

NAPA COUNTY
STATE OF CALIFORNIA

NOTICE TO CONTRACTORS

Proposals shall be submitted under sealed cover plainly marked as a proposal, and identifying the project to which the proposal relates and the date of the bid opening therefore. Proposals which are not properly marked will be rejected. Sealed proposals will be received at the office of the Clerk of the Board of Supervisors, Napa County Administration Building, 1195 Third Street, Room 310, Napa, California, until **3:30 P.M. on Thursday July 25, 2013** (no bids will be accepted after 3:30 P.M.) after which they will be publicly opened and read for the construction in accordance with the Plans and Special Provisions thereto, to which special reference is made as follows:

**NAPA COUNTY HALL OF JUSTICE FIRE DAMPER REPAIR PROJECT
PW 11-33**

The engineers estimate for this project is \$ 862,000.

In accordance with the provisions of Section 1774 of the Labor Code of California, the prevailing wage rates for classifications of Labor to be employed in the work have been determined by the Board of Supervisors of Napa County and is included in the Special Provisions referred to above.

Bids are required for the entire work called for by the Plans and Specifications, and neither partial nor contingent bids will be considered. No bid will be considered unless it is made on a blank form furnished by the County Engineer of Napa County and is made in accordance with the provisions of the proposal requirements and conditions set forth under Section 2 of the Standard Specifications of the State California, Department of Transportation, dated May 2006, except as modified in the above referred to Special Provisions.

Bidders are responsible for monitoring <http://www.countyofnapa.org/PublicWorks/CurrentProjects/> for addendums which may be issued up until **July 22, 2013 at 3:30PM**.

Bid Results of the three apparent low bidders with their subcontractor's list will be on the County's website <http://www.countyofnapa.org/PublicWorks/CurrentProjects/> the following day after the bids are publicly opened and read. Each bidder must be licensed as required by law.

The Board of Supervisors reserves the right to reject any or all bids.

*****SPECIAL SECURITY PROCEDURES REQUIRED FOR BIDDING THIS PROJECT*****

A valid visitor security clearance must be on file (an individual cleared within 6 months of the walkthrough date) or a new Visitor Security Clearance Form submitted and cleared prior to attending the mandatory pre-bid site visit or viewing the plans.

In addition to the Visitor Security Clearance Form a notarized Bid Period Non Disclosure Agreement (BPNDA) must be completed by the prospective bidder and received by the County prior to reviewing the Plans. **The Plans may only be seen by appointment at the office of the County of Napa Department of Corrections, 1125 Third Street, Napa, California** and no cameras or cell phones will be allowed to be in the plan reviewer's possession while reviewing the plans. Appointments can be scheduled by e-mailing Ginny.Leija@countyofnapa.org.

The **mandatory** pre-bid site visit for Contractors and Subcontractors bidding the project is scheduled for **July 12, 2013 at 10:00 am**. Attending the pre-bid site visit is required and any Contractor or Subcontractor failing to

have an agent sign in and attend and list their name on the sign in sheet **will be disqualified** from the bidding process. No cameras, cell phones, electronic devices or agents who have not been cleared for entry will be allowed in the jail. The meeting point will be inside the 1195 THIRD STREET FIRST FLOOR LEVEL ENTRANCE.

Copies of the Visitor Security Clearance Form, BPNDA, Specifications Special Provisions (excluding State Standard Specifications and other documents included by reference), Proposal Forms and Contract Forms will be on the County's website <http://www.countyofnapa.org/PublicWorks/CurrentProjects/>

Contractors and Subcontractors must mail or deliver in person to Napa County Department of Public Works 1195 Third St., Room 101, Napa, CA 94559 a signed and notarized BPNDA.

Visitor Security Clearance Forms may be SUBMITTED with the BPNDA or separately via e-mail to Frank.Lucido@countyofnapa.org and Ginny.Leija@countyofnapa.org by **July 8, 2013**. Individuals who have a valid visitor security clearance on file must notify Frank.Lucido@countyofnapa.org and Ginny.Leija@countyofnapa.org of their intent to use that clearance for this project by **July 8, 2013**.

All questions including those raised in the walk through must be submitted in writing and mailed, or e-mailed to Frank.Lucido@countyofnapa.org, Napa County Department of Public Works 1195 Third St., Napa, CA 94559. **The last day to submit questions is July 18, 2013 by 12:00 noon.** No questions will be accepted after that time.

By order of the Board of Supervisors of the County of Napa, State of California made this March 12, 2013.

NAPA COUNTY CLERK OF THE BOARD OF SUPERVISORS



A Tradition of Stewardship
A Commitment to Service

DEPARTMENT OF PUBLIC WORKS
1195 THIRD STREET, ROOM 201
NAPA, CALIFORNIA 94559

SPECIFICATIONS

FOR

**NAPA COUNTY
HALL OF JUSTICE
FIRE DAMPER REPAIR PROJECT
PW 11-33**

NOTICE TO CONTRACTORS

CONTRACT FOR CONSTRUCTION

PROPOSAL FORM

*SPECIAL PROVISIONS - SECTION 'A'
SECTION 'B'*

Contractor shall possess a Class "B" license at the time of contract award.

Bid opening Date: July 25th, 2013

Approved

County Engineer

RCE 47574



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY DEPARTMENT OF CORRECTIONS



DATE: _____

VISITOR SECURITY CLEARANCE

WITH MY SIGNATURE BELOW, I HEREBY AUTHORIZE NAPA COUNTY DEPARTMENT OF CORRECTIONS (NCDC) TO CONDUCT A BACKGROUND AND SECURITY CHECK ON ME AS A CONDITION OF MY ACCEPTANCE TO ENTER THE JAIL AS A CONTRACTOR/VISITOR/VOLUNTEER.

THE PURPOSE OF MY VISIT IS: _____ (AA, NA, CONTRACTOR/VENDOR, EDUCATION, ETC.)

PROJECT/PROGRAM NAME: _____ PROGRAM COORDINATOR: _____

PROGRAM COORDINATOR PHONE #: _____ EMAIL: _____

DATE(S) OF VISIT(S): _____

NAME: _____ ALIAS OR MAIDEN NAME: _____
PRINT LAST, FIRST AND MIDDLE AS IT APPEARS ON ID CARD/DRIVER'S LICENSE

DATE OF BIRTH: _____ DRIVER'S LICENSE #: _____ STATE: _____

SEX: _____ RACE: _____ EYES: _____ HAIR: _____ EMAIL: _____

ADDRESS: _____ CITY: _____ ZIP CODE: _____

HOME PHONE #: _____ CELL PHONE #: _____

EMERGENCY CONTACT PERSON: _____ PHONE #: _____

CIRCLE ANSWER FOR EACH OF THE FOLLOWING QUESTIONS:

HAVE YOU EVER BEEN CONVICTED OF A CRIME? YES NO

ARE YOU CURRENTLY ON PROBATION OR PAROLE? YES NO

HAVE YOU EVER BEEN ON PROBATION OR PAROLE? YES NO IF YES, WHEN? _____

DO YOU HAVE ANY FRIENDS OR FAMILY WHO ARE CURRENTLY IN CUSTODY? YES NO

I UNDERSTAND THAT ANY **FALSE** STATEMENT, VERBAL OR WRITTEN, MAY CAUSE MY NAME TO BE REMOVED FROM THE ELIGIBLE LIST OF VISITORS. I ALSO UNDERSTAND THAT IF ANY OF THE ABOVE INFORMATION CHANGES, I SHALL NOTIFY BOTH MY PROGRAM COORDINATOR AND NAPA COUNTY DEPARTMENT OF CORRECTIONS IMMEDIATELY.

