

COUNTY OF TULARE
STATE OF CALIFORNIA
5953 South Mooney Blvd.
VISALIA, CALIFORNIA 93277

AGREEMENT NO.: _____

DEPARTMENT: _____

**AGREEMENT FOR ADULT PRE-
TRIAL FACILITY RAIL
ENHANCEMENT**

THIS AGREEMENT made and entered into this _____ day of _____, 2017 by and between the COUNTY OF TULARE, hereinafter called the COUNTY, and Greg Peterson Construction hereinafter called the CONTRACTOR.

WITNESSETH: That the CONTRACTOR and COUNTY for the consideration hereinafter named agree as follows:

ARTICLE (1) THE WORK: The CONTRACTOR agrees to furnish at his own cost and expense, all tools, equipment, apparatus, labor, materials (excepting COUNTY supplied materials), mechanical workmanship, transportation and services necessary to perform and complete, in a good and workmanlike manner the following work:

GENERAL: RAIL ENHANCEMENT WORK, PAINTING _____

LOCATION: ADULT PRE-TRIAL FACILITY
36650 RD. 112

VISALIA, CA 93291

Responsibilities of the CONTRACTOR: It shall be the responsibility of the CONTRACTOR to establish a knowledge of the general area, and the specific location of the various sites where the work is to be performed. This, so as to familiarize himself with the following as applicable: worksite, ingress and egress thereto, location of adjacent buildings, structures, utilities, trees, plantings, obstructions, soil composition and the extent of the job. It shall be the responsibility of the CONTRACTOR to cope with all of the difficulties encountered concerning these eventualities, and all others which might affect the CONTRACTOR's ability to perform the work.

Protection of the Property: The CONTRACTOR shall take all needed precautions to protect the property, both real and personal, of the COUNTY and private individuals and shall safeguard the passing public from harm, from any eventualities arising during the course of the work. He shall make certain that these safeguards are used for the above both during and after the hours of work.

Workmanship: All work shall be performed in a neat and workmanlike manner using the best recognized practices of the particular trade involved to properly complete the work required. The work shall proceed vigorously to completion once it is started.

Specifications: Furnish all tools, equipment, apparatus, labor, materials, workmanship, transportation, and services necessary to perform and complete the work in accordance with the plans and specifications.

All work under this Agreement shall be done in accordance with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and using the best practices of the profession/trade(s), and shall be completed to the satisfaction of the Director or his designee.

Costs: The price for all services rendered under this Agreement is to include all materials and all labor and shall cover all costs of the use of the usual machinery and tools required in the work and shall include all of the CONTRACTOR's costs of insurance for property damage and public liability protection, social security benefits, unemployment insurance for workers, any other benefits, costs or charges required to be forwarded by the CONTRACTOR.

ARTICLE (2) TIME FOR COMPLETION AND DAMAGES: The work to be performed under this Agreement shall commence within THIRTY (30) days after the date first above written, and shall be diligently pursued by the CONTRACTOR, and completed within SIXTY (60) days thereafter. Should the CONTRACTOR be delayed in the erection or completion of the work by the neglect for default of the COUNTY, or by fire, strikes, lockouts, embargoes or earthquakes and which were not reasonably foreseeable at the time of execution of the Agreement documents, then the time allowance herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all of the causes aforesaid, but no allowance of additional time shall be made unless a request is presented to the COUNTY within five (5) days of such obstruction or delay, including holidays, specifying the cause thereof.

In addition, the CONTRACTOR and the COUNTY reserve the right to mutually agree in writing upon an extension of time for completion for causes other than enumerated above.

The granting of an extension of time by the COUNTY for performance by the CONTRACTOR shall not operate as a waiver or stop the COUNTY from claiming damage due to any other delays, prior to subsequent which were not approved by the COUNTY as herein provided. The COUNTY shall not be liable for any damages on account of any such delay.

Should the CONTRACTOR fail to complete this Agreement, and the work provided herein within the time fixed for such completion as determined by the COUNTY, the CONTRACTOR shall become liable to the COUNTY for all loss and damage which the latter may suffer on account thereof, and IT IS HEREBY UNDERSTOOD AND AGREED that it is and will be difficult and impossible to ascertain and determine the actual damage with the COUNTY will sustain in the event of, and by reason of, such delay. It is therefore agreed that said CONTRACTOR will pay to the COUNTY the sum of Twenty-five Dollars (\$25.00) per day for each and every day beyond the time herein prescribed in finishing the said work as liquidated damages, as herein provided, and in case the same is not paid, agrees that the COUNTY may deduct the amount thereof from any monies due or that may become due CONTRACTOR under this Agreement. This paragraph does not exclude the recovery of damages under other provisions of the Agreement Documents.

