

NCTPA AGREEMENT NO. XX-XX

**CONSTRUCTION CONTRACT**

(UPCCAA)

**THIS AGREEMENT**, is made and entered into as of this **XXX day** of **MONTH, 20XX** by and between the Napa County Transportation and Planning Agency, hereinafter referred to as "NCTPA", and **COMPANY NAME**, doing business as a \_\_\_\_\_ whose mailing address is \_\_\_\_\_, hereinafter referred to as "Contractor";

**TERMS**

**ARTICLE I.** In consideration of the payments and covenants hereinafter mentioned, to be made and performed by NCTPA, Contractor shall, 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 NCTPA, necessary to install and complete in a good, workmanlike and substantial manner and to the satisfaction of the NCTPA Board, that construction project known as **NAME OF PROJECT**, which shall be constructed in the County of Napa, California, in accordance with Special Provisions described in Exhibit A and the 2010 2006 Standard Specifications of the State of California Department of Transportation ("Standard Specifications"). The Special Provisions and Standard Specifications are incorporated by reference as if set forth herein.

**ARTICLE II.** NCTPA 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.** Contractor agrees to receive and accept the following price 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 Board of Supervisors of the NCTPA, 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 Special Provisions in Exhibit "A", the Standard Specifications, under them, to wit:

**TITLE OF JOB**

**Project Description:**

<b>LUMP SUM BASE BID</b>	
NAME OF PROJECT W/ SUMMARY OF SERVICES TO BE PROVIDED - shall include: All labor, material, and product (inclusive all fees and charges and warranty) for work described in Exhibit A.	\$ 0,000.00
<b>LUMP SUM BASE BID TOTAL WRITTEN:</b> <b>XX</b>	

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

Napa County Transportation and Planning Agency

By \_\_\_\_\_  
KATE MILLER,  
Executive Director

“NCTPA”

By \_\_\_\_\_

“CONTRACTOR”

Approved as to Form Office of Agency Counsel
By: _____ Deputy County Counsel
Date: _____

NOTE: Signature of those executing for the Contractor must be acknowledged by Notary Public.

EXHIBIT "A"

**SPECIAL PROVISIONS**

1. LOCATION

Soscol Gateway Transit Center (SGTC), 625 Burnell Street, Napa, CA 94559

2. DESCRIPTION OF WORK

Work generally consist of, but is not limited to:

- XXXXXXXXXX;
- XXXXXXXXXX

3. DEFINITIONS AND TERMS: The following terms when used in this Exhibit A or in the Standard Specifications shall have the following meanings when used in this Contract:

Contractor. The person or entity described as "Contractor" in the preamble to this Contract.

NCTPA. The Napa County Transportation and Planning Agency

Department of Transportation . The Board of the Napa County Transportation and Planning Agency

Department. The Napa County Transportation and Planning Agency.

Director of Transportation. The NCTPA Executive Director.

Engineer or County Engineer. The NCTPA Executive 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. The Napa County Transportation and Planning Agency

State of California. The Napa County Transportation and Planning Agency.

Standard Specifications. The 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 NCTPA or its corresponding agency, office or officer acting under this contract.

**4. CONTRACT DOCUMENTS**

The Contract Documents shall include the Contract main text, this Exhibit "A" (Special Provisions), Notice to Contractors, the Proposal, the performance bond, the labor and materials bonds, the attached plans, the Standard Specifications of the State of California, Department of Transportation, dated May 2006, insofar as same may apply, and pertinent portions of other documents included by reference thereto in the Special Provisions or the Contract pages.

**5. TIME OF COMPLETION**

The Contractor shall begin work within five (5) working days after receiving notice that the contract has been executed and approved and shall diligently prosecute the same to completion before the expiration of five (5) working days after receiving notice that the contract has been executed and approved. The number of working days shall include the lead time for delivery of materials.

**8. PREVAILING WAGES**

In accordance with the provisions of Section 1774 of the Labor Code of the State of California, the Board of NCTPA 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 under this Contract. These rates of wages are on file and may be seen at the NCTPA, 625 Burnell Street, Napa, California, 94559.

**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. AWARD AND EXECUTION OF THE CONTRACT (Bonds)**

Contractor shall furnish a faithful Performance Bond in an amount equal to one hundred percent (100%) of the contract price of the work contemplated and the laborer's and material's man payment bond as required by Section 9550 of the Civilian Code in an amount equal to one hundred percent (100%) of the contract price of the work contemplated. (NOT REQUIRED FOR WORK UNDER \$25,000)

## 11. SCOPE OF WORK

Attention is directed to Section 4 of the Standard Specifications.