SIGNATURE _____ PRINTED NAME _____ DATE _____

*******SECURITY STAFF USE ONLY BELOW THIS LINE*******

RECORDS FOUND: SHERIFF'S RECORDS YES NO DL CHECK YES NO

WPS CHECK YES NO CJIMS RECORD YES NO CII CRIMINAL HISTORY YES NO

ENTRY APPROVED YES NO BY: _____ DATE: _____

NAPA COUNTY
BID PERIOD CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as this _____ day of _____, 2013, by and between _____, whose business address is _____ ("Potential Bidder"), and NAPA COUNTY, a political subdivision of the State of California ("County").

WHEREAS, the County owns and operates Napa County Department of Corrections ("NCDC") which houses inmates that are legally committed to the institution.

WHEREAS, the Potential Bidder desires to view drawings and documentation that detail the layout and operations of NCDC for the sole purpose of bidding on the "Napa County Hall of Justice Fire Damper Repair Project," PW 11-31.

IT IS THEREFORE AGREED:

1. Purpose

The purpose of this Agreement is to allow the Potential Bidder to access to drawings and documentation detailing the layout of NCDC for the sole purpose of estimating cost and bidding on the "Napa County Hall of Justice Fire Damper Repair Project," PW 11-31.

This Agreement is intended to ensure the safety and security of NCDC. By signing this Agreement Potential Bidder is stating that it will not disclose any Confidential Information (as defined in paragraph 4) and only use Confidential Information for the purposes of bidding on the the "Napa County Hall of Justice Fire Damper Repair Project," PW 11-31. Further, Potential Bidder warrants that its employees, agents, assigns, will be similarly bound by this Non-Disclosure Agreement and all other applicable laws and regulations pertaining to confidentiality. Partners and or subcontractors that interested in viewing plans for the "Napa County Hall of Justice Fire Damper Repair Project," PW 11-31 will be required to execute a Confidentiality and Non-Disclosure Agreement with the County.

2. Disclosure

Potential Bidder shall not publish, nor make and/or retain copies or disclose to any third party, any Confidential Information furnished except as required by judicial process in a legal proceeding, in which event the Potential Bidder will provide to the County notice of the request or demand to disclose Confidential Information prior to its disclosure.

3. Indemnification

3.1 In General. To the full extent permitted by law, Potential Bidder shall hold harmless, defend at its own expense, and indemnify County and the officers, agents, employees and volunteers of County from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of Potential Bidder or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of County or its officers, agents, employees, volunteers, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work

product privilege.

3.2 Employee Character and Fitness. Potential Bidders reviewing plans must complete a Visitor Security Clearance Form and pass security clearance as required for the Napa County Hall of Justice Fire Damper Repair Project,” PW 11-31. Notwithstanding anything to the contrary in this Paragraph, Potential Bidder shall hold County and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or Potential Bidder’s actions in this regard.

4. Confidential Information and Confidential Materials

4.1 "Confidential Information" as outlined herein shall be used in strict confidence solely for the purpose bidding on the Napa County Hall of Justice Fire Damper Repair Project,” PW 11-31 and shall not be used for any other purpose or disclosed by the Potential Bidder, its employees, agents, assigns, partners and without the prior written consent of the County with the exception of the following:

- 4.1.1 It was already in the possession of the Potential Bidder;
- 4.1.2 It is learned from or become publicly disclosed by a source with legal right to use and disclose same; and
- 4.1.3 It is identical to information, which was developed by the Potential Bidder independently of any Confidential Information received from other party.

4.2 “Confidential Information” is defined as nonpublic information that County designates as confidential or any other nonpublic information which disclosure could compromise security or the operations of NCDC. “Confidential Information” includes, but is not limited to, all information relating to the design, layout and operations of NCDC.

5. Restrictions

5.1 Potential Bidder shall take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, to protect NCDC’s Confidential Information. Potential Bidder may disclose Confidential Information only to Potential Bidder’s employees on a need-to-know basis. Potential Bidder will have executed or shall execute appropriate written agreements with its employees and subcontractors sufficient to enable it to comply with all the provisions of this Agreement.

5.2 Confidential Information may be disclosed, reproduced, summarized or distributed only in pursuance of Potential Bidder’s business relationship with County, and only as otherwise provided hereunder. Potential Bidder agrees to segregate all such information from other confidential materials in Potential Bidder’s possession to prevent commingling.

6. Rights and Remedies

6.1 All Confidential Information is and shall remain the property of the County.

6.2 Potential Bidder shall notify the County immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Potential Bidder, and will cooperate with the County in every reasonable way to help the County regain possession of the Confidential Information and prevent its further unauthorized use.

6.3 Potential Bidder acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that the County shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

6.4 Disclosing Party may visit Potential Bidder premises, with reasonable prior notice and during normal business hours, to review Potential Bidder’s compliance with the terms of this Agreement.

7. Governing Law

This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California.

8. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of the County, its agents, or employees, but only by an instrument in writing signed by an authorized officer of the County. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

9. Miscellaneous

9.1 Subject to the limitations set forth in this Agreement, this Agreement is binding upon the parties, their successors and assigns.

9.2 If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

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9.3 All obligations created by this Agreement shall survive change or termination of the parties' business relationship.

I, the undersigned, represent that I am authorized to enter into this Agreement on behalf of the Potential Bidder and its agents. Potential Bidder and its agents hereby agree to the terms of this Agreement.

AGREED AND ACCEPTED BY:

By: _____

Name (printed): _____

Title: _____

Date: _____

AGREED AND ACCEPTED BY:

By: _____

Name (printed): _____

Title: _____

Date: _____

Napa County Department of Corrections

By _____

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By:</p> <p>Date:</p>
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NAPA COUNTY
STATE OF CALIFORNIA

CONTRACT FOR CONSTRUCTION

THIS AGREEMENT, made and concluded in triplicate this ___th day of _____, 2013, by and between the NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and _____ a corporation, hereinafter referred to as "CONTRACTOR";

TERMS

ARTICLE I. In consideration of the payments and covenants hereinafter mentioned, to be made and performed by County, and under the conditions expressed in the two (2) bonds attached hereto, Contractor shall, enter into a Construction Nondisclosure Agreement and at Contractor's own cost and expense, do all the work and furnish all materials, except such as are specified herein to be furnished by County, necessary to construct and complete in a good, workmanlike and substantial manner and to the satisfaction of the Napa County Board of Supervisors that project known as **NAPA COUNTY HALL OF JUSTICE FIRE DAMPER REPAIR PROJECT, PW 11-33**, which shall be constructed in the County of Napa, California, in accordance with the Plans and Specifications ("Plans") entitled **NAPA COUNTY HALL OF JUSTICE FIRE DAMPER REPAIR PROJECT, PW 11-33**, the Bid submitted by Contractor ("Bid Proposal"), the Special Provisions, and the 2006 Standard Specifications of the State of California Department of Transportation ("Standard Specifications"). The Plans, Bid Proposal, Special Provisions, and Standard Specifications are hereby incorporated by reference as if set forth herein.