ARTICLE (3) THE CONTRACT SUM: In consideration of the covenants, agreements, and promises on the part of the CONTRACTOR contained in this Agreement, and the strict and literal fulfillment of each and every such covenant, agreement, and promise and as compensation in full for the performance and diligent completion of the work specified in Article (1) hereof, the COUNTY agrees to pay and cause to be paid to the CONTRACTOR according to the following schedule:

ONE HUNDRED EIGHTY-FOUR THOUSAND. EIGHT HUNDRED THIRTY-NINE AND 00/100 DOLLARS

It is mutually agreed that the COUNTY shall pay no more than a maximum of

ONE HUNDRED EIGHTY-FOUR THOUSAND, EIGHT HUNDRED AND THIRTY-NINE00/100
DOLLARS (\$184,839.00) for the performance of all work under this Agreement.

The price to be paid CONTRACTOR shall be paid in legally issued warrants drawn at the order of the COUNTY on the appropriate fund or funds as required by law, subject to the delay attendant upon examination and approval of said orders by COUNTY officers in the manner required by law for the issuance of warrants. Upon completion of the work and its acceptance by the COUNTY, the CONTRACTOR may be paid ninety-five percent (95%) of the agreement price. The final, if unencumbered, shall be due thirty-five (35) days after the filing of the Notice of Completion. COUNTY warrants will be issued with lag time as per standard COUNTY invoice payment procedures.

In lieu of the five percent (5%) retainage, the CONTRACTOR may substitute securities as provided below.

Security Substitutions for Moneys Withheld to Insure CONTRACTOR's Performance: The CONTRACTOR, at his request and expense, will be permitted to substitute equivalent securities for any monies withheld to insure performance as follows, and in accordance with Section 4590 Chapter 13 of Division 5 of Title 1 of California Government Code. The term satisfactory completion of the agreement in Section 4590 of the California Government Code shall mean the time the COUNTY has issued written final acceptance of the work and filed a Notice of Completion as required by law.

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 as the escrow agent, who shall then pay such monies to the CONTRACTOR. Upon satisfactory completion of the Agreement, the securities shall be returned to the CONTRACTOR.

Securities eligible for investment under this section shall include those listed in Government Code Section 16430, 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 COUNTY.

The CONTRACTOR shall be the beneficiary of any securities substituted for monies withheld and shall receive any interest thereon.

Any escrow agreement entered into pursuant to these conditions shall contain as a minimum, the following provisions:

- a. The amount and type of securities to be deposited;
- b. The terms and conditions of conversion to cash in case of the default of the CONTRACTOR;
- c. The termination of the escrow upon completion of the Agreement; and
- d. The CONTRACTOR shall pay all costs and fees associated with the escrow or deposit.

ARTICLE (4) WITHHOLDING: Payment of the agreement sum shall be made in the manner and upon the conditions set forth in Article (3) hereinabove, subject to the following conditions, which are in addition to those contained elsewhere in the Agreement:

- a. The COUNTY may withhold payments to such extent as may be necessary to protect the COUNTY from loss on account of:
 - (1) Defective work or material not remedied or replaced.
 - (2) The filing of claims or notices to withhold, or reasonable evidence indicating probable filing of such claims or notices.
 - (3) Failure of the CONTRACTOR to make payments properly to sub-CONTRACTORS, or for materials or labor.
 - (4) A reasonable doubt that the Agreement can be completed for the balance then unpaid.
 - (5) Damage to another CONTRACTOR.When the above grounds for withholding are removed, payment shall be made

for amounts withheld because of them.

ARTICLE (5) THE AGREEMENT DOCUMENTS: The complete Agreement between the COUNTY and the CONTRACTOR shall consist of the following Agreement Documents in existence: The Solicitation for Bids; the Bonds; these Articles of Agreement; Plans and Specifications; the Plot Plan; and all addenda, bulletins and modifications incorporated in those documents before their execution. The work called for in one document and not expressly mentioned in the other is to be performed the same as if mentioned in all agreement documents.

