

**COUNTY OF SAN MATEO AIRCRAFT NOISE INSULATION PROJECT  
AGREEMENT FOR PUBLIC IMPROVEMENTS**

THE AGREEMENT dated this \_\_\_\_\_ day of \_\_\_\_\_, 2003, is by and between the County of San Mateo, ("County"), and **G. E. Chen Construction, Inc.**, ("Contractor").

**RECITALS**

**WHEREAS**, County has initiated appropriate proceedings to authorize construction of the public works and improvements herein provided and for the execution of this contract;

**WHEREAS**, notice was duly published for bids for the contract for the improvements hereinafter described;

**WHEREAS**, on \_\_\_\_\_, 2003, after notice was duly given, the County awarded the contract for the construction of said improvements hereinafter described to the Contractor, which said County found to be the lowest responsible bidder for said improvements;

**WHEREAS**, Contractor is specially trained, experienced, and competent to perform the special services required by this agreement;

**WHEREAS**, Contractor is willing to render such professional services, as hereinafter defined, in accordance with the following terms and conditions; and

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

**NOW, THEREFORE**, County and Contractor agree as follows:

**AGREEMENT**

1. **Scope of Work:** Contractor shall agree to furnish all labor, materials, tools, and equipment, and provide all those services described in and required by the Bidding and Contract Documents, the Specifications and Construction Documents, and the Construction Documents as provided for in the Plans and Specifications and as directed by the Director of Environmental Services Agency for the County of San Mateo.

All work shall be performed and completed as required in said Plans and Specifications under the direction and supervision and subject to the approval of the Director of Environmental Services Agency for the County of San Mateo, or their designated assistant or representative.

2. **The Contract Documents:** The complete agreement consists of the following documents: this agreement, Notice Inviting Sealed Bids, the Accepted Bid, the complete plans, detailed drawings, Standard Plans and Specifications, General Provisions, Special Provisions and Technical Provisions, Faithful Performance Bond, Labor and Materials Payment Bond, Bid Schedule and Wage Scale, Schedule of Values, and all Federal Provisions, Forms, Affidavits, Attachments and Addendum.

All of the above named documents are intended to be read together and coordinated so that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. The documents comprising the complete contract will hereinafter be referred to as the "Contract Documents".

3. **Contract Price:** County shall pay and Contractor shall accept, in full payment for the work agreed to be done, the sum of **Ninety-Three Thousand, Ninety Dollars and No Cents (\$93,090.00)**. Said price is determined by Contractor's Bid and the unit prices contained in the Schedule of Values. The Bid and the Schedule of Values are incorporated by reference herein. In the event work is performed or materials furnished in addition to, or work or materials are deleted from those set forth in Contractor's bid and the Specifications herein, such work and materials will be paid for or deleted at the unit prices therein contained in the Schedule of Values.

Said amount shall be paid in installments as hereinafter provided in Section 15 below.

4. **Independent Contractor Status:** It is expressly understood and agreed by both parties that Contractor, while engaged in carrying out and complying with any of the terms and conditions of this agreement, is an independent contractor and not an employee of the County of San Mateo. Contractor expressly warrants to not represent, at any time or in any manner, that Contractor is an employee of the County.

5. **Manufacturers Certified Installers:** Contractor shall employ or subcontract a manufacturer certified installer for work to be performed for window and door installation. Such certification of the employee or subcontractor shall be furnished by the manufacturer and subject to the approval of the Director of Environmental Services Agency for the County of San Mateo, or their designated assistant or representative.

6. **Effective Date and Time of Completion:** The effective date of this agreement is the date indicated in the first paragraph of this agreement. The time of completion for this agreement and all work shall be two hundred forty (240) consecutive calendar days after the issuance of the Notice to Proceed. Work within each dwelling unit shall be completed in a nine (9) consecutive calendar day period. In the event that a weekend or holiday occurs during the period of work within a dwelling unit, the work site shall be left neat, clean, secure and habitable. Work shall be completed on working days as specified in the paragraph below.

A working day is hereby defined as any day, except Saturdays, Sundays, legal holidays and days on which the Contractor is not prevented from working by inclement weather or conditions resulting immediately therefrom, which would be adverse to the current controlling operation or

operations. Adverse conditions, as approved by the Director of Environmental Services Agency for the County of San Mateo, will be conditions such that prevent Contractor from proceeding with at least sixty percent (60%) of the normal labor and equipment force engaged on any day for at least five (5) hours toward completion of such operation or operations.