ARTICLE II. County hereby promises and agrees with Contractor to employ, and does hereby employ, Contractor to provide the materials and to do the work according to the terms and conditions herein contained for the prices hereinafter set forth, and hereby contracts to pay the same at the time, in the manner, and upon the conditions set forth herein, and both parties hereby agree, for themselves, their heirs, executors, administrators, successors and assigns, to full performance of the covenants contained herein.

ARTICLE III. It is further expressly agreed by and between the parties that if there is any conflict between the Bid Proposal of Contractor and any of the other terms of this Contract, then such other terms shall control and any such conflicting terms of the Bid Proposal shall not be deemed to have been accepted by County.

ARTICLE IV. Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this Contract; for all loss and damage, arising out of the nature of such work, from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the Napa County Board of Supervisors and for all risks of every description connected with the work; for all expenses incurred by or in consequence of the suspension or discontinuance of work; and for well and faithfully completing the work and the whole thereof in the manner and according to the Plans, Special Provisions, and Standard Specifications and the requirements of the Engineer under them, to wit:

NAPA COUNTY HALL OF JUSTICE FIRE DAMPER REPAIR PROJECT

PW 11-33

Item No.	Item Description	Units	Qty	Item Price	Total
1	Demolition	LS	1		
2	Inspector System and Controls	LS	1		
3	Caulking, Sealants and Fire stopping	LS	1		
4	Electrical	LS	1		
5	Architectural	LS	1		
6	Misc.	LS	1		
7	Smoke Testing Allowance	EA	1	20,000	20,000

TOTAL CONTRACT AMOUNT: \$ _____

TOTAL CONTRACT AMOUNT: (Written Number) _____

IN WITNESS WHEREOF, this Contract has been approved by County and Contractor as of the date first set forth on page C-1 of this Contract.

NAPA COUNTY, a political subdivision of the State of California

By _____
BRAD WAGENKNECHT, Chairman of the Board of Supervisors

ATTEST:
Clerk of the Board of Supervisors

“COUNTY”

By _____

By _____

By _____

“CONTRACTOR”

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: _____</p> <p>Date: _____</p>
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NOTE: Signature of those executing for the Contractor must be acknowledged by Notary Public. If a corporation, this document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate document demonstrating the legal authority of the signature to bind the company.

PROPOSAL FORM
(MAY BE DETACHED AND SUBMITTED ALONE)

**TO THE BOARD OF SUPERVISORS
OF NAPA COUNTY
NAPA, CALIFORNIA**



FOR:

**NAPA COUNTY HALL OF JUSTICE FIRE DAMPER REPAIR PROJECT
PW 11-33**

NAME OF BIDDER _____

BUSINESS ADDRESS _____

PLACE OF BUSINESS _____

Location: The work to be done and referred to herein is in the County of Napa, State of California, more particularly described as follows:

**NAPA COUNTY HALL OF JUSTICE FIRE DAMPER REPAIR PROJECT
PW 11-33**

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm or corporation; that he has carefully examined the location of the proposed work, the annexed proposed form of contract, the Plans, Special Provisions and Standard Specifications; and he proposes, and agrees if this proposal is accepted, that he will contract with Napa County, in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction, and to do all the work and furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements of payment therefore the following item prices to wit:

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NAPA COUNTY HALL OF JUSTICE FIRE DAMPER REPAIR PROJECT

PW 11-33

Item No.	Item Description	Units	Qty	Item Price	Total
1	Demolition	LS	1		
2	Inspector System and Controls	LS	1		
3	Caulking, Sealants and Fire stopping	LS	1		
4	Electrical	LS	1		
5	Architectural	LS	1		
6	Misc.	LS	1		
7	Smoke Testing Allowance	EA	1	20,000	20,000

TOTAL CONTRACT AMOUNT: \$ _____

TOTAL CONTRACT AMOUNT: (Written Number) _____

*Authorized Signature Name Title

*Authorized Signature Name Title

* If a corporation, this document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. **In the alternative, a single corporate signature is acceptable when accompanied by a corporate document demonstrating the legal authority of the signature to bind the company.**

INSTRUCTIONS TO BIDDERS

The Bid and Determining Low Bidder.

Bids are required for the entire work. The amount of the bid for comparison purposes will be the Total Lump Sum Base Bid.

The bidder shall set forth for each item of work, in clearly legible figures, as item price and a total for the item in the respective spaces provided for this purpose. In the case of unit basis items, the amount set forth under the "Total" column shall be the extension of the item price bid on the basis of the estimated quantity for the item.

In case of a discrepancy between the item price and the total set forth for the item, the item price shall prevail, provided, however, if the amount set forth as an item price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or in the case of unit basis items, is the same amount as the entry in the "Total" column, then the amount set forth in the "Total" column for the item shall prevail in accordance with the following:

- 1) As to lump sum items, the amount set forth in the "Total" column shall be the item price.
- 2) As to unit basis items, the amount set forth in the "Total" column shall be divided by the estimated quantity for the item and the price thus obtained shall be the item price.

In case of a discrepancy between the Total Lump Sum Base Bid and the calculated total of the amounts in the "Total" column for each line item determined after using the above procedures for resolving the discrepancies, the calculated total of the amounts set forth in the "Total" column for shall become the Total Lump Sum Base Bid and shall be used for comparison purposes in determining the lowest bid.

It is understood and agreed that the quantities of work under each item are approximate only, being given for a basis of comparison of proposal, and the right is reserved to the County to increase or decrease the amount of work under any item as may be required, in accordance with provisions set forth in the specifications for this project.

It is further understood and agreed that the total amount bid for the project does not constitute an agreement to pay a lump sum for the work unless it specifically so states.

If this proposal shall be accepted and the undersigned shall fail to contract as aforesaid and to give the two bonds in the sums to be determined as aforesaid, with surety satisfactory to the Board of Supervisors of the County of Napa within eight (8) days, not including Saturdays, Sundays and legal holidays, after the bidder has received notice from the County Engineer that the contract has been awarded to him, the Board of Supervisors may, at its option, determine that the bidder has abandoned the contract, and thereupon this proposal, and the acceptance thereof shall be null and void, and the forfeiture of such security accompanying this proposal shall operate and the same shall be the property of the County of Napa.

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Form of Bid.

- (1) To receive consideration, bids shall be made on the forms and in the manner set forth in the Notice to Proposers.
- (2) Bids received after the date and time advertised for opening will be considered non-responsive and will be rejected.
- (3) Each bid must be completed in ink, typewritten or computer generated, and all changes and/or erasures must be initialed in ink. Each bid must be signed in ink by an authorized representative of the firm.
- (4) Bidders shall not change the bid form nor make additional stipulations on the bid form which are not consistent with the provisions of the specifications.

Taxes. Bid prices shall include all applicable federal, state, and local taxes.

Receipt of Bids. All bids must be received sealed in an envelope prior to the time specified in the Notice to Proposers or as amended expressly by an addendum. Late bids will not be opened and will not be considered under any circumstances.

Postponement of Opening. The County reserves the right to postpone the date and time for receiving and/or opening of proposals at any time prior to the date and time established in the Notice to Proposers.

Rejection of Proposals. The County reserves the right to reject any proposals which are incomplete, obscure, or irregular, any proposals which omit a bid on any one or more items for which bids are required; any proposals which omit unit prices if unit prices are required; any proposal in which unit prices are unbalanced in the opinion of the County; any proposals accompanied by insufficient or irregular proposal guaranty; and any proposals from bidders who have previously failed to perform properly or to complete contracts of any nature on time.