ARTICLE (6) ARTICLES OF AGREEMENT CONTROLLING: It is hereby mutually agreed and understood that in any particulars and provisions or parts thereof wherein any of the other Agreement Documents are contrary to these Articles of Agreement, the provisions of these Articles of Agreement shall control and supersede such provisions of any other agreement documents.

ARTICLE (7) CHANGE ORDERS: No change shall be made except on Change Order duly issued and unless in pursuance of a written order from the COUNTY stating that the extra work or change is authorized, and no claim of an addition to the agreement sum shall be valid unless so ordered, approved and executed in the form of a supplemental written agreement or written Change Order.

The COUNTY, at any time during the progress of the work, shall have the right to order alterations in, additions to, or deviations or omissions from, the work contemplated by this Agreement, and the same shall in no way make void the Agreement. If any such changes involve an increase or decrease in the agreement amount, the Change Order shall state the amount to be added to or deducted from the Agreement amount, and shall also state the additional time, if any, needed for the performance of the work; provided that any addition shall be determined upon the basis of an estimate and acceptance of a lump sum; and provided further that, where additions to the Agreement amount cannot feasibly be determined upon such estimate and acceptance basis, such additions shall be upon the basis of actual cost of labor and material, plus fifteen percent (15%) to cover the CONTRACTOR's profit and overhead expenses for the extra work.

ARTICLE (8) GUARANTEE: CONTRACTOR guarantees that all materials and workmanship shall conform to the Agreement and agrees to replace, at his sole cost and expense, and in conformity with the Agreement, any defective material and any and all work defectively or improperly performed or installed within a period of one (1) year after final acceptance. The CONTRACTOR shall, in no case longer than fifteen (15) days after receipt of written notice thereof, commence to repair and/or replace any defect in materials or workmanship which may develop during said one year period, and any damage to adjacent materials resulting from the repairing or replacing of such defects, at its own expense and without cost to COUNTY. In the event CONTRACTOR fails to remedy any such defect within fifteen (15) days after receipt of such written notice (unless CONTRACTOR has commenced the repair and is diligently pursuing the repair to completion), COUNTY may proceed to have such defects remedied at CONTRACTOR's expense and CONTRACTOR shall pay the costs and charges incurred thereby. Emergency repairs, including but not limited to power, water, sewer, fire and life safety, shall have a 48-hour response time. The cost and repair of any supplementary damage caused by construction defects will be the sole responsibility of the CONTRACTOR. Neither acceptance nor payment nor any provision in these documents shall be deemed to be a waiver by COUNTY to relieve CONTRACTOR of any responsibility under this Agreement.

ARTICLE (9) PROSECUTION OF WORK: If the CONTRACTOR should neglect to prosecute the work efficiently, properly and diligently, or fail to perform any provisions of this Agreement, the COUNTY, after one (1) day written notice to the CONTRACTOR, may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to the CONTRACTOR.

The COUNTY shall have the power and authority to order any mechanic or laborer from the worksite upon finding that such mechanic or laborer is not endeavoring in good faith to comply with the plans and specifications, or is so careless or incompetent as to jeopardize the proper prosecution of the work, and

ADULT PRE-TRIAL FACILITY RAIL ENHANCEMENTS

such mechanic or laborer shall not thereafter be re-employed on the work, except with the express permission of the COUNTY.

ARTICLE (10) TERMINATION BY THE COUNTY:

- a) Without Cause: COUNTY will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. COUNTY will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. No sanctions will be imposed.
- b) With Cause: If the Contactor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if the CONTRACTOR or any of his subcontractors are violating any of the provisions of the Contract, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the COUNTY, then the COUNTY may, and providing that sufficient cause exists to justify such action, serve written notice upon the CONTRACTOR and his surety of its intention to terminate the Contract; such notice to contain the reasons for such intention to terminate the Contract, and unless within five (5) days after the serving of such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, the Contract shall, upon the expiration of said five (5) days, cease and terminate. In the event of any such termination, the COUNTY shall immediately serve written notice thereof upon the surety and the CONTRACTOR, and the surety shall have the right to take over and perform the agreement, provided, however, that the surety within ten (10) days after the serving upon it of notice of termination does not give the COUNTY written notice of its intention to take over and perform the Contract or does not commence performance thereof within the ten (10) days stated above from the date of the serving of such notice, the COUNTY may take over the work and prosecute the same to completion by Contract or by any other method it may deem advisable, for the account and at the expense of the CONTRACTOR, and the CONTRACTOR and his surety shall be liable to the COUNTY for any excess cost occasioned the COUNTY thereby, and in such event the COUNTY may without liability for so doing, take possession and utilize in completing the work, such materials, appliances, plant and other property belonging to the CONTRACTOR as may be on the site of the work and necessary therefore. In such case the CONTRACTOR shall not be entitled to receive any further payment until the work is finished.