7. **Designation of Primary Provider of Services and Assignment of Personnel:** This agreement contemplates the services of G E. Chen Construction., Inc. The primary provider of the services called for by this agreement shall be Chun-Yi Chen, who shall not be replaced without the written consent of the Director of Environmental Services Agency for the County of San Mateo or their assigned assistant or representative.

Contractor shall assign only competent personnel to perform services pursuant to this agreement. If County asks Contractor to remove a person assigned to the work called for under this agreement, Contractor agrees to do so immediately regardless of the reason, or lack of a reason, for County's request.

8. **Superintendence by Contractor:** Contractor's designated primary provider of services shall give personal superintendence to the work on said improvements or have a competent foreman or superintendent, satisfactory to the Director of Environmental Services Agency for the County of San Mateo, on the work at all times during progress, with the authority to act for him/her.

9. **Permits:** Contractor shall, at Contractor's expense obtain all necessary permits and licenses for the construction of all improvements, and will give all necessary notices and pay all necessary fees and taxes as required by law.

10. **Licenses:** If a license of any kind, which term is intended to include evidence of registration, is required of Contractor, its employees, agents or subcontractors by federal or state law, Contractor warrants that such license has been obtained, is valid and in good standing, and Contractor shall keep it in effect at all times during the term of this agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

11. **Inspection by City Project Inspector:** Contractor, at all times, will maintain proper facilities and provide safe access for inspection by the County Project Inspector to all parts of the work.

12. **Inspection and Testing of Materials:** A report shall be submitted to the County by the Contractor on all materials requiring STC (Sound Transmission Class) ratings for each type of unit. The report shall be from a recognized acoustic testing laboratory and will have a rating at least equal to the STC ratings specified in the Plans and Specifications. All submittals shall be provided for the Architect's review within thirty (30) days after issuance of the Notice of Award. All submittals must be approved in writing by the Architect and the Acoustical Engineer before items are ordered or installed. Inspection shall be made by the Architect and Acoustical Engineer on all materials before installation.

13. **Care of the Work:** Contractor has examined the site of the work and is familiar with its topography and condition, the nature and layout of the structures, the location of the property lines, easements, building lines, and other physical factors and limitations affecting the performance of this agreement. Contractor, at Contractor's expense, shall obtain any permission necessary from the County

for any operations conducted on the homeowner's property. Contractor shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance.

14. **Extra and/or Additional Work and Changes:** Should the County at any time during the progress of said work request any alteration, deviation, addition, or omission from said Plans and Specifications or other contract documents, it shall be at liberty to do so, and the same shall in no way affect or make void this agreement or the Contract Price. Request for such changes must be made in writing as a formal Change Order, and must be signed by the Director of Environmental Services Agency for the County of San Mateo.

15. **Payments to Contractor:** On the thirtieth (30th) of each and every month during the progress of the work, commencing with the thirtieth (30th) day of the month following the Notice to Proceed, Contractor shall submit to the County a complete itemized statement of all labor and materials incorporated into the improvement during the preceding month and the portion of the contract sum applicable thereto. On approval in writing by the Director of Environmental Services Agency for the County of San Mateo, County shall pay Contractor a sum based upon a maximum of ninety (90%) percent of the contract price as incorporated into the improvements under the contract during the month covered by said statement.

The remaining ten (10%) percent, less that amount withheld by County to correct defective work or otherwise complete the Contract, shall be paid to Contractor thirty (30) days after recordation of the Notice of Completion of the work. Contractor shall furnish County with a release of, or bond against, all claims against County arising under and by virtue of this contract, the work done, or the materials furnished hereunder. In the event that there are any claims specifically excepted by Contractor, there shall be retained by County stated amounts to be set forth therein and approved by the Director of Environmental Services Agency for the County of San Mateo. If payment has been established, and until the validity of such claims have been properly determined and approved, County shall pay such claims and in this regard County is hereby empowered to pay directly to claimant the full amount of any valid claims.

16. **Disputes Pertaining to Payment of Work:** Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the true size of any payment to Contractor during the performance of this Contract, such dispute shall be decided by the Director of Environmental Services Agency for the County of San Mateo and the decision of the latter shall be final and conclusive.

17. **Legal Work Day - Penalties for Violation:** Eight (8) hours of labor shall constitute a legal day's work. Contractor shall not require more than eight (8) hours in a day from any person employed by the Contractor in the performance of such work. Contractor shall forfeit as a penalty to County the sum of twenty-five dollars (\$25.00) for each laborer, workman or mechanic employed in the execution of this contract by Contractor or by any Subcontractor for each calendar day during which such laborer, workmen or mechanic is required or permitted to labor more than eight (8) hours in violation of the provisions of Section 1813 of the Labor Code of the State of California.