Relief of Bidders. Attention is directed to the provisions of Public Contract Code Section 5100, et seq., concerning relief of bidders, and in particular to the requirement therein that if a bidder claims a mistake was made in its bid, the bidder shall give the County written notice within five (5) calendar days after the opening of the bids of the alleged mistake, specifying in the notice, in detail, how the mistake occurred.

Bid Protest Procedures. Any bid protest must be in writing and received by the County at 1195 Third Street, Napa, CA before 5:00 p.m. no later than five (5) working days following the occurrence giving rise to the protest (the "Bid Protest Deadline") shall be considered pursuant to the procedures set forth in Section 10 of the County Purchasing Manual and must comply with the provisions of that Section and those requirements set forth below:

- (1) Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest.

(2) The bid protest must contain a complete statement of the basis for the protest and all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address and telephone number of the person representing the protesting bidder if different from the protesting bidder.

(3) The party filing the protest shall concurrently transmit a copy of the protest and all supporting documents by fax or by e-mail, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

(4) The protested bidder may submit a written response to the protest, provided the response is received by the County before 5:00 p.m., within two (2) working days after the Bid Protest Deadline or after receipt of the bid protest, whichever is sooner (the "Response Deadline"). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address and telephone number of the person representing the protested bidder if different from the protested bidder.

(5) A copy of the protest and all supporting documents must also be transmitted by fax or by e-mail, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

(6) The procedure and time limits set forth in this section are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest. The bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

It is the intention of the County to award a contract, if at all, to the lowest bidder who demonstrates the attributes of trustworthiness, as well as quality, fitness (including financial qualifications), capacity and experience to enable it to prosecute the work successfully and properly, and to complete the work within the time period named in the Contract Documents.

To determine the degree of responsibility to be credited to the bidder, the County will weigh any evidence that the bidder has performed satisfactorily other contracts of like nature and magnitude, and comparable difficulty and rates of progress, to the Work. The County shall have sole discretion to determine what contracts are of like nature and magnitude, and comparable difficulty and rates of progress.

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NONCOLLUSION DECLARATION TO BE EXECUTED
BY BIDDER AND SUBMITTED WITH BID

"I, _____, hereby declare as follows: that he or she is _____ of _____ the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding, that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid."

I certify and declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ at _____
(DATE) (PLACE)

SIGNATURE

Accompanying this proposal is a _____
[Insert the words "cashier's check", "certified check", or "bidder's bond" as the case may be.]
A personal check is not an acceptable form of security.]
in an equal amount to at least ten percent of total bid.

The names of all persons interested in the foregoing proposal as principals are as follows:

IMPORTANT NOTICE: If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer and manager thereof; if a copartnership, state true name of firm, also names of all individual copartners comprising the firm; if bidder or other interested person is an individual, state first and last names in full.

Licensed in accordance with an act providing for the registration of Contractors License No. _____
Expiration Date _____ Classification _____

Signature of bidder

NOTE; if bidder is corporation, the legal name of the corporation shall be set forth above together with the signature of the officer or officer authorized to sign contracts on behalf of the corporation; if bidder is a co partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts in behalf of the co partnership; and if bidder is an individual, his signature shall be placed above. If signature is by an agent other than an officer of a corporation or a member of a partnership, a Power of Attorney must be on file with the County prior to opening bids or submitted with the bid; otherwise, the bid will be disregarded as irregular and unauthorized.

Business Address _____

Place of Residence _____

Dated _____, 2013 Phone _____

ADDENDUM ACKNOWLEDGEMENT

Bidder acknowledges receipt of the following addendums which are attached to the proposal:

Addendum No. _____ Date _____

Addendum No. _____ Date _____

Addendum No. _____ Date _____

Addendum No. _____ Date _____

Addendum No. _____ Date _____

Addendum No. _____ Date _____

Addendum No. _____ Date _____

LIST OF SUBCONTRACTORS

Pursuant to Section 4100 to 4113 of the Public Contract Code, Section 8-1.01 of the Standard Specifications, and Resolution 74-3 of the Napa County Board of Supervisors, each bidder shall complete and submit this form with his bid in accordance with the following instructions.

- 1. For each subcontract item to be performed by a subcontractor, the following shall be indicated herein: the name of the subcontractor, the portion of work to be preformed and the location of the place of business.
- 2. Only one subcontractor shall be listed for each craft unless there is an alternate bid in which case a different subcontractor, when so designated, may be listed for the alternate work.
- 3. **All fields must be completed as specified or bid proposal will be rejected.**

Name of Subcontractor	Portion of Contract (i.e. Electrical, Striping, Roofing, etc.)	Location of Business (City and State)

Note: Bid Bonds to be on this form or on a form supplied by a licensed surety insurer

**BIDDERS BOND
NAPA COUNTY
STATE OF CALIFORNIA**

KNOW ALL PERSONS BY THESE PRESENTS,

That we _____

_____ as PRINCIPAL, and

_____ as SURETY,

are held and firmly bound unto the NAPA COUNTY, hereinafter called the COUNTY, in the penal sum of TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID of the Principal above named, submitted by said Principal to the Napa County Board of Supervisor, for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. In no case shall the liability of the surety hereunder exceed the sum of

\$ _____ THE

CONDITION OF THIS OBLIGATION IS SUCH THAT WHEREAS the Principal has submitted the above mentioned bid to the Napa County Board of Supervisors for the work in Napa County, in accordance with the Specifications entitled **NAPA COUNTY HALL OF JUSTICE FIRE DAMPER REPAIR PROJECT, PW 11-33**, and the Standard Specifications of the State of California, Department of Transportation, dated, 2006, therefore, heretofore adopted by the Board of Supervisor of the County of Napa.

NOW THEREFORE, if the aforesaid Principal is awarded the contract and within the time and manner required under the Specifications, after the prescribed forms are presented to him for signature, enter into a written contract, in the prescribed form, in accordance with the bid, and files and two bonds with the County Clerk of Napa, one to guarantee faithful performance and the other to guarantee payment for labor

and materials, as required by law, then this obligation shall be null and void; otherwise, it shall be and remain in full force and virtue.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the surety shall pay all cost incurred by the obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

SEALED with our seals and dated this ___ day of _____, 2013.

_____	_____
Principal (contractor):	Surety:
By: _____	By: _____
	, Attorney in Fact
By: _____	

Signatures for Principal and Surety must be acknowledged before a Notary Public

APPROVED AS TO FORM: MINH TRAN,
Napa County Counsel

By: _____

**NAPA COUNTY
PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS THAT WE, _____,
whose address is _____ as Principal,
and _____, duly
authorized under the laws of the State of California to become sole surety on bonds and undertakings, as
Surety, are jointly and severally held and firmly bound unto NAPA COUNTY, a political subdivision of
the State of California, as Obligee, in the full and just sum of
_____ **AND /100 DOLLARS**

lawful money of the United States of America, to be paid to the said Obligee, successors or assigns; for
which payment, well and truly to be made, we bind ourselves, our heirs, executors, successors,
administrators and assigns, jointly and severally, firmly by these presents.

THE CONDITION of the foregoing obligation is such that; whereas, the above bounden Principal has
entered into a contract, or is about to enter into a contract with the Obligee to do and perform the
following work, to-wit: **NAPA COUNTY HALL OF JUSTICE FIRE DAMPER REPAIR
PROJECT, PW 11-33** as is more specifically set forth in said contract, to which contract reference is
hereby made.