If the unpaid balance of the agreement price exceeds all direct and indirect costs of finishing the work, including compensation for additional managerial and administrative services, CONTRACTOR will only be paid for his actual unpaid costs from such excess. If such expense shall exceed such unpaid balance, the CONTRACTOR shall pay the difference to the COUNTY.

- c) Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where CONTRACTOR'S services have been terminated by the COUNTY, said termination will not affect any rights of the COUNTY to recover damages against the CONTRACTOR.
- d) Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of COUNTY for which CONTRACTOR'S services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

ARTICLE (11) ASSIGNMENT: Neither party to the Contract shall assign the Agreement or subcontract it as a whole without the written consent of the other, nor shall the CONTRACTOR assign any monies due or to become due to him hereunder, without the previous written consent of the COUNTY.

ARTICLE (12) LOSS OR DAMAGE: The COUNTY or its authorized representative shall not in any way or manner be answerable or suffer loss, damage, or expense or liability for any loss or damage that may happen to said work, or part thereof, or in or about the same during its execution and before acceptance and the said CONTRACTOR shall assume all liabilities of every kind or nature arising from said work, either by accident, negligence, theft, vandalism, or any causes whatever; and shall hold the COUNTY and its authorized representatives harmless from all liability of every kind and nature arising from accident, negligence or any cause whatever.

ARTICLE (13) INDEMNIFICATION: CONTRACTOR shall hold harmless, defend and indemnify County, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including County property, arising out of the acts or omissions of CONTRACTOR or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against County by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, the cost of any penalty or sanction imposed by any agency with regulatory authority over the activities carried out by CONTRACTOR, and any claims made against County alleging civil rights violations by CONTRACTOR under Government Code Sections 12920 et seq (California Fair Employment and Housing Act). CONTRACTOR specifically agrees to hold harmless and indemnify County for any and all claims arising out of any injury, disability, or death of CONTRACTOR's employees or agents. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

ARTICLE (14) INSURANCE: Prior to approval of this agreement by the COUNTY, Contractor shall file with the (Department, Board of Supervisors etc.), evidence of the insurance as set forth in **Exhibit B** attached, which outlines the minimum scope, specifications and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in **Exhibit B** shall not be used to reduce limits available to County as an additional insured from the Contractor's full policy limits. Insurance policies shall not be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer (s). Failure to maintain or renew coverage, or to provide evidence of renewal, may be considered a material breach of this Agreement.

ARTICLE (15) INDEPENDENT CONTRACTOR: This Agreement is entered into by both parties with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the CONTRACTOR or any of its agents, employees or officers as an agent, employee or officer of County. CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees, agents or officers of County. CONTRACTOR shall be solely responsible for determining the means and methods of performing the specified services and County shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. As CONTRACTOR is not County's employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, County will not:

- a. Withhold FICA (Social Security) from CONTRACTOR's payments.
- b. Make state or federal unemployment insurance contributions on CONTRACTOR's behalf.
- c. Withhold state or federal income tax from payments to CONTRACTOR.
- d. Make disability insurance contributions on behalf of CONTRACTOR.
- e. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

Notwithstanding this independent contractor relationship, County, through the County Agent, shall have the right to designate the sites at which services are to be performed, and to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

ARTICLE (16) NON-RESPONSIBILITY OF THE COUNTY: Indebtedness incurred for any cause in connection with this work must be paid by the CONTRACTOR, and the COUNTY is hereby relieved at all times from any indebtedness or claim other than the agreement sum.

ARTICLE (17) HOURS OF WORK: Eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and it is expressly stipulated that no workmen employed at any time by the CONTRACTOR, or by subcontractor under this Agreement, upon the work, shall be required or permitted to work thereon more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except as provided in Section 1810 to 1815, inclusive, of the Labor Code of the State of California, all the provisions whereof are deemed to be incorporated herein as if fully set out; and it is further expressly stipulated that for each and every violation of said last named stipulation, said CONTRACTOR shall forfeit, as a penalty to the said COUNTY, Twenty-five Dollars (\$25.00) for each workman employed by the CONTRACTOR in the execution of this Agreement, or by any subcontractor under this Agreement, for each calendar day during which said workman is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of said sections of the Labor Code.