18. **Prevailing Wage Scale:** The minimum compensation to be paid for labor upon all work performed under this contract shall be the general prevailing rate of per diem wages and the general prevailing rate for holidays and overtime work as defined in the Prevailing Wage Provisions section of the Bidding and Contract Documents.

19. **Suspension or Termination of Contract:** If at any time in the opinion of the Director of Environmental Services Agency for the County of San Mateo, the Contractor has failed to supply an adequate working force, or materials of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in and by the terms of the Contract, written notice shall be served upon the Contractor. Should Contractor then neglect or refuse to provide the means for a satisfactory compliance with the contract, as directed by the Director of Environmental Services Agency for the County of San Mateo within the time specified by such notice, the County in any such case, shall have the power to suspend the operation of the Contract. Upon receiving notice of such suspension, the Contractor shall discontinue said work or such parts of it as the Director of Environmental Services Agency for the County of San Mateo may designate. In the event of a Contractor suspension under this agreement or if the Contractor otherwise abandons the project prior to completing all of the services described in this, Contractor shall, without delay, deliver to County all materials and records prepared or obtained in the performance of this agreement.

Upon such suspension or abandonment, the Contractor's control shall terminate and thereupon the County or its duly authorized representative may take possession of all or any part of the Contractor's materials, tools, equipment, or appliances upon the premises, at no cost to the County. The County then may use the same for the purpose of completing said Contract, or hire such forces and buy or rent such additional machinery, tools, appliances, equipment, additional materials and supplies at the Contractor's expense as may be necessary for the proper conduct and completion of the work. The County retains the right to employ other parties, or employ the necessary workmen, substitute other machinery or materials, and purchase the materials contracted for, in such manner as the Director of Environmental Services Agency for the County of San Mateo may deem proper, to carry the Contract to completion. The County may terminate the Contract and relet the work or any part thereof. The County shall not make payment for any work not performed by the Contractor.

Any excess of cost arising therefrom over and above the contract price will be charged against the Contractor and its sureties who will be liable therefor. In the event of such suspension, all money due the Contractor or retained under the terms of this Contract shall be forfeited to the County, but such forfeiture will not release the Contractor or its sureties from liability for failure to fulfill the contract. The Contractor and its sureties will be credited with the amount of money so forfeited toward the costs of completion and any excess of cost over the contract price, arising from the suspension of the operations of the Contract and the completion of the work by the County as above provided, and the Contractor will be so credited with any surplus remaining after all just claims for such completion have been paid.

In the determination of the question whether there has been any such compliance with the Contract as to warrant the suspension or annulment thereof, the decision of the Director of Environmental Services Agency for the County of San Mateo shall be binding on all parties to the Contract.

20. **Liquidated Damages:** The Contractor shall complete the work called for under the Contract in all parts and requirements within the time frame specified in Section 6, Effective Date and Time of Completion, above. Time is of the essence in performance of this Contract.

It is agreed by the parties of the Contract that in case all the work called for under the Contract is not completed before or upon the expiration of the time limit as set forth in these specifications, damage will be sustained by the County, and that is and will be impracticable to determine the actual damage which the County will sustain in the event of and by reason of such delay. It is therefore agreed that the Contractor will pay to the County the sum of **TWO HUNDRED FIFTY DOLLARS (\$250.00)** per day for each and every day's delay beyond the time prescribed to complete the work. The Contractor agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that the County may deduct the amount thereof from any money due or that may become due the Contractor under the Contract.

It is further agreed that in case the work called for under the Contract is not finished and complete in all parts and requirements within the time specified, the County shall have the right to extend the time for completion or not, as may seem best to serve the interest of the County. If the County decides to extend the time of completion of the Contract, it shall further have the right to charge to the Contractor, its heirs, assigns, or sureties, and to deduct from the final payment for the work, all or any part as it may deem proper, of the actual cost of inspection, superintendence and other overhead expenses which are directly chargeable to the Contract and which accrue during the period of such extension, except that the cost of final surveys and preparation of final estimate shall not be included in such charges.