NOW, THEREFORE, if the said Principal shall well and truly do the said work, and fulfill each and
every of the covenants, conditions and requirements of the said contract in accordance with the plans and
specifications, then the above obligation shall be null and void, otherwise it shall remain in full force and
effect.

THE SURETY does hereby consent to any and all alterations, modifications and revisions to the
agreement secured by this bond including but not limited to, any extension of time for performance or
modifications in manner of performance which may be agreed upon and between NAPA COUNTY as
Obligee and the Principal, and the Surety does hereby waive notice of any alterations, modifications,
revisions, or extensions.

SEALED with our seals and dated this ____ day of _____, 2013.

Principal (contractor): _____ Surety: _____

By: _____ By: _____

By: _____

, Attorney in Fact

Signatures for Principal and Surety must be acknowledged before Notary Public

APPROVED AS TO FORM: MINH TRAN,
Napa County Counsel

By: _____

**NAPA COUNTY
LABOR AND MATERIAL BOND**

KNOW ALL PERSONS BY THESE PRESENTS THAT WE, _____, as Principal, and **THE HANOVER INSURANCE COMPANY** duly authorized under the laws of the State of California to become sole surety on bonds and undertakings, as Surety, are held and firmly bound unto any and all materialmen, persons, companies or corporations furnishing materials, provisions, provender or other supplies used in, upon, for or about the performance of the work contracted to be executed or performed under the contract hereinafter mentioned, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said work to be done, and all persons who performed work or labor upon the same, and whose claim has not been paid by the contractor, company or corporation, in the just and full sum of _____ **AND /100 DOLLARS** for the payment whereof, well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION of the foregoing obligation is such that; whereas the above bounden principal has entered into a contract, or is about to enter into a contract with **NAPA COUNTY**, a political subdivision of the State of California, to do and perform the following work, to-wit: **NAPA COUNTY HALL OF JUSTICE FIRE DAMPER REPAIR PROJECT, PW 11-33**

NOW THEREFORE, if the above bounden Principal, contractor, person, company or corporation, or his or its subcontractor fails to pay for any materials, provisions, provender, other supplies, or terms used in, upon for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal or the subcontractors of the Principal pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor, then the Surety of this bond will pay the same, in an amount not exceeding the sum specified in this bond as well as a reasonable attorney's fee, which shall be fixed and awarded by the court to the prevailing party in said suit, said attorney's fee to be taxed as costs in said suit and to be included in the judgment therein rendered.

THE SURETY does hereby consent to any and all alterations, modifications and revisions to the contract above referred to, and work and labor under which is secured by this bond, including but not limited to, any extension of time for performance or modifications in manner of performance which may be agreed upon by and between **NAPA COUNTY** and the Principal, and the Surety does hereby waive notice of any alterations, modifications, revisions, or extensions.

THIS BOND is executed and filed to comply with the provisions of the act of Legislature of the State of California as designated in Civil Code sections 9550 et seq., inclusive, and all amendments thereto and shall inure to the benefit of any of the persons named in Civil Code section 9100 so as to give a right of action to those person or their assigns in any suit brought upon the bond.

SEALED with our seals and dated this ___ day of _____, 2013.

Principal (contractor): _____	Surety: _____
By: _____	By: _____
By: _____	_____, Attorney in Fact

Signatures for Principal and Surety must be acknowledged before Notary Public

APPROVED AS TO FORM: MINH TRAN,
Napa County Counsel

By: _____

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FINISH

NAPA COUNTY Hall of Justice Fire Damper Repair Project

PW 11-33

SPECIAL PROVISIONS

SECTION 'A'

GENERAL CONDITIONS

1. **LOCATION**

1125 Third Street, Napa, CA 94559

2. **DESCRIPTION OF WORK**

The work involves demolition and replacement of existing Ruskin smoke damper actuators and testing the assembly, installing a damper monitoring and control system, installing electrical conduit, smoke testing, smoke and fire proofing, and interfacing with the existing fire alarm panel.

3. **DEFINITIONS AND TERMS**

As used herein, unless the context otherwise requires, the following terms have the following meaning:

Contractor. The successful Bidder whose Bid Proposal is accepted by the Napa County Board of Supervisors and to whom the Contract is awarded by the Board.

County. Napa County, a political subdivision of the State of California.

Department of Transportation. The Board of Supervisors of the County of Napa, State of California.

Department. The Napa County Department of Public Works.

Director of Transportation. The Napa County Public Works Director.

Engineer or County Engineer. The Napa County Public Works Director, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

Laboratory. The established laboratory of the Materials and Research Department of Transportation of the State of California or laboratories authorized by the Engineer to test materials and work involved in the contract.

Owner. Napa County.

State of California. Napa County.

Transportation Building, Sacramento. Room 101, Administration Building, 1195 Third Street, Napa, California 94559.

State Highway Engineer. The County Engineer.

Standard Specifications. The May 2006 edition of the Standard Specifications of the State of California, Department of Transportation. Any reference therein to the State of California or a State agency, office or officer shall be interpreted to refer to the County or its corresponding agency, office or officer acting under this contract.

4. **CONTRACT DOCUMENTS**

The Contract Documents shall include the Standard Specifications of the State of California, Department of Transportation, dated May 2006, insofar as same may apply, the Special Provisions, the Notice to Contractors, the Proposal, the Contract (“C”) pages, the two contract bonds required herein, any supplemental agreements amending or extending the work, and pertinent portions of other documents included by reference thereto in the Special Provisions or the Contract pages.

5. **TIME OF COMPLETION**

Attention is directed to all of the provisions of Section 8-1.03 and 8-1.06 of the Standard Specifications. The Contractor shall begin work within fifteen (15) calendar days after receiving notice that the contract has been executed and approved and shall diligently prosecute the same to completion before the expiration of 270 working days from the start of work.

6. **LIQUIDATED DAMAGES**

Attention is directed to the provisions of Section 8-1.07 of the Standard Specifications. The Contractor shall pay to the County of Napa the sum of \$500 per day for each and every calendar day delay in finishing the work in excess of the number of working days prescribed above and any extension of time granted

7. **SPECIALTY ITEMS**

Attention is directed to Section 8-1.01 of the Standard Specifications.

8. **PREVAILING WAGES**

In accordance with the provisions of Section 1774 of the Labor Code of the State of California, the Napa County Board of Supervisors has ascertained from the Director of Industrial Relations the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) applicable to the work to be done. These rates of wages are on file and may be seen at the County of Napa, Department of Public Works, 1195 Third Street, Room 101, Napa, California.

9. **PAYROLL RECORDS**

Special Attention is directed to the provisions of Section 7-1.01A(3) of the Standard Specifications. A copy of all payrolls shall be submitted weekly to the Engineer. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Department or on any form with identical wording. The Contractor shall be responsible for the submission of copies of payrolls of all subcontractors.

10. **PROPOSAL REQUIREMENTS AND CONDITIONS**

Attention is directed to Section 2 of the Standard Specifications.

(a) Examination of Site. Each bidder shall have examined the site of the work before bidding so he shall have full knowledge of all facilities and difficulties affecting the work which may not be particularly described herein. No variation or allowance from the contract sum will be made because of lack of such examination or knowledge.

