



**CAPITAL PROJECTS AND FACILITIES
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

ALLEN ISHIDA
District One

PETE VANDER POEL
District Two

PHILLIP A. COX
District Three

J. STEVEN WORTHLEY
District Four

MIKE ENNIS
District Five

AGENDA DATE: August 12, 2014

Public Hearing Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
CONTACT PERSON: Kyle Taylor		PHONE: 636-5303

SUBJECT: Award the contract for the Strathmore Library Remodel Project at 19646 Road 230, Strathmore, CA

REQUEST(S):
That the Board of Supervisors:

1. Award the contract for the Strathmore Library Remodel Project at 19646 Road 230, Strathmore, to the lowest responsible bidder, Dale Atkins Contractor, 15430 Avenue 296, Visalia, CA 93292, in the amount of \$137,000.00; and
2. Authorize the Chairman to sign the construction agreement upon receipt of certificates of insurance, bonds, license verification, and contract subject to review and approval as to form by County Counsel.

SUMMARY:
On June 3, 2014, the Board authorized the advertisement of bids for the Strathmore Library Remodel Project at 19646 Road 230, Strathmore, CA. The project consists of exterior and interior renovations to the existing building and grounds. The work includes select partial demolition, site improvements, concrete, rough carpentry, wood doors and frames, sealants, finishes, plumbing, mechanical, and electrical work. The work will make the interior and exterior of the Library ADA compliant. The contractor will provide a 3 year warranty.

A total of four bids were received and opened on July 17, 2014. A recap of the bids follows:

SUBJECT: Award the contract for the Strathmore Library Remodel

DATE: August 12, 2014

Contractor	Amount
Dale Atkins Contractor	\$137,000.00
MPI Prime Construction, Inc.	\$145,000.00
JTS Construction	\$149,000.00
Gary Interrante Construction CO.	\$150,000.00
Architect's Estimate	\$260,000.00

The lowest bid was submitted by Dale Atkins Contractor in the amount of \$137,000.00.

It is requested that the Board award the contract for the Strathmore Library Remodel Project to the lowest responsible bidder, Dale Atkins Contractor, in the amount of \$137,000.00 and authorize the Chairman to sign the construction agreement upon receipt of certificates of insurance, bonds, license verification, and contract subject to review and approval as to form by County Counsel.

The contract documents call for 120 calendar days of construction.

FISCAL IMPACT/FINANCING:

The project is funded in the Capital Projects Fund 030-086-3400-8130.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's five year Strategic Plan includes the Safety and Security initiative to provide for the safety and security of the public. The Strathmore Library Remodel Project aligns with the initiative by providing improved facilities for the protection of the public.

ADMINISTRATIVE SIGN-OFF:

Kyle Taylor
Capital Projects Coordinator II

Cc: Auditor-Controller
County Counsel
County Administrative Office (2)

Attachment(s) Agreement with Dale Atkins Contractor

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF AWARD THE)
CONTRACT FOR THE STRATHMORE) RESOLUTION NO. _____
LIBRARY REMODEL PROJECT) AGREEMENT NO. _____

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD _____
_____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JEAN M. ROUSSEAU
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

1. Awarded the contract for the Strathmore Library Remodel Project at 19646 Road 230, Strathmore, to the lowest responsible bidder, Dale Atkins Contractor, 15430 Avenue 296, Visalia, CA 93292, in the amount of \$137,000.00; and
2. Authorized the Chairman to sign the construction agreement upon receipt of certificates of insurance, bonds, license verification, and contract subject to review and approval as to form by County Counsel.

SECTION 00506 - AGREEMENT OWNER AND CONTRACTOR

**AGREEMENT
BETWEEN
OWNER AND CONTRACTOR**

AGREEMENT

made as of the _____ day of _____ in the year of Two Thousand and Fourteen

BETWEEN the Owner: **COUNTY OF TULARE, STATE OF CALIFORNIA**

and the Contractor: Dale Atkins Contractor

The Project: Tulare County – Strathmore Library Remodel Project - at
19646 Road 230, Strathmore, CA

The Owners Representative: Kyle Taylor – Capital Projects and Facilities - County of Tulare

The Architect: Chas Rhoads

The Owner and the Contractor agree as set forth below.

**ARTICLE 1
THE CONTRACT DOCUMENTS**

The Contract documents consist of this Agreement, the General Conditions and those documents enumerated in Sub-paragraph 1.1.1 of the General Conditions, which documents are hereby incorporated into this Agreement and made a part hereof.

**ARTICLE 2
THE WORK**

The Contractor shall perform all the Work required by the Contract Documents for the Tulare County – Strathmore Library Remodel Project - at 19646 Road 230, Strathmore, CA.

**ARTICLE 3
TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

The Work to be performed under this Contract shall be commenced within Ten (10) calendar days after the date the Notice to Proceed is received by the Contractor and, subject to authorized adjustments, Substantial Completion of the Work Shall be achieved not later than **120** calendar days after the date the Notice to Proceed is received by the Contractor.

The Contractor shall be liable for liquidated damages of **\$500.00** for each and every calendar day beyond the time herein described.

