitoring and reporting plan for the Work. In addition to the liquidated damages specified in Section 4.4, **Liquidated Damages**, the City and the Contractor agree that penalties imposed on and costs incurred by the City as a result of violations of such requirements caused by the actions or inactions of the Contractor, its employees, or subcontractors, the Contractor will forfeit and pay the City any and all penalties and costs for such violations, up to a maximum of \$10,000

per calendar day. Costs related to such penalties and violations include, without limitation, City staff time, City equipment costs, materials, City's consultants and legal fees.

ARTICLE 5 – INSURANCE AND BONDS

5.1 Insurance. Contractor shall maintain in full force and effect at all times during the term of the Agreement, at its sole expense, policies of insurance in accordance with the General Conditions and the Supplementary Special Conditions. By execution of this Agreement, the Contractor certifies as follows:

“I am aware of the provisions of §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.”

5.2 Faithful Performance Bond and Payment Bond. The Contractor, simultaneously with the execution of the Agreement, will be required to furnish a Faithful Performance Bond to guarantee the Faithful Performance of the Contract equal to one hundred (100%) of the Total Contract Price set forth in Article 4 and a Payment Bond required by Part 4, Title 15, Chapter 7, Division Three of the Civil Code of the State of California equal to one hundred percent (100%) of the Total Contract Price set forth in Article 4. The bonds must be issued by a surety company admitted in California and with a current A.M. Best's rating of no less than A-:VII or equivalent, unless otherwise approved by Agency.

Any alteration(s) made in any provision of this Agreement shall not operate to release any surety from liability on any bond required hereunder and the consent to make such alteration(s) is hereby given, and any surety on said bonds hereby waives the provisions of Sections 2819 and 2845 of the California Civil Code.

Contractor must submit the following document with the bonds: The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws or other instrument entitling or authorizing the person who executed the bond to do so.

ARTICLE 6 – CITY'S REPRESENTATIVE(S) AND AUTHORITY'S CONSULTANTS

6.1 City's Representative. The City has designated **Scott Buenting**, or his/her designee to act as City's Representative. The City may change the individual(s) acting as City's Representative(s), or delegate one or more specific functions to one or more specific City's Representative at any time with notice and without liability to Contractor. Each City's Representative is the beneficiary of all Contractor obligations to the City, including without limitation, all releases and indemnities. All documents requiring the signature/approval of City shall be signed by the City's Representative.

6.2 Design Engineer. The City has designated **Carollo Engineers** to act as Design Engineer. The Design Engineer is included within and covered by Contractor's release and indemnity obligations to the City.

6.3 Construction Manager. The City has designated **CDM-Smith, Inc.** to act as Construction Manager. The City may assign, upon mutual agreement, all or part of the City's Representative's duties, rights and responsibilities to the Construction Manager. The Construction Manager is the beneficiary of all Contractor obligations to the City, including without limitation, all releases and indemnities.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

7.1 Representations and Warranties. In order to induce the City to enter into this Agreement, Contractor makes the following representations and warranties:

- A. Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods,

techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.

- B. Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, record drawings, drawings, products specifications or reports, available for bidding purposes, of physical conditions, including Underground Facilities, which are identified in Section 00300, Supplemental Project Information Available to Bidders, or which may appear in the Contract Documents. Contractor further acknowledges and agrees that, in executing the Agreement, it is relying on its own observation of (1) the site of the Work, (2) access to the Site, (3) all other data and matters requisite to the fulfillment of the Work and on its own knowledge of existing facilities on and in the vicinity of the site of the Work to be constructed under the Contract, (4) the conditions to be encountered, (5) the character, quality and scope of the proposed Work, (6) the quality and quantity of the materials to be furnished, and (7) the requirements of the Contract, the plans, the specifications, and other related information made available to Contractor by the City.
- C. Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- D. Contractor has given the City prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and record drawings and actual conditions and the written resolution thereof (if any) through Addenda issued by the City is acceptable to Contractor.
- E. Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.
- F. Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Contractor.