The CONTRACTOR and each subcontractor shall also keep an accurate record showing the names and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the work contemplated by this Agreement, which record shall be open at all reasonable hours to the inspection of the COUNTY or its officers or agents, and to the Division of Labor Law Enforcement of the Department of Industrial Relations, its deputies and agents.

Notwithstanding the above stipulations, pursuant to Section 1815 of the Labor Code, work performed by employees of CONTRACTORS in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon the project upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1 ½) times the basic rate of pay.

ARTICLE (18) WAGE RATES: In accordance with the requirements of Section 1770 of the Labor Code, the Director of the Department of Industrial Relations, has determined the general prevailing rate of per diem wages for workmen required to perform the subject work. A copy of such prevailing wage rate is on file with the Clerk of the Tulare County Board of Supervisors and is available for inspection. It shall be mandatory upon the CONTRACTOR to whom the Agreement is awarded, and upon any subcontractor under him, to pay not less than the said specified rates to all laborers, workmen, and mechanics employed by them in the execution of the Agreement. It is the responsibility of the Contractor to furnish certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement).

It is hereby further agreed that the CONTRACTOR shall forfeit to the COUNTY, as a penalty, Twenty-five Dollars (\$25.00) for each laborer, workman or mechanic employed for each calendar day or portion thereof, who is paid less than the said stipulated rates for any work done under the Agreement, by him or by any subcontractor under him. The difference between said stipulated rates and the amount paid to each workman for each calendar day or portion thereof for which each workman was paid less than said stipulated rate shall be paid by the CONTRACTOR. The CONTRACTOR, and each subcontractor, shall keep or cause to be kept an accurate record showing the names and occupations of all laborers, workmen and mechanics employed in connection with the execution of this Agreement or any subcontractors thereunder, and showing also the actual per diem wages paid to each of such workers, which record shall be open at all reasonable hours to the inspection of the COUNTY or its officers and agents, and to the Chief of the Division of Labor Statistics and Law Enforcement of the State Department of Industrial Relations, its deputies and agents.

In case it becomes necessary for the CONTRACTOR or any subcontractor to employ on the work under this Agreement any person in a trade or occupation (except executive, supervisory, administrative, clerical or other non-manual workers as such) for which no minimum wage rate is hereby specified, the CONTRACTOR shall immediately notify the COUNTY who will promptly thereafter determine the prevailing rate for such additional trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

ARTICLE (19) EMPLOYMENT OF APPRENTICES: Pursuant to Section 1775 of the Labor Code of the State of California, nothing in this Agreement shall prevent the employment of properly registered apprentices upon public works.

Every such apprentice shall be paid the standard wage paid to apprentices under the regulation of the craft or trade at which he is employed, and shall be employed only at the work of the craft or trade to which he is registered.

Only apprentices, as defined in Labor Code section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at Section 3070), Division 3 of the Labor Code, are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he is training.

ARTICLE (20) CONVICT MADE MATERIALS: The CONTRACTOR agrees that no materials manufactured or produced in a penal or correctional institution shall be incorporated under this Agreement.

ARTICLE (21) ROYALTIES AND PATENTS: The CONTRACTOR shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the COUNTY harmless from loss on account thereof, except that the COUNTY shall be responsible for all such loss when a particular process or the products of a particular manufacturer or manufacturers is specified, but if the CONTRACTOR has information that the process or article specified is an infringement of a patent he shall be responsible for such loss unless he promptly gives such information to the COUNTY.

ARTICLE (22) SURVEYS, PERMITS AND REGULATIONS: The COUNTY shall furnish all necessary existing surveys unless otherwise specified. Permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the CONTRACTOR. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the COUNTY, unless otherwise specified.

ARTICLE (23) NON-DISCRIMINATION IN EMPLOYMENT: Federal and State Laws prohibit discrimination in employment. The California Fair Employment Practices Act (Labor Code Section 1410 to 1433) prohibits discrimination in employment on the basis of race, religion, color, sex, physical handicap, medical condition, marital status, age, national origin or ancestry, and applies to all employers, employment agencies and labor organizations.