(b) State Contract Act. The State Contract Act is not applicable to contracts involving political subdivisions of the State of California. Pre-qualification of bidders will not be required.

(c) Joint Venture. If two or more Bidders desire to bid jointly on a single project or desire to combine their assets for so doing, they must file an affidavit of joint venture with the County Engineer, and such affidavit of joint venture will be valid only for the specific project for which it is filed. If such affidavit of joint venture is not filed as aforesaid and approved by the Engineer prior to the time for opening bids on the specific projects for which it is submitted, a joint bid submitted by the said Bidders will be disregarded.

11. **AWARD AND EXECUTION OF THE CONTRACT**

Attention is directed to Section 3 of the Standard Specifications, contract bonds. In-lieu of the bonds specified under Section 3.1.02 of the Standard Specifications, the successful bidder shall furnish a faithful Performance Bond as required by Section 20129 of the Public Contract Code in an amount equal to one hundred percent (100%) of the contract price of the work contemplated and the laborer's and material man's payment bond as required by Section 3247 of the Civil Code in an amount equal to one hundred percent (100%) of the contract price of the work contemplated.

12. **SCOPE OF WORK**

Attention is directed to Section 4 of the Standard Specifications.

The intent of the Plans and Specifications is to cover the complete project ready for use when completed. The Contractor shall accomplish complete installation of facilities, and any other required items to make the unit complete. All units, facilities, etc., shall be in operating condition to the approval of the Engineer. The quantities and items listed in the proposal form and contract form are given as a basis for the comparison of bids and the Board of Supervisors does not, expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work as may be deemed necessary or expedient by the Engineer.

13. **CHANGE ORDERS**

(a) Procedure. Attention is directed to Section 4-1.03 of the Standard Specifications.

(b) Authorized Representative / Limits. No Change Order shall be valid or binding against COUNTY unless such Change Order has been executed in writing by (1) COUNTY's Director of Public Works consistent with the authority granted to him by the Board of Supervisors pursuant to the limitations set forth under Napa County Resolution No. 2011-18 and Public Contract Code Section 20142, or (2) by the Board of Supervisors.

14. **CONTROL OF THE WORK**

Attention is directed to Section 5 of the Standard Specifications.

Deviations from the approved Plans and Specifications shall be approved by the Engineer and all changes shall be by written permission only.

15. **LEGAL RELATION AND RESPONSIBILITY**

Attention is directed to Section 7 of the Standard Specifications.

(a) Prevailing Wages. In-lieu of the prevailing wage rates being set forth in the Notice to Contractors as provided in Standard Specifications Section 7-1.01 A(2) "Prevailing Wages", see Section 8 and 9 of these Special Provisions.

(b) Public Safety. Furnishing and maintenance of barricades, flashing lights and other safety devices shall be the responsibility of the Contractor at all times. The Contractor shall respond promptly to correct improper conditions or inoperative devices.

Failure to frequently inspect and maintain lights and barricades in proper operating condition when in use on the roadway, or failure to respond promptly to notification of improperly

operating equipment, will be sufficient cause for suspension of the contract until such defects are corrected.

All expenses incurred by the County because of emergency "call-outs" and for resetting or supplementing the Contractor's barricades or warning devices, will be charged to the contractor and may be deducted from moneys due him.

(c) Acceptance of Contract. Attention is directed to Section 7-1.17 of the Standard Specifications. Acceptance will consist of the execution and filing with the County Recorder of a Notice of Completion as defined in Civil Code section 8182.

Should it become necessary due to developed conditions to occupy any portion of the work before the contract is fully completed, such occupancy shall not constitute acceptance.

(d) Hold Harmless/Indemnification. To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions to act of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees or volunteers. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(e) Insurance. CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(1) Workers' Compensation insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(2) Liability insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better or equivalent self-insurance:

(i) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than TWO MILLION DOLLARS (\$2,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of

CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than TWO MILLION DOLLARS (\$2,000,000).

(ii) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000) combined single limit per occurrence.

(3) Certificates. All insurance coverages referenced in (2), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the DEPARTMENT OF PUBLIC WORKS prior to commencement of performance of any of Contractor's duties; shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. For the commercial general liability insurance coverage referenced in (2)(i), and, where the vehicles area covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in (2)(ii) CONTRACTOR shall also file with the evidence of coverage and endorsement from the insurance provider naming COUNTY, its officers employees, agents and volunteers as additional insureds and waiving subrogation, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request of COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insured to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(4) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be approved by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines

that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

16. **PROSECUTION AND PROGRESS**

Attention is directed to Section 8 of the Standard Specifications, and to the following:

- (a) Progress Schedule. The contractor, promptly after being awarded the contract, shall prepare and submit for the Owner's and Engineer's information a Contractor's construction schedule for the work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the work and project or when requested in writing by the Engineer, shall be related to the entire project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the work.
- (b) Schedule Of Submittals. The Contractor shall prepare and keep current, for the Engineer's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Engineer reasonable time to review submittals.
- (c) Current Progress Schedule. The Contractor shall perform the work in general accordance with the most recent schedules submitted to the Owner and Engineer.
- (d) Termination of Contract. In-lieu of the provisions of Section 8-1.08 of the Standard Specifications the following shall apply.

Whenever, in the opinion of the Board of Supervisors the said work is neglected by the Contractor, or the same is not prosecuted with the diligence and force specified, meant and intended in and by the terms of this contract, it shall be lawful for the Board of Supervisors to make a requisition upon the Contractor for such additional specific force or such additional specific material to be brought into the work under this contract or to remove improper material from the grounds, and its due and faithful fulfillment requires; of which action of the Board of Supervisors due notice in writing of not less than five days shall be served upon the Contractor or his agent having charge of the work; and if the Contractor fails to comply with such requisition within five days, it shall be lawful for the Board of Supervisors to employ upon such work the additional force or supply the materials as specifically required as aforesaid; and the amount paid for such additional force or material shall be charged against the Contractor and be deducted from his next or subsequent estimate and payment, or the same or any part thereof not so deducted may be recovered from the Contractor or his sureties.

Moreover, if the Contractor fails to comply with such requisition within five days, the Board of Supervisors may declare the contract terminated and may itself proceed to complete the work herein specified or may engage any other person or persons to do the same. Upon the completion of such work, the said Board of Supervisors through its proper office or officers shall cause a statement to be made of the default of the Contractor as aforesaid, and in completing the work itself or by any other person or persons. Should the amount in such statement be more than the amount would have been due the Contractor upon the completion of the work by him, the difference shall be paid by the Contractor to the County of Napa.

17. **TERMINATION FOR CONVENIENCE OF THE COUNTY**

Notwithstanding any other provision of this AGREEMENT, COUNTY may, at any time, and without cause, terminate this AGREEMENT in whole or in part, upon not less than seven (7) days' written notice to CONTRACTOR. Such termination shall be effected by delivery to CONTRACTOR of a notice of termination specifying the effective date of the termination and the extent of the work to be terminated. CONTRACTOR shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by COUNTY. COUNTY shall pay CONTRACTOR for the work completed prior to the effective date of the termination, and such payment shall be CONTRACTOR's sole remedy under this AGREEMENT. Under no circumstances will CONTRACTOR be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this paragraph. CONTRACTOR shall insert in all subcontracts that the subcontractor shall stop work on the date of and to the extent specified in a notice of termination, and shall require subcontractors to insert the same condition in any lower tier subcontracts.