Contractor has listed the following Subcontractors consistent with the Subcontractor Listing Law, California Public Contract Code §4100 <i>et seq.</i> : Name of Subcontractor and Address of Mill or Shop	Description of Subcontractor's Work	Subcontractor's License No.
Allied Steel Co., Inc. 1027 Palmyrita Ave. Riverside, CA 92057	Structural Steel & metal Decking	164718
Utilion Inc. DBA P.T.S. Masonry 7117 Tokay Ave. Sacramento, CA 95827	Masonry	704533
Gonsalves & Santucci, Inc. 5141 Commercial Circle Concord, CA 94520	Rebar	199902
The HDD Company, Inc. 4525 Serrano Parkway, Suite 210 El Dorado Hills, CA 95762	Horizontal Directional Drilling	858987
Drill Tech Drilling & Shoring, Inc. 2200 Wymore Way Antioch, CA 94509	Soil Nail, Rock Fall Drapery	745354
A. Teichert & Son, Inc. 3500 American River Drive Sacramento, CA 95864	Underground Pipelines	8
Crusader Fence Company, LLC 3115 Gold Valley Drive Rancho Cordova, CA 95742	Fencing	1056652
Con J. Franke Electric, Inc. 317 N. Grant Street Stockton, CA 95202	Electrical I&C	288366
Techno Coatings, Inc. 1391 S. Allec Street Anaheim, CA 92805	Painting & Coatings	296517

ARTICLE 8 – LABOR CODE COMPLIANCE AND DAVIS-BACON WAGES

8.1 California Labor Code. Pursuant to the provisions of §1770 *et seq.* of the California Labor Code, which are hereby incorporated by reference and made a part hereof, the Director of the Department of Industrial Relations has determined the general prevailing rate of the per diem wages and the general prevailing rate for holiday and overtime Work in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to perform the Work. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at City Public Works Department office, or may be downloaded from the State Department of Industrial Relations website, Division of Labor Statistics and Research, <http://www.dir.ca.gov/dlsr/>. The rate of prevailing wage for any craft, classification or type of workmanship to be employed in performing the Work is the rate established by the applicable collective bargaining contract which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate is adopted.

It shall be mandatory for the Contractor and all subcontractors to pay not less than such specified prevailing wage rates to all workers employed in the performance of the Work. If any worker engaged in the performance of the Work is paid less than the specified prevailing wage rate, the Contractor shall pay to each such worker the difference between the specified prevailing wage rate and the actual amount paid to such worker for each calendar day or portion thereof. In addition, Contractor shall comply with the provisions

of California Labor Code §1775, including provisions which require Contractor to (a) forfeit as penalty to City not more than \$200 for each calendar day or portion thereof for each worker (whether employed by Contractor or any Subcontractor) paid less than the applicable prevailing wage rates for any work done under this Contract in violation of the provisions of the California Labor Code, and (b) pay to each worker the difference between the prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which the worker was paid less than the prevailing wage.

The Contractor and each Subcontractor shall keep or cause to be kept an accurate record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week for all laborers, workers and mechanics employed in connection with the performance under the Contract Documents or any subcontract thereunder, and showing the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by City and its agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the City harmless from any and all claims made by the State of California, the Department of Industrial Relations, any Subcontractor, any worker or any other third party with regard thereto. Contractor shall be responsible to ensure compliance with section 1776. Failure to comply with that section may result in the California Labor Commissioner's assessment of a penalty of \$100 per day per affected worker.

The Contractor shall post, at each jobsite, a copy of such prevailing rate of per diem wages as determined by the Director for the California Department of Industrial Relations.

The successful Bidder and its subcontractors shall employ the appropriate number of apprentices, in each apprenticeable craft, on the project site as stipulated in California Labor Code sections 1777.5, 1777.6 and 1777.7. Failure to comply may result in the California Labor Commissioner's assessment of a penalty of \$100 for each day of noncompliance.

Pursuant to California Labor Code Section 1771.1, by execution below, the Bidder and its Subcontractors certify that when the Bidder's bid was submitted, the Bidder and its Subcontractors were registered and qualified to perform public work pursuant to Section 1725.5 of the California Labor Code, subject to limited legal exceptions. Pursuant to California Labor Code Section 1771.1, by execution below, the Bidder and its Subcontractors certify that they are registered and qualified to perform public work pursuant to Section 1725.5 of the California Labor Code, subject to limited legal exceptions.

8.2 Davis-Bacon Wages. Pursuant to State Water Resources Control Board (SWRCB) Division of Financial Assistance Guidelines for Clean Water State Revolving Fund (CWSRF), the successful bidder must comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemental by Department of Labor regulations (29 CFR Part 5) it shall be mandatory upon the Contractor to whom the work is awarded and upon any Subcontractor under the Contractor to pay not less than Davis-Bacon wage rates. A copy of said wage rates is on file at City Public Works Department office and in Specification Section 00225, Davis Bacon Wage Determinations. These rate determinations may also be found on the Department of Labor's website at: <http://www.dol.gov/dba.aspx>. It shall be mandatory upon the Contractor to whom the work is awarded and upon any Subcontractor under the Contractor to pay not less than State prevailing wage rates or Davis-Bacon wage rates, whichever is higher, to all workmen employed by them in the execution of the Contract.