Title VII of the Federal 1964 Civil Rights Act (42 U.S.C. Section 2000e – 2000e-17) prohibits employment discrimination on the basis of race, color, sex, religion or national origin, and applies to all employers that employ at least fifteen (15) workers during each working day in each of twenty (20) or more calendar weeks in the current or preceding year.

In addition to these two laws of general application, there are other Federal and State laws that prohibit employment discrimination in particular cases.

The County of Tulare is an Affirmative Action Employer and expects all of its CONTRACTORS and suppliers to familiarize themselves with, and comply with, all applicable laws relating to employment

ARTICLE (24) NON-FUNDING CLAUSE: Funds provided for service under the terms of this Agreement are contingent on availability of public funds. Should sufficient funds not be allocated during those terms, this Agreement may be modified or terminated at any time by the County upon thirty (30) days' notice. Notice shall be fully given in writing through service in person or by first class mail.

ARTICLE (25) COMPLIANCE WITH LAW: CONTRACTOR shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

ARTICLE (26) LICENSE CLASSIFICATION & SB854 REGULATION: Contractors are required by law to be licensed and regulated by the Contractor's State License Board.

- a. No contractor or subcontractor may be awarded a contract/agreement for public works unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- b. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). Listed contractor/subcontractors must be registered with the DIR. Pursuant to SB854, the DIR registration number of each contractor/subcontractor must be identified. In addition, Tulare County reports all public works projects to the DIR within 5 days of the award of contract/agreement.

ARTICLE (27) RECORDS AND AUDIT: CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, CONTRACTOR shall make such records available within Tulare County to the Auditor of Tulare County and to his agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.

ARTICLE (28) CONFLICT OF INTEREST:

(a) CONTRACTOR agrees to, at all times during the performance of this Agreement, comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interests laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

ARTICLE (29) FORM DE-542: CONTRACTOR acknowledges that this Agreement is subject to filing obligations pursuant to Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include the CONTRACTOR's full name, social security number, address, the date this contract was executed, the total amount of the contract, the contract's expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make such information available and to complete Form DE- 542. Failure to provide the required information may, at COUNTY's option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

ARTICLE (30) NOTICES:

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

**Mark Van Fossen
Tulare County Capital Projects
5953 S. Mooney Blvd.
Visalia, CA 93277**

**Phone No.: (559) 636-5305
Email: mvanfossen@co.tulare.ca.us**

CONTRACTOR:

**Greg Peterson Greg Peterson
Construction
855 E. Davis Drive
Dinuba, CA 93618**

**Phone No.: (559) 288-9616
Fax No.: (559) 595-1022
Email: gpetersonconstruction@yahoo.com**

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

ARTICLE (31) DISPUTE RESOLUTION: If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

ARTICLE (32) FURTHER ASSURANCES: Each party will execute any additional documents and perform any further acts that may be reasonably required to affect the purposes of this Agreement.

ARTICLE (33) CONSTRUCTION: This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.

ARTICLE (34) HEADINGS: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

ARTICLE (35) NO THIRD-PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

ARTICLE (36) CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY: This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

ARTICLE (37) ENTIRE AGREEMENT REPRESENTED: This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

ARTICLE (38) WAIVERS: The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

ARTICLE (39) EXHIBITS AND RECITALS: The Recitals and the Exhibits to this Agreement are incorporated into and are integral parts of this Agreement.

ARTICLE (40) GOVERNING LAW: This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County California.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereinabove named on the day and year first above written.

“COUNTY”

COUNTY OF TULARE

Date _____

By _____
Chairman, Board of Supervisors

“CONTRACTOR”

Greg Peterson Construction

Date _____

By _____
Title _____

Date _____

By _____
Title _____

Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation’s Board of Directors’ resolution authorizing the execution of the contract.

CONTRACTOR’S LICENSE NUMBER _____

LICENSE CLASSIFICATION (B) _____

DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION NUMBER _____

**CERTIFICATION CONCERNING WORKERS’
COMPENSATION INSURANCE**

STATE OF CALIFORNIA)
) ss.
COUNTY OF TULARE)

The undersigned is aware of the provisions of Section 3700 of the Labor Code of the State of California which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and the undersigned will comply with such provisions before commencing the performance of work under this Contract.

Date _____

Signed _____
CONTRACTOR