The Contractor shall not be assessed with liquidated damages for the cost of inspection during any delay in the completion of the work caused by acts of God or of the public enemy, acts of the County, fire, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather or delays of subcontractors due to such cases, provided that the Contractor shall within ten (10) days from the beginning of any such delay notify the Director of Environmental Services Agency for the County of San Mateo in writing of the causes of the delay. The Director of Environmental Services Agency for the County of San Mateo shall ascertain the facts and the extent of delay, and his finding of facts thereon shall be final and conclusive.

If the Contractor is delayed by any act of the County, not contemplated by the Contract, the time of completion shall be extended proportionately and the Contractor shall be relieved during the period of such extension of any claim for liquidated damages, or inspection charges or other penalties. The Contractor shall have no claim for any other compensation for any such delay.

21. **Performance by Sureties:** In the event of any contract suspension or termination, County shall immediately give written notice thereof to Contractor and Contractor's sureties. The sureties shall have the right to take over and perform the agreement, provided that the County receives written notice of their intentions from said sureties within five (5) days of issuance of said termination notice. Said sureties will then be required to commence performance of the work within five (5) days after notice to the County of such election. Should work not commence, County may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable. In such an event the Contractor and the sureties shall be liable to County for any excess cost or damages occasioned by the

County thereby; and, in such event, County may without liability for so doing, take possession of 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.

Should Contractor contract in an individual capacity, then Contractor shall require that the surety bond shall contain the following provision: "Should Contractor contract in its individual capacity, the death of the Contractor shall not relieve the surety of its obligations."

22. **Contractor's, Subcontractor's and Materialman's Remedies:** The Contractor, and any subcontractors, material men providing materials, equipment renters planning to lease equipment, or other furnisher of provisions or other supplies in furtherance of this agreement or any provision thereof are relegated to those statutory provisions found in Division 2, Part 3 of the California Public Contract Code, entitled "Contracting by Local Agencies". Notwithstanding the fact that certain work and services may in fact be provided upon privately owned property, this Contract and all provisions involved are a public contract and as such is defined in Division 2, Part 3 of the Public Contracts Code, and no mechanic's liens, material men's liens, or liens of any form or nature may be placed upon private parcels by reason of this agreement. The Contractor, and any subcontractors, material men providing material, equipment renters planning to lease equipment, or other furnisher of provisions or other supplies in furtherance of the agreement or any provision thereof are relegated to those remedies available for work as against public entities only.

23. **Contract Security:** Concurrently with the execution of this agreement, Contractor shall furnish: (1) a surety bond in an amount equal to at least one hundred percent (100%) of the contract price as security for the faithful performance of this contract; and (2) a separate surety bond in an amount equal to at least one hundred percent (100%) of the contract price as security for the payment of all persons performing labor and furnishing materials in connection with this contract in accordance with Section 5100 to 5108, inclusive, of the Public Contract Code of the State of California. Sureties on each of said bonds and the form thereof shall be satisfactory to the County and be subject to the approval of the Director of Environmental Services Agency for the County of San Mateo.

24. **Indemnification - Contractor's Responsibility:** It is understood and agreed that the Contractor has the skills necessary to perform the work agreed to be performed under this agreement, that County relies upon the skills of Contractor to do and perform Contractor's work in a skillful and professional manner, and Contractor thus agrees to so perform the work.

Acceptance by County of the work performed under this agreement does not operate as a release of said Contractor from responsibility for the work performed. It is further understood and agreed that Contractor is apprized of the scope of the work to be performed under this agreement and Contractor agrees that said work can and shall be performed in a fully competent manner.

Contractor shall indemnify, defend, and hold County, its officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, or other cause in connection with the negligent or intentional acts or omissions of Contractor, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising out of the sole

negligence or willful misconduct of the County, its officers, employees, agents, or volunteers. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

25. **Ownership of Materials:** Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by Contractor pursuant to this agreement shall be the property of the County at the moment of their completed preparation. All materials and records of a finished nature, such as final plans, specifications, reports, and maps, prepared or obtained in the performance of this agreement, shall be delivered to and become the property of the County. All materials of a preliminary nature, such as survey notes, sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this agreement, shall be made available, upon request, to the County at no additional charge and without restriction or limitation on their use consistent with the intent of the original design.

26. **Insurance:** On or before beginning any of the services or work called for by any term of this agreement, Contractor, at its own cost and expense, shall carry, maintain for the duration of the agreement, and provide proof thereof that is acceptable to the County the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the County of San Mateo. Contractor shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Contractor has also been obtained for the subcontractor.

