

Contract

This public works contract ("Contract") is entered into by and between the City of Cupertino ("City"), a municipal corporation, and DMZ Builders ("Contractor"), for work on the **Retaining Wall Replacement – Regnart Road, Project No. 2017-12**, Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal and accompanying Bid Schedule, a copy of which is attached for convenience as Exhibit A, to perform the Work to construct the Project. On October 3, 2017, City authorized award of this Contract to Contractor for the amount of Contractor's bid.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:
 - 2.1 Notice Inviting Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment Bond, Performance Bond and, if required, a Warranty Bond;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Drawings and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Award;
 - 2.12 Notice to Proceed;
 - 2.13 City of Cupertino Standard Details; and
 - 2.14 The following:
No other documents
3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.
4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor \$343,133.00 (the "Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within 40 calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$1,000.00 per day for each day of

unexcused delay in completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.

7. Labor Code Compliance.

7.1 General. This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.

7.2 Prevailing Wages. This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.

7.3 DIR Registration. City will not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code section 1725.5, subject to limited legal exceptions.

8. Workers' Compensation Certification. Under Labor Code section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code section 3700 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 on this Contract."

9. Conflicts of Interest. Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or policy or in violation of any California law, including under Government Code section 1090 et seq. and under the Political Reform Act as set forth in Government Code section 81000 et seq. and its accompanying regulations. No officer, official, employee, consultant, or other agent of the City ("City Representative") may have, maintain, or acquire a "financial interest" in the Contract, as that term is defined under the Political Reform Act (Government Code section 81000, et seq., and regulations promulgated thereunder); or under Government Code section 1090, et seq.; or in violation of any City ordinance or policy while serving as a City Representative or for one year thereafter. Any violation of this Section constitutes a material breach of the Contract.

10. Independent Contractor. Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.

11. Notice. Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

City:

Name: City of Cupertino
Address: 10300 Torre Avenue
City/State/Zip: Cupertino, CA 95014

Phone: 408-777-3354
Attn: Director of Public Works
Email: johnr@cupertino.org
Copy to: John Raaymakers

Contractor:

Name: Richard Zito
Address: 1717 Solano Way # 19
City/State/Zip: Concord, CA 94520
Phone: (925) 826-5387
Attn: tbd
Email: tbd
Copy to: tbd

12. General Provisions.

- 12.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.
- 12.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.
- 12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.6 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code section 313.

[Signatures are on the following page.]

The parties agree to this Contract as witnessed by the signatures below:

CONTRACTOR
DMZ Builders

By _____
Name _____
Title _____
Date _____

By _____
Name _____
Title _____
Date _____

CITY OF CUPERTINO
A Municipal Corporation

By _____
Timm Borden
Director of Public Works
Date _____

RECOMMENDED FOR APPROVAL:

By _____
Name _____
Title _____
Date _____

APPROVED AS TO FORM:

By _____
Name _____
City Attorney
Date _____

ATTEST:

Grace Schmidt
City Clerk
Date _____

Contract Amount: \$343,133.00
P.O. No. _____
Account No. 420-99-040-ST 020-03-01

END OF CONTRACT

ATTACHMENT A

Bidder's Name: DMZ Builders

Bid Proposal

RETAINING WALL REPLACEMENT – REGNART ROAD

DMZ Builders ("Bidder") hereby submits this Bid Proposal to the City of Cupertino ("City") for the above-referenced project ("Project") in response to the Notice Inviting Bids and in accordance with the Contract Documents referenced therein.

1. **Base Bid.** Bidder proposes to perform and fully complete the Work for the Project as specified in the Contract Documents, within the time required for full completion of the Work, including all labor, materials, supplies, and equipment and all other direct or indirect costs including, but not limited to, taxes, insurance and all overhead for the following price ("Base Bid"):

\$ 343,133.00

2. **Addenda.** Bidder agrees that it has confirmed receipt of or access to, and reviewed, all addenda issued for this Bid. Bidder specifically acknowledges receipt of the following addenda:

Addendum:	Date Received:	Addendum:	Date Received:
#01	<u>08-24-17</u>	#05	<u> </u>
#02	<u> </u>	#06	<u> </u>
#03	<u> </u>	#07	<u> </u>
#04	<u> </u>	#08	<u> </u>

3. **Bidder's Warranties.** By signing and submitting this Bid Proposal, Bidder warrants the following:

3.1 **Examination of Contract Documents.** Bidder has thoroughly examined the Contract Documents and represents that, to the best of Bidder's knowledge, there are no errors, omissions, or discrepancies in the Contract Documents, subject to the limitations of Public Contract Code section 1104.

3.2 **Examination of Worksite.** Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.

3.3 **Bidder is Qualified.** Bidder is fully qualified to perform the Work.

3.4 **Responsibility for Bid.** Bidder has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed Bid.

4. **Award of Contract.** By signing and submitting this Bid Proposal, Bidder agrees that if Bidder is awarded the Contract for the Project, within ten days following issuance of the notice of award to Bidder, Bidder will do all of the following:

4.1 **Execute Contract.** Enter into the Contract with City in accordance with the terms of this Bid Proposal, by signing and submitting to City the Contract prepared by City using the form included with the Contract Documents;

4.2 **Submit Required Bonds.** Submit to City a payment bond and a performance bond, each for 100% of the Contract Price, using the bond forms provided and in accordance with the requirements of the Contract Documents; and

4.3 **Insurance Requirements.** Submit to City the insurance certificate(s) and endorsement(s) as required by the Contract Documents.