ARTICLE 9 – MISCELLANEOUS PROVISIONS

9.1 Assignment. Contractor shall not assign this Contract or any rights under or interests in the Contract without the City's written approval. No assignment will release or discharge the Contractor from any duty or responsibility under the Contract Documents.

9.2 Successors and Assigns; No Third Party Beneficiaries. The provisions of this Agreement and the Contract Documents shall inure to the benefit of and shall apply to and bind the successors and permitted assigns of the Parties. Nothing contained in this Agreement or the Contract Documents is

intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and permitted assigns, any rights or remedies hereunder.

9.3 Contractor Bankrupt. If Contractor should commence any proceeding under federal bankruptcy law, or if Contractor be adjudged a bankrupt, or if Contractor should make any assignment for the benefit of creditors, or if a receiver should be appointed on account of Contractor's insolvency, then the City may, without prejudice to any other right or remedy, terminate the Agreement and complete the Work by giving notice to Contractor and its surety according to the General Conditions.

The City shall have the right to complete, or cause completion of the Work, all as specified in the General Conditions.

9.4 Unfair Competition. The following provision is included in this Agreement pursuant to California Public Contract Code §7103.5.

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assigning 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 §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 the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, with further acknowledgment by the parties."

9.5 Nondiscrimination and Equal Opportunity. The Contractor shall not discriminate on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any affirmative obligations required of Contractor thereby.

Contractor shall include the provisions of this Subsection in any subcontract.

9.6 No Waiver of Remedies. Neither the inspection by the City 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 the City, nor any extensions of time, nor any positions taken by City 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 City 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 the City shall have any and all equitable and legal remedies, which it would in any case have.

9.7 Governing Law. This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Contra Costa, State of California, and governed by California law (excluding choice of law rules). By entering into this Agreement, the Contractor consents and submits to the jurisdiction of Courts of the State of California, over any action of law, suit in equity, and/or other proceeding that may arise out of the Contract Documents.

9.8 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement or the Contract Documents shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- A. personal delivery, in which case notice is effective upon delivery;
- B. certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- C. nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- D. facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

Any written notice to Contractor shall be sent to:

Company Name Shimmick Construction Company, Inc.
 Company Address 1 Harbor Center, Suite 200, Suisun City, CA 94585
 Individual's Name John White
 Individual's Email Address jwhite@shimmick.com
 Individual's Direct Dial Phone #: 707-759-6858
 Individual's Fax # 510-777-5099

Any written notice to City shall be sent to:

City of Antioch
Capital Improvements Division
P.O. Box 5007
Antioch, CA 94531-5007

9.9 Execution in Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have signed the Agreement on the date set forth opposite their names.

CONTRACTOR

Under penalty of perjury, I certify that the taxpayer identification number and all other information provided here are correct.

DATE: _____

BY:  _____

John White, Vice President
 Print Name _____

Vice President
 Title: _____

BY _____

Print Name

Title: _____

1000001063
DIR Registration #

94-3107390
Federal ID#

State ID#

594575, A, B, C10, C13, C33, C36, C51, HAZ
California Contractor's License # & Classifications

June 30, 2022
Contractor's License Expiration Date

Type of Business Entity (*check one*):

- Individual/Sole Proprietor
- Partnership
- Corporation
- Limited Liability Company
- Other (*please specify:* _____)

If Contractor is an out-of-state corporation, Contractor warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

CITY OF ANTIOCH
a California Public Entity

DATE: 1/20/21

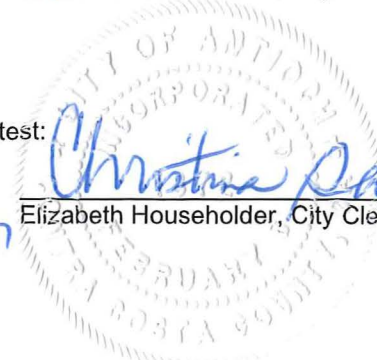
BY 
Rowland E. Bernal, Jr., City Manager

Original Approved as To Form:


Thomas Lloyd Smith, City Attorney

Attest:


Elizabeth Householder, City Clerk



Original Approved as to Form:


John Samuelson, Public Works Director/City Engineer