- (a) **Worker's Compensation:** Statutory Worker's Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor shall be provided with limits not less than one million dollars. In the alternative, Contractor may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against the County for loss arising from work performed under this agreement.
- (b) **Commercial General and Automobile Liability:** Contractor, at Contractor's own expense, shall maintain commercial general and automobile liability insurance for the period covered by this agreement in an amount not less than one million dollars per occurrence, combined single limit coverage for risks associated with the work contemplated by this agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting



therefrom, and damage to property resulting from activities contemplated under this agreement, including the use of owned and non-owned automobiles.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) and Insurance Services Office Automobile Liability for CA 0001 (ed. 12/90) Code 1 (any auto). No endorsement shall be attached limiting the coverage.

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- (i) County, its officers, employees, agents, and volunteers are to be covered as insured as respects each of the following: liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired, or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to County, its officers, employees, agents or volunteers.
- (ii) The insurance shall cover on an occurrence or an accident basis, and not on a claims made basis.
- (iii) An endorsement must state that coverage is primary insurance and that no other insurance affected by the County will be called upon to contribute to a loss under the coverage.
- (iv) Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to County and its officers, employees, agents, and volunteers.
- (v) Insurance is to be placed with California-admitted insurers with a Best's rating of no less than A:VII.
- (vi) Notice of cancellation or non-renewal must be received by County at least thirty days prior to such change.
- (vii) Course of construction policies shall contain the following provisions:
  1. The County shall be named as loss payee.

2. The insurer shall waive all rights of subrogation against the County.

- (viii) Contractor shall furnish the County with original certificates and amendatory **endorsements** effecting coverage required by this clause. The endorsements should be on forms provided by the County or on other than the County's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.
- (c) Subcontractors: Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
- (d) Deductibles and Self-Insured Retention: Contractor shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this agreement. During the period covered by this agreement, upon express written authorization of County Attorney, Contractor may increase such deductibles or self-insured retentions with respect to County, its officers, employees, agents, and volunteers. The County Attorney may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Contractor procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.
- (e) In addition to any other remedies the County may have if Contractor fails to provide or maintain any insurance policy endorsements to the extent and within the time herein required, County may, at its sole option:
- (I) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;
  - (ii) Order Contractor to stop work under this agreement or withhold any payment which becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements thereof;
  - (iii) Terminate this agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies the County may have and is not the exclusive remedy for Contractor's failure to maintain insurance or secure appropriate endorsements.

27. **Amendments:** This agreement may be modified or amended only by a written document executed by both Contractor and County's Director of Environmental Services Agency for the County of San Mateo and approved as to form by the County Attorney. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this agreement.

28. **Abandonment by Contractor:** In the event the Contractor ceases performing services under this agreement or otherwise abandons the project prior to completing all of the services described in this agreement, Contractor shall, without delay, deliver to County all materials and records prepared or obtained in the performance of this agreement, and shall be paid for the reasonable value of the services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which County incurs as a result of such cessation or abandonment.

29. **Waiver:** The waiver by either party of a breach by the other of any provision of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this agreement.

30. **No Third-Party Rights:** The parties intended not to create rights in, or to grant remedies to, any third party as a beneficiary of this agreement or of any duty, covenant, obligation, or undertaking established herein.

31. **Severability:** Should any part of this agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

32. **Compliance with Laws:** In the performance of this agreement, Contractor shall abide by and conform to any and all applicable laws of the United States and the State of California, and all ordinances of the County of San Mateo.

Contractor warrants that all work done under this agreement will be in compliance with all applicable safety rules, laws, statutes and practices, including but not limited to Cal/OSHA regulations.

33. **Controlling Law:** The agreement and all matters relating to it shall be governed by the laws of the State of California.

34. **Conflict of Interest:** Contractor warrants and covenants that Contractor presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this agreement a violation of any applicable state,

local, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, Contractor shall promptly notify County of the existence of such conflict of interest so that the County may determine whether to terminate this agreement. Contractor further warrants its compliance with the Political Reform Act (Gov. Code section 8100 et seq.) respecting this agreement. Contractor is not a "public official" for purposes of Government Code section 87200 et seq. Contractor conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the County or any County official, other than normal, contract monitoring. In addition, Contractor possesses no authority with respect to any County decision beyond the rendition of information, advice, recommendation or counsel.

35. **Copyright:** Upon County's request, Contractor shall execute appropriate documents to assign to the County the copyright to work created pursuant to this agreement. The issuance of a patent or copyright to Contractor or any other person shall not affect County's rights to the materials and records prepared or obtained in the performance of this agreement. County reserves a license to use such materials and records without restriction or limitation consistent with the intent of the original design, and County shall not be required to pay any additional fee or royalty for such materials or records. The license reserved by County shall continue for a period of fifty years from the date of execution of this agreement unless extended by operation of law or otherwise.