ATTACHMENT A

Bidder's Name: DMZ Builders

5. **Bid Security.** As a guarantee that, if awarded the Contract, Bidder will perform its obligations under Section 4 above, Bidder is enclosing bid security in the amount of ten percent of its maximum bid amount in one of the following forms (check one):

 A cashier's check or certified check payable to City and issued by
_____ [Bank name] in the amount of
\$ _____.

 X A bid bond, using the Bid Bond form included with the Contract Documents, payable to City and executed by a surety licensed to do business in the State of California.

This Bid Proposal is hereby submitted on September 19 , 2017.

DMZ Builders
Bidder Business Name
Richard Zito
Signature
PRESIDENT
Name/Title (If Corporation: Chairman, President or Vice President)

986594 09/30/17 A, B, C-10, C-21
License #, Expiration Date, and Classification

1717 Solano Way #19
Address

Concord, CA 94520
City, State, Zip

925 826-5387
Contact Phone

09/19/17
Date
[Signature]
Signature
Vice President
Name/Title (If Corporation: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer)

1000006023
DIR Registration #

925 826-5387
Phone

Richard Zito / President
Contact Name/Title

rzito@dmzbuilders.com
Contact Email

END OF BID PROPOSAL

ATTACHMENT A

Bidder's Name: DMZ Builders

Bid Schedule

This Bid Schedule must be completed in ink and included with the sealed Bid Proposal. Pricing must be provided for each Bid Item as indicated. Items marked "(SW)" are Specialty Work that must be performed by a qualified Subcontractor. The lump sum or unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the "Extended Total Amount" column must be identical to the Base Bid price entered in Section 1 of the Bid Proposal Form.

LS = Lump Sum EA = Each LF = Linear Foot CY = Cubic Yard SY = Square Yard
SF = Square Feet LB = Pounds TON = Ton (2000 lbs) AL = Allowance

BID ITEM NO.	ITEM DESCRIPTION	EST. QTY.	UNIT	UNIT COST	EXTENDED TOTAL AMOUNT
1	Mobilization	1	LS	\$ 32,000	\$ 32,000
2	Field Engineering & Survey Work	1	LS	\$ 18,000	\$ 18,000
3	Traffic Control & Construction Area Signage	1	LS	\$ 35,000	\$ 35,000
4	Temporary Water Pollution Control	1	LS	\$ 15,000	\$ 15,000
5	Utility Location	1	LS	\$ 3,000	\$ 3,000
6	Roadway Excavation	1	LS	\$ 13,000	\$ 13,000
7	Clearing & Grubbing	1	LS	\$ 15,000	\$ 15,000
8	Remove Tree	2	EA	\$ 5,000	\$ 10,000
9	Remove Existing Retaining Wall	1	LS	\$ 8,000	\$ 8,000
10	Hot Mix Asphalt (Type A)	14	TON	\$ 465	\$ 6,510
11	AC Dike (Type A)	20	LF	\$ 100	\$ 2,000
12	Concrete Barrier – Type 60	20	LF	\$ 500	\$ 10,000
13	Concrete Barrier – Type 60D	102	LF	\$ 200	\$ 20,400
14	12x12 DI With 8" PVC Down Drain	2	EA	\$ 2,500	\$ 5,000
15	Jute Erosion Control Blanket/Netting	20	SY	\$ 125	\$ 2,500
16	Structural Excavation (Soldier Pile Wall)	42	CY	\$ 125	\$ 5,250
17	Structural Backfill (Soldier Pile Wall)	4	CY	\$ 150	\$ 600
18	Concrete Backfill (Soldier Pile Wall)	31	CY	\$ 400	\$ 12,400
19	Lean Concrete Backfill	13	CY	\$ 200	\$ 2,600
20	Installed Drilled Piers	380	LF	\$ 190	\$ 72,200
21	Structural Concrete, Retaining Wall	25	CY	\$ 1,500	\$ 37,500
22	Bar Reinforcement Steel (Retaining Wall)	3,670	LB	\$ 1.90	\$ 6,973
23	Retaining Wall Gutter	102	LF	\$ 100	\$ 10,200
				TOTAL BID	\$ 343,133.00

ATTACHMENT A

Bidder's Name: DMZ Builders

TOTAL BASE BID: Items 1 through 23 inclusive: \$ 343,133.00

Note: The amount entered as the "Total Base Bid" should be identical to the Base Bid amount entered in Section 1 of the Bid Proposal form.

BIDDER NAME: DMZ Builders

END OF BID SCHEDULE

ATTACHMENT A

Bidder's Name: DMZ Builders

Subcontractor List

For each Subcontractor that will perform a portion of the Work in an amount in excess of one-half of 1% of the Bidder's total Contract Price,¹ the bidder must list a description of the Work, the name of the Subcontractor, its California contractor license number, the location of its place of business, its DIR registration number, and the portion of the Work that the Subcontractor is performing based on a percentage of the Base Bid price. Bidder may not list more than one Subcontractor for each such portion of the Work listed by Bidder below.

DESCRIPTION OF WORK	SUBCONTRACTOR NAME	CALIFORNIA CONTRACTOR LICENSE NO.	LOCATION OF BUSINESS	DIR REG. NO.	PERCENT OF WORK
	Case Pacific	SAN LUIS OBISPO	SAN LUIS OBISPO		
Drilling	Case Pacific	259827	Paso Robles, CA San Luis Obispo	1000006311	3.0

END OF SUBCONTRACTOR LIST

¹ For street or highway construction this requirement applies to any subcontract of \$10,000 or more.