18. **MEASUREMENT AND PAYMENT**

Attention is directed to Section 9 of the Standard Specifications.

(a) Force Account Payment. In-lieu of the first paragraph of Section 9-1.03A(3) "Equipment Rental", the following shall apply:

Equipment rental rates shall be those rental rates applicable on contracts advertised by the State of California, Department of Transportation on the effective date of this contract.

(b) Partial payment. In-lieu of Section 9-1.06, Paragraph 3 of the Standard Specifications the County will retain five percent (5%) of the value of all work done and five (5%) percent of the value of the materials so estimated to have been furnished and delivered and unused or furnished and stored as aforesaid as part security for the fulfillment of the contract by the Contractor to the extent not inconsistent with Public Contract Code Section 20104.50; all such retentions being subject to the following statutory requirements:

Public Contract Code Section 7107. Retention proceeds; withholding disbursement

- (a) *This section is applicable with respect to all contracts entered into on or after January 1, 1993 relating to the construction of any public work of improvement.*
- (b) *The retention proceeds withheld from any payment by the public entity from the original contractor, or by the original contractor from any subcontractor, shall be subject to this section.*
- (c) *Within 60 days after the date of completion of the work of improvement, the retention withheld by the public entity shall be released. In the event of a dispute between the public entity and the original contractor, the public entity may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. For purposes of this subdivision, "completion" means any of the following:*

- (1) *The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.*
- (2) *The acceptance by the public agency, or its agent, of the work of improvement.*
- (3) *After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the contractor.*
- (4) *After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.*
- (d) *Subject to subdivision (e), within 10 days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.*
- (e) *The original contractor may withhold from a subcontractor its portion of the retention proceeds if a bona fide dispute exists between the subcontractor and the original contractor. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.*
- (f) *In the event that retention payments are not made within the time periods required by this section, the public entity or original contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.*
- (g) *If a state agency retains an amount greater than 125 percent of the estimated value of the work yet to be completed pursuant to Section 10261 of the Public Contract Code, the state agency shall distribute undisputed retention proceeds in accordance with subdivision (c). However, notwithstanding subdivision (c), if a state agency retains an amount equal to or less than 125 percent of the estimated value of the work yet to be completed, the state agency shall have 90 days in which to release undisputed retentions.*
- (h) *Any attempted waiver of the provisions of this section shall be void as against the public policy of this state.*

Public Contract Code Section 22300. Performance retentions; provision for substitute security; escrow agreement

- (a) *Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract; however, substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (> 7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.*
- (b) *Alternatively, the contractor may request and the owner shall make payment of retentions earned directly to the escrow agent at the expense of the contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon*

satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section.

- (c) Securities eligible for investment under this section shall include those listed in > Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency. The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon. Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract. For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.
- (d) (1) Any contractor who elects to receive interest on moneys withheld in retention by a public agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a public agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the contractor.
(2) This subdivision shall apply only to those subcontractors performing more than five percent of the contractor's total bid.
(3) No contractor shall require any subcontractor to waive any provision of this section.
- (e) The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors and subcontractors in public contract procedures.
- (f) The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form:

**ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between:

_____ whose address is _____
_____ hereinafter called "Owner,"
_____ whose address is _____
_____ hereinafter called " Contractor" and
_____ whose address is _____
_____ hereinafter called " Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner

within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of _____, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

On behalf of Contractor:

Title

Title

Name

Name

Signature

Signature

Address

Address

On behalf of Escrow Agent:

Title

Name

Signature

Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

COUNTY OF NAPA

“Owner”

Contractor

Title

Title

Name

Name

Signature

Signature

Public Contract Code Section 20104.50 Timely progress payments; legislative intent; interest; payment requests

- (a) (1) *It is the intent of the Legislature in enacting this section to require all local governments to pay their contractors on time so that these contractors can meet their own obligations. In requiring prompt payment by all local governments, the Legislature hereby finds and declares that the prompt payment of outstanding receipts is not merely a municipal affair, but is, instead, a matter of statewide concern.*
- (2) *It is the intent of the Legislature in enacting this article to fully occupy the field of public policy relating to the prompt payment of local governments' outstanding receipts. The Legislature finds and declares that all government officials, including those in local government, must set a standard of prompt payment that any business in the private sector which may contract for services should look towards for guidance.*
- (b) *Any local agency which fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.*
- (c) *Upon receipt of a payment request, each local agency shall act in accordance with both of the following:*
 - (1) *Each payment request shall be reviewed by the local agency as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.*

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

- (d) The number of days available to a local agency to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which a local agency exceeds the seven-day return requirement set forth in paragraph (2) of subdivision (c).
- (e) For purposes of this article:
 - (1) A "local agency" includes, but is not limited to, a city, including a charter city, a county, and a city and county, and is any public entity subject to this part.
 - (2) A "progress payment" includes all payments due contractors, except that portion of the final payment designated by the contract as retention earnings.
 - (3) A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the local agency.
- (f) Each local agency shall require that this article, or summary thereof, be set forth in the terms of any contract subject to this article.

(c) Claims. All claims under this contract shall be subject to the following statutory requirements:

Public Contract Code Section 20104 Application of article; provisions included in plans and specifications

- (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.
- (2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.
- (b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.
- (2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.
- (c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.
- (d) This article applies only to contracts entered into on or after January 1, 1991.

Public Contract Code Section 20104.2 Claims; requirements, tort claims excluded

For any claim subject to this article, the following requirements apply:

- (a) The claim shall be in writing and include the documents necessary to substantiate the claim.

Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
- (b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
- (2) If additional information is thereafter required, it shall be requested and provided

pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claim within 60 days of receipt of the claim, or may request in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation. or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

Public Contract Code Section 20104.4 Civil action procedures; mediation and arbitration: trial de novo: witness

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil

Discovery Act of (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) Title 3 of Part 3 of the Code of Civil Procedure, any party who receiving an arbitration award requests a trial de novo but does obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses participate in the mediation or arbitration process.

Public Contract Code Section 20104.6 Payment of portion of claim which is undisputed; of interest on arbitration award or judgment

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

(d) Final Payment. Payment will be made in accordance with the provisions of Section 9-1.07 of the Standard Specifications provided however that in no event will the final payment be made within 35 calendar days after the filing of Notice of Completion.

The final estimate shall be conclusive and binding against both parties to the contract on all questions relating to the performance of the contract and the amount of work done thereunder and compensation therefore.

19. MISCELLANEOUS PROVISIONS

(a) Licenses and Permits. Any and all licenses and permits required shall be provided by the Contractor and he shall abide by any and all Federal, State and County laws and rules affecting the work and shall maintain all required protection for property, employees and the public and insurance in connection with same, for all of which he shall bear necessary expense.

(b) Building Laws, etc. The Contractor shall conform to and abide by all County and State Building, Labor, Sanitary and Electrical Codes, Ordinances, Laws, Rules and Regulations. Such laws and regulations shall be considered a part of these Special Provisions as if set forth herein in full and the work and materials shall be in accordance therewith.

(c) Guarantees. All work performed and equipment or material furnished shall be guaranteed for one (1) year from date of acceptance against any inherent or developed defects of materials or workmanship in manufacture or installations.

All guarantees normally provided by manufacturers of equipment or material installed under this project shall be furnished to the County of Napa and shall remain in force for their normal life.