Contractor shall accomplish complete installation of the required facilities as described in the Description of Work, above, including all items required to make the work in operating condition to the approval of the Engineer. All references to plans and specifications in the Standard Specifications shall apply to the Description of Work and attached plans.

## 12. CONTROL OF THE WORK

Attention is directed to Section 5 of the Standard Specifications.

Deviations from the Description of Work and attached plans shall be approved by the Engineer and all changes shall be by written permission only.

## 13. 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.
  - (1) Safety Devices. Furnishing and maintenance of 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 inspect and maintain all necessary safety devices in proper operating condition when in use, 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 or termination as otherwise provided in this Contract.
  - (2) Material Safety Data Sheets (MSDS) – The Contractor shall provide MSDS for each product used on site upon request by the Engineer.
  - (3) Safety Standards; Suspension of Contract for Unsafe Equipment. 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), the Federal Aviation Administration (FAA) 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.

- (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 3093. 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 NCTPA and the officers, agents, employees and volunteers of NCTPA 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 NCTPA 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. If and 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, employer's liability and a waiver of subrogation, and shall provide NCTPA with certification of all such coverages upon request by NCTPA'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 transact business in the State of California and having a A.M. Best rating of A VII or better:
    - (i) General Liability. Commercial or comprehensive general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) 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.

(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 ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence.

(3) Certificates. All insurance coverages referenced in (2), above, shall be evidenced by one or more certificates of coverage which shall be filed by Contractor with NCTPA prior to commencement of performance of any of Contractor's duties; shall be kept current during the term of this Agreement; shall provide that NCTPA 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 insurance coverage referenced in (2)(i), the certificate of insurance or endorsements attached thereto shall also name NCTPA, its officers, employees, agents and volunteers as additional insureds; 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 NCTPA shall pertain only to liability for activities of Contractor under this Agreement; and shall provide that the insurance provided is primary coverage to NCTPA with respect to any insurance or self-insurance programs maintained by NCTPA. 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 the Department or the NCTPA's Risk Manager, Contractor shall provide or arrange for the insurer 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, NCTPA's Risk Manager, which approval shall not be denied unless the NCTPA'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 NCTPA'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 NCTPA, its officers, employees, agents, and volunteers or Contractor shall procure a

bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

#### 14. 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. 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. Termination of Contract. In-lieu of the provisions of Section 8-1.08 of the Standard Specifications the following shall apply.

(d) **Termination for Cause**. If Contractor fails to fulfill in a timely and proper manner Contractor's obligations under this Agreement or otherwise breaches this Agreement and fails to cure such failure or breach within five (5) days of receipt of written notice from the Engineer describing the nature of the breach, the Engineer may, in addition to any other remedies the NCTPA may have, terminate this Agreement by giving at least five (5) days

prior written notice by mail or personal delivery to the Contractor at the address noted in the Preamble to this Contract. Notwithstanding the foregoing, the Engineer may terminate this Contract immediately and without prior written notice of either default or termination if the Engineer determines that such is necessary to prevent an imminent danger to public health and safety, but the Engineer shall give written notice of the reasons for such action to Contractor within five (5) days after the action or as soon thereafter as possible, if risks to public health and safety preclude giving such notice with that time.

- (e) **Termination for Convenience.** Notwithstanding any other provision of this AGREEMENT, NCTPA 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 NCTPA. NCTPA 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.

## 15. 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 NCTPA will retain five percent (5%) of the value of all work done and five percent (5%) 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

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:

\_\_\_\_\_  
Title  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Address

On behalf of Contractor:

\_\_\_\_\_  
Title  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
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.

NCTPA  
**"Owner"**

\_\_\_\_\_  
Title  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Signature

**Contractor**

\_\_\_\_\_  
Title  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
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" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" 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.

**16. 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 this Exhibit "A" 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 NCTPA and shall remain in force for their normal life.

- (d) Ownership of Plans and Specifications. All drawings, specifications, and copies thereof provided to Contractor by the NCTPA shall remain the property of the NCTPA 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.
- (f) 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.
- (g) 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.
- (h) 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.

## 17. OWNER'S RIGHT TO DO WORK

The NCTPA 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.

**18. 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 NCTPA by the State of California pursuant to agreement between the NCTPA 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 NCTPA 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.

**19. NCTPA 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 NCTPA 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) NCTPA "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective August 23, 2005.
- (c) NCTPA Drug and Alcohol Policy.
- (d) Napa NCTPA Information Technology Use and Security Policy. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the NCTPA computer network shall sign and have on file with NCTPA's ITS Department prior to receiving such access the certification attached to said Policy.
- (e) NCTPA Workplace Violence Policy.

**20. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS.**

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. (Reserved)

## 21. 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 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.