

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # \*B-13

Urgent  Routine

AGENDA DATE November 25, 2008

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Award the Construction Contract for the Tenant and Site Improvements of the Unfinished Space of the 5th floor of the 12<sup>th</sup> Street Office Building to the Lowest Responsible Bidder, Simile Construction Service, Inc., of Modesto, California

STAFF RECOMMENDATIONS:

1. Award the construction contract for the tenant and site improvements for the unfinished space for the 5<sup>th</sup> floor of the 12<sup>th</sup> Street Office Building to the lowest responsible bidder, Simile Construction Service, Inc., of Modesto, California, for the lump sum amount of \$395,000.
2. Authorize the Project Manager to issue a notice to proceed contingent upon receipt of proper insurance and bonds.

(Continued on Page 2)

FISCAL IMPACT:

On October 7, 2008, the Board of Supervisors approved the plans and specifications for the tenant and site improvements for the unfinished space for the 5th floor of the 12<sup>th</sup> Street Office Building for and authorized the call for bids for tenant improvements. The total project budget, initially established was \$1,012,000. Within the initial project budget, \$656,697 was allocated for the construction only portion of this effort. The remainder is equipment, furnishings, support costs such as project and construction management, inspection and various supplies.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2008-809

On motion of Supervisor O'Brien, Seconded by Supervisor Grover

and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, and Vice Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: Mayfield

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

**STAFF RECOMMENDATIONS: (Continued)**

3. Authorize the Project Manager to negotiate and sign contracts and work authorizations necessary to