ARTICLE 4
CONTRACT SUM

The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order or as otherwise provided in the Contract Documents, the Sum of \$137,000.00_____.

ARTICLE 5
PROGRESS PAYMENTS

Based upon Applications for Payment submitted to the Owner by the Contractor and Project Certificates for Payment issued by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents as follows:

Progress Payments: The Contractor shall, on or before the first day of each month, make an estimate of the work performed during the preceding month and submit same to the Owner's Representative for checking and approval. On or about the 20th day of the month, following the month in which the work was performed, the Owner shall pay to the Contractor ninety (90%) percent of the value of said work in place, as checked and approved by the Owner's Representative. The balance of ten (10%) percent of the estimate shall be retained by the Owner until the time of final acceptance of said work.

The Contractor may make a request for the retention to be reduced to five (5%) percent, and the remaining retention would be held until 35 days after the Notice of Completion is filed if the following requirements have been met:

1. The Contractor shall be seventy-five (75%) percent complete with the Work, not including stored materials.
2. The Work shall be on schedule.
3. The Contractor shall be maintaining a good practice of schedule and quality control as determined by the Owner's Representative.

Upon consent of the Owner, the retainage rate shall be 5% for all subsequent payments. Any monies previously withheld for retainage shall be retained by the Owner until disbursed as set forth above.

ARTICLE 6
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor when the Work has been completed; the Contract fully performed, the Owner's Representative has issued a Project Certificate for Payment, which approves the final payment due the Contractor and the Board of Supervisors of Tulare County has formally accepted the project as complete by Resolution.

**ARTICLE 7
MISCELLANEOUS PROVISIONS**

7.1 Terms used in this Agreement, which are defined in the "GENERAL CONDITIONS" of the contract shall have the meanings designated in those Conditions.

7.2 Notices shall be addressed as follow:

OWNER

Board of Supervisors
County of Tulare
County Civic Center
2800 W. Burrel Avenue
Visalia, CA 93291
(559) 636-5000

CONTRACTOR

OWNERS REPRESENTATIVE

Kyle Taylor – County of Tulare
Capital Projects and Facilities
5963 S. Mooney Blvd.
Visalia, CA 93277
(559) 636-5303 – Phone
(559) 713-3061 – Fax

SURETY

7.3 **PREVAILING WAGES.** The Contractor agrees that State Prevailing Wages apply to this Project, and that the Contractor will pay the rates for each trade or craft and shall require the subcontractors on the project to pay the rates for each trade and craft. The State Wage Determinations are on file with the Clerk of the Board of Supervisors, Administration Building, County Civic Center, Visalia, California, and will be made available to any interested person on request; and the Payroll Submittal Information attached hereto as Section 00508 are incorporated herein as if set forth in full and are a part of this Contract. The Contractor agrees to repay the Owner any and all amounts paid to any subcontractor in violation of Public Contract Code Section 6109.

7.4 **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.

7.5 **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.

7.6 **INDEPENDENT CONTRACTOR STATUS:**

a. 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.

b. CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, 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:

- i. Withhold FICA (Social Security) from CONTRACTOR'S payments.
- ii. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
- iii. Withhold state or federal income tax from payments to CONTRACTOR.
- iv. Make disability insurance contributions on behalf of CONTRACTOR.
- v. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

c. Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

7.7 **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 from, or in connection with, the performance by 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, 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), and any fines or penalties imposed on COUNTY for CONTRACTORS failure to provide form DE-542, when applicable. 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. The absence of insurance or insufficient insurance limits will not eliminate the obligation to indemnify.

7.8 **CONFLICT OF INTEREST:**

a. CONTRACTOR agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interests or 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 the making of any decision on behalf of COUNTY in which such officer, employee or consultant has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant 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.

- 7.9 **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.
- 7.10 **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.
- 7.11 **CONSTRUCTION:** This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.
- 7.12 **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.
- 7.13 **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.
- 7.14 **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.
- 7.15 **EXHIBITS AND RECITALS:** The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
- 7.16 **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, 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.

- 7.17 **FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts which may be reasonably required to effect the purposes of this Agreement.

- 7.18 **ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

- 7.19 **ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY.

- 7.20 **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.

- 7.21 **UNEMPLOYMENT INSURANCE COMPLIANCE:** 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 DE Form 542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

- 7.22 **REDUCTION IN FUNDING:** Contractor expressly understands and agrees that COUNTY is dependent upon certain Federal and/or State and/or local funding to pay the services provided in this contract. If such Federal and/or State and/or local funding is discontinued or reduced, County shall have the right to terminate the contract. In either event County shall provide CONTRACTOR with at least 30 days prior written notice of such termination.

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This Agreement entered into as of the day and year first written above.

OWNER

CONTRACTOR

CHAIRMAN, BOARD OF SUPERVISORS

Signature

Typed Name

Signature

Typed Name

COUNTY OF TULARE
Civic Center
Visalia, CA 93291

Address

ATTEST: Jean Rousseau
County Administrative Officer/Clerk of
The Board of Supervisors of the
County of Tulare

BY: _____

APPROVED AS TO FORM

County Counsel

END OF SECTION 00506