36. **Time is of the Essence:** Contractor agrees to diligently prosecute the services to be provided under this agreement to completion and in accordance with any schedules specified herein. In the performance of this agreement, time is of the essence.

37. **Whole Agreement:** This agreement constitutes the entire understanding and agreement of the parties. This agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

38. **Multiple Copies of Agreement:** Multiple copies of this agreement may be executed but the parties agree that the agreement on file in the office of County's County Clerk is the version of the agreement that shall take precedence should any differences exist among counterparts of the document.

39. **Other Contracts:** County may award other contracts to other contractors for additional work and Contractor shall fully cooperate with such other contractors and carefully fit Contractor's own work to that which may be provided for under other contracts as may be directed by the Director of Environmental Services Agency for the County of San Mateo, has appointed assistant or representative. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

40. **Provisions Cumulative:** The provisions of the agreement are cumulative, and in addition to and not in limitation of, any other rights or remedies available to either party.

41. **Interpretation:** As used herein, any gender includes both genders, the singular is included in the plural and vice versa.

42. **Non-discrimination.**

- a. **General.** No person shall, on the grounds of race, color, creed, national origin, religious affiliation or non-affiliation, sex, sexual orientation, marital status, age (over forty), pregnancy, childbirth or related conditions, medical condition (including but not limited to AIDS, HIV positive diagnosis, or cancer), mental or physical disability, veteran's status, union membership, or political affiliation, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under this Agreement. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and subcontractors under this Agreement.
- b. **Employment.** Contractor shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. Contractor's personnel policies shall be made available to County upon request.
- c. **Violation.** Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject Contractor to penalties, to be determined by the County Manager, including, but not limited to:
  - i. termination of this Agreement
  - ii. disqualification of Contractor from bidding on or being awarded a County contract for a period of up to three (3) years;
  - iii. liquidated damages of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) per violation;
  - iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to:

- i. examine Contractor's employment records with respect to compliance with this paragraph;
- ii. set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Agreement or any other contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within

thirty (30) days of such filing, provided that within such thirty (30) days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of its response to the complaint when filed.

43. **Equal Benefits.** With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between and employee with a domestic partner and an employee with a spouse.

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

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

**Marcia Raines  
Director of Environmental Services Agency  
County of San Mateo  
Planning and Building Division  
455 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063**

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

**G. E. Chen Construction, Inc.  
340 West 23rd Ave.  
San Mateo, CA 94403**

Notices required to be given sureties of Contractor shall be addressed as following:

**United States Fidelity and Guaranty Company  
205 East 3<sup>rd</sup> Ave., #314  
San Mateo, CA 94401**

43. **One Year Guaranty Upon Final Acceptance:** The Contractor agrees that upon final acceptance of the work the following guaranty shall become operative; that Contractor shall repair or replace, at its own expense, any of said work which shall at any time during a One (1) year period subsequent to the date of final acceptance of application of completion, become damaged or defective because of faulty workmanship or defective materials.

Contractor shall file with County a corporate surety bond in the sum of **Ninety-Three Thousand, Ninety Dollars and No Cents (\$93,090.00)** securing this guaranty to County, and said bond shall be filed at the time final acceptance of this work is requested. Should

Contractor not file said bond as required herein, County may retain any unpaid portion of the contract price as a cash bond for said one (1) year period. In this event, no interest shall be paid to contractor by reason of County's retention. Should contractor, within a reasonable time after demand for repair or replacement work is made, fail to make any and all such repairs or replacements, County may undertake said repairs and replacements with its own forces or through Contract, and Contractor shall reimburse County for any and all costs of said repairs or replacements, even if said cost exceed the principal sum of the corporate surety and which is security for the performance of this guaranty. Contractor and his/her surety may provide the afore going guaranty in conjunction with any other bonding or surety agreement.

IN WITNESS WHEREOF, Contractor has executed this agreement, and the County, by its Director of Environmental Services Agency for the County of San Mateo, who is authorized to do so, has executed this agreement.

COUNTY OF SAN MATEO

By: \_\_\_\_\_  
Rose Jacobs Gibson  
President, Board of Supervisors

ATTEST:

\_\_\_\_\_  
County Clerk

CONTRACTOR

By: \_\_\_\_\_

Title: \_\_\_\_\_