

**AGREEMENT FOR PUBLIC IMPROVEMENT**  
**SANITARY SEWER ROOT CONTROL PROJECT**  
**CITY PROJECT NO. 86110**

THIS AGREEMENT, made in duplicate and entered into in the City of Burlingame, County of San Mateo, State of California on \_\_\_\_\_, 2020 by and between the CITY OF BURLINGAME, a Municipal Corporation, hereinafter called "City", and DUKES ROOT CONTROL, INC., a New York Corporation, hereinafter called "Contractor."

**WITNESSETH:**

**WHEREAS**, City has taken appropriate proceedings to authorize construction of the public work and improvements herein provided for and to authorize execution of this Contract; and

**WHEREAS**, pursuant to State law and City requirements, a notice was duly published for bids for the contract for the improvement hereinafter described; and

**WHEREAS**, on September 8, 2020, after notice duly given, the City Council of Burlingame awarded the contract for the construction of the improvements hereinafter described to Contractor, which the Council found to be the lowest responsive, responsible bidder for these improvements; and

**WHEREAS**, City and Contractor desire to enter into this Agreement for the construction of said improvements.

**NOW, THEREFORE, IT IS AGREED** by the parties hereto as follows:

1. Scope of work.

Contractor shall perform the work described in those Contract Documents entitled:

**SANITARY SEWER ROOT CONTROL PROJECT, CITY PROJECT 86110**

2. The Contract Documents.

The complete contract between City and Contractor consists of the following documents: this Agreement; Notice Inviting Sealed Bids, attached hereto as Exhibit A; the accepted Bid Proposal, attached hereto as Exhibit B; the specifications, provisions, addenda, complete plans, profiles, and detailed drawings contained in the bid documents titled "**SANITARY SEWER ROOT CONTROL PROJECT, CITY PROJECT NO. 86110**"; the State of California Standard Specifications 2010, as promulgated by the California Department of Transportation; prevailing wage rates of the State of California applicable to this project by State law; and all bonds; which are collectively hereinafter referred to as the Contract Documents. All rights and obligations of City and Contractor are fully set forth and described in the Contract Documents,

which are hereby incorporated as if fully set forth herein. All of the above described documents are intended to cooperate so that any work called for in one, and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents.

### 3. Contract Price.

The City shall pay, and the Contractor shall accept, in full, payment of the work above agreed to be done, the sum of four hundred seventy-eight thousand seven hundred and forty dollars (\$478,740), called the "Contract Price". This price is determined by the lump sum and unit prices contained in Contractor's Bid. In the event authorized work is performed or materials furnished in addition to those set forth in Contractor's Bid and the Specifications, such work and materials will be paid for at the unit prices therein contained. Said amount shall be paid in progress payments as provided in the Contract Documents.

### 4. Termination

At any time and with or without cause, the City may suspend the work or any portion of the work for a period of not more than 90 consecutive calendar days by notice in writing to Contractor that will fix the date on which work will be resumed. Contractor will be granted an adjustment to the Contract Price or an extension of the Time for Completion, or both, directly attributable to any such suspension if Contractor makes a claim therefor as provided in the Contract Documents.

The occurrence of any one or more of the following events will justify termination of the contract by the City for cause: (1) Contractor's persistent failure to perform the work in accordance with the Contract Documents; (2) Contractor's disregard of Laws or Regulations of any public body having jurisdiction; (3) Contractor's disregard of the authority of the Engineer; or (4) Contractor's violation in any substantial way of any provision of the Contract Documents. In the case of any one or more of these events, the City, after giving Contractor and Contractor's sureties seven calendar days written notice of the intent to terminate Contractor's services, may initiate termination procedures. Such termination will not affect any rights or remedies of City against Contractor then existing or that accrue thereafter. Any retention or payment of moneys due Contractor will not release Contractor from liability. At the City's sole discretion, Contractor's services may not be terminated if Contractor begins, within seven calendar days of receipt of such notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 calendar days of such notice.

Upon seven calendar days written notice to Contractor, City may, without cause and without prejudice to any other right or remedy of City, terminate the Contract for City's convenience. In such case, Contractor will be paid for (1) work satisfactorily completed prior the effective date of such termination, (2) furnishing of labor, equipment, and materials in accordance

with the Contract Documents in connection with uncompleted work, (3) reasonable expenses directly attributable to termination, and (4) fair and reasonable compensation for associated overhead and profit. No payment will be made on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

5. Provisions Cumulative.

The provisions of this Agreement are cumulative and in addition to and not in limitation of any other rights or remedies available to the City.

6. Notices.

All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid.

Notices required to be given to the City shall be addressed as follows:

Mr. Jim Brown  
Sewer Supervisor  
City of Burlingame  
1361 N. Carolan Ave.  
Burlingame, California 94010

Notices required to be given to Contractor shall be addressed as follows:

Mr. Tom Edwards  
Pacific Regional Manager  
Dukes Root Control Inc.  
23575 Cabot Blvd., Suite 208  
Hayward, CA 94545

7. Interpretation

As used herein, any gender includes the other gender and the singular includes the plural and vice versa.

8. Waiver or Amendment.

No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the City and the Contractor. One or more waivers of any term, condition, or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision.

9. Controlling Law.

This Agreement is to be governed by and interpreted in accordance with the laws of the State of California.

10. Successors and Assignees.

This Agreement is to be binding on the heirs, successors, and assigns of the parties hereto but may not be assigned by either party without first obtaining the written consent of the other party.

11. Severability.

If any term or provision of this Agreement is deemed invalid, void, or unenforceable by any court of lawful jurisdiction, the remaining terms and provisions of the Agreement shall not be affected thereby and shall remain in full force and effect.

12. Indemnification.

Contractor shall indemnify, defend, and hold the City, its directors, officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of, pertaining or relating to the actual or alleged negligence, recklessness or willful misconduct of Contractor, its employees, subcontractors, or agents, or on account of the performance or character of the services, except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, employees, agents, or volunteers. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code. Notwithstanding the foregoing, for any design professional services, the duty to defend and indemnify City shall be limited to that allowed by state law. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

**IN WITNESS WHEREOF**, two identical counterparts of this Agreement, consisting of five pages, including this page, each of which counterparts shall for all purposes be deemed an original of this Agreement, have been duly executed by the parties hereinabove named on the day and year first hereinabove written.

CITY OF BURLINGAME,  
a Municipal Corporation

"CONTRACTOR"

By \_\_\_\_\_  
Lisa K. Goldman, City Manager

By \_\_\_\_\_  
Print Name:  
Duke's Root Control, Inc.

Approved as to form:

\_\_\_\_\_  
Kathleen Kane, City Attorney

ATTEST:

\_\_\_\_\_  
Meaghan Hassel-Shearer, City Clerk