(d) Ownership of Plans and Specifications. All drawings, specifications and copies thereof provided to the Bidder by the County shall remain the property of the County and they shall not be used by the Contractor or its subcontractors on other work.

(e) Addenda. Any addenda or notices issued during the time of bidding and forming a part of the documents provided to the Bidder for the preparation of his bid, shall be covered in the bid and shall be made a part of the contract. The Bidder shall acknowledge receipt of addenda in the space provided in the Proposal.

Should a bidder find apparent discrepancies in the drawings or documents, or should he be in doubts to their meaning, he should at once notify the County of Napa, Public Works Department, which will send a written instruction to all bidders. The County of Napa will not be responsible for oral instructions.

20. **OWNER'S RIGHT TO DO WORK**

Napa County as Owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors on the job site reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate his work with theirs.

If any part of the Contractor's work depends for proper execution or results upon work of any other Contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for proper execution and results. His failure to so inspect and report shall constitute his acceptance of other Contractors' work as fit and proper for reception of his work, except as to defects which may develop in other Contractors' work after execution of his work.

To insure proper execution of his subsequent work, the Contractor shall measure and inspect work already in place and shall at once report to the Engineer any discrepancy between executed work and contract documents.

The Contractor shall ascertain to his own satisfaction the scope of the project and nature of any other contracts that have been or may be awarded by owner in prosecution of the project to the end that the Contractor may perform this contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to the Contractor exclusive occupancy at the site of project. The Contractor shall not cause any unnecessary hindrance or delay to any other Contractors working on project. If simultaneous execution of any contract for the project is likely to cause interference with performance of some other contract or contracts, the owner shall decide which Contractor shall cease work temporarily and which Contractor then shall continue or whether work can be coordinated so that the Contractors may proceed simultaneously.

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21. **EQUAL OPPORTUNITY EMPLOYMENT**

During the performance of the Contract, the Contractor shall comply with all applicable laws, ordinances, regulations, and codes, including but not limited to, the following:

(a) **Non-Discrimination.** During the performance of the work required by the Contract, the Contractor and its subcontractors shall not deny the benefits thereof to any person on the basis of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), nor shall they discriminate unlawfully against any employee or applicant for employment because of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), or use of family care leave. The Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, the Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Contract subcontracts to the Contractor work required of the County by the State of California pursuant to agreement between the County and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and the Contractor and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) **Documentation of Right to Work.** The Contractor shall abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of the Contractor performing any of the work under the Contract have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. The Contractor shall make the required documentation available upon request to the County for inspection.

(c) **Inclusion in Subcontracts.** To the extent any of the work to be performed by Contractor under the Contract is subcontracted to a third party, the Contractor shall include the provisions of (a) and (b), above, in all such subcontracts as obligations of the subcontractor.

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22. **COUNTY POLICIES ON WASTE, HARASSMENT, DRUG/ALCOHOL-FREE, VIOLENCE-FREE WORKPLACE.**

Contractor hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. Contractor also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment Free Work Environment" revised effective January 8, 2002.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

23. **REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.**

Before starting each portion of the work, the Contractor shall carefully study and compare the Contract Documents relative to that portion of the work, shall take field measurements of any existing conditions related to that portion of the work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies, or omissions discovered by the contractor shall be reported promptly to the Engineer as a request for information in such form as the Engineer may require.

Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Engineer, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the contractor shall be reported promptly to the Engineer.

24. **SUPERVISION AND CONSTRUCTION PROCEDURES**

(a) Supervision And Direction Of Work. The Contractor shall supervise and direct the work, using the contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of

such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Engineer and shall not proceed with that portion of the work without further written instructions from the Engineer. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

(b) Responsibility Of Work. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, subcontractors, and their agents and employees, and other persons or entities performing portions of the work for or on behalf of the Contractor or any of its subcontractors.

(c) Subsequent Work. The Contractor shall be responsible for inspection of portions of work already performed to determine that such portions are in proper condition to receive subsequent work.

(d) Superintendent. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

25. **INTERPRETATION; VENUE.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

SPECIAL PROVISIONS

SECTION 'B'

TECHNICAL SPECIFICATIONS

1. GENERAL REQUIREMENTS

(a) **LAYOUT OF WORK** – The Contractor shall lay out all work from the references given and as shown on the plans, set the necessary markers and stakes and shall be responsible for the correctness of the work.

(b) **MATERIAL SAFETY DATA SHEETS (MSDS)** – The Contractor shall provide MSDS for each product used on site.

(c) **DAMAGES** – The Contractor shall be responsible for any damages to existing facilities, utilities and roads due to causes attributable to the work, and all such damaged facilities, utilities and roads shall be repaired when directed by the Engineer and as required to place them in as good as condition as existed before commencement of the work.

(d) **PUBLIC SAFETY** – The Contractor shall furnish, erect and maintain all lights, signs, barricades and barriers necessary to give adequate warning to the public at all times and shall provide such guards as may be necessary to prevent accidents and avoid damage and injury.

(e) **COOPERATION** – The Contractor shall cooperate with the occupants of the existing facilities adjacent to the project and coordinate the work in such a manner as to minimize the disruption to the existing facilities.

(f) **SCHEDULE OF WORK** – The Contractor shall not obstruct the access to any other driveway within the project area for greater than 15 minutes.

(g) **SAFETY** – The Contractor shall comply with all the applicable provisions of the United States Department of Labor Occupational Safety and Health Act (OSHA), State of California Division of Industrial Safety, Title 8, Safety Orders (Cal-OSHA) and any other applicable codes and regulations.

If, in the opinion of the Engineer, any operation or piece of equipment that is observed by the Engineer appears to be unsafe, the Engineer may immediately halt that portion of the work until the hazard is corrected to the satisfaction of the Engineer and no time extension or additional compensation shall be granted for the time lost due to said halting of the work.

(h) **PRE-CONSTRUCTION CONFERENCE** – Prior to the commencement of any work of any kind, the Contractor, or his authorized agent or representative shall attend a pre-construction conference with representatives of the Napa County Engineer. The conference is required to familiarize all authorized persons involved with policies, regulations and procedures and to discuss construction operations and methods in order to avoid any misunderstanding or conflicts during construction.

(i) **DISPOSITION OF REMOVED MATERIALS** – The Contractor shall be responsible for the disposal of all surplus excavation materials off the site. The Contractor shall not dispose of any materials from demolition or removal by sale, gift or in any manner whatsoever, to the general public at the site. Disposal operations shall comply with all applicable laws and ordinances and must be approved by the Engineer.

(j) **CLEAN UP** – Clean up shall be performed to prevent accidents to personnel, protect all work in place, and to effect completion of the project in an orderly manner. Excess debris shall be removed from the work area immediately so as not to clutter the existing facilities. Access to all other properties within the project area shall be unobstructed and passable between the hours of 4:00 p.m. and 7:00 a.m. weekdays, on weekends and holidays, and whenever work is not actively in progress.

(k) **EQUIPMENT** – Standard construction equipment shall be used and shall be maintained in a safe and satisfactory condition at all times and in compliance with the latest provisions of the CAL/OSHA regulations. All trucks and other heavy equipment shall be well maintained and in proper working order and in compliance with all applicable laws and regulations.

(l) **WORKING HOURS REQUIREMENTS** – Normal work week shall be Monday through Friday 7:00 to 5:00 pm unless otherwise approved by the Engineer or otherwise stated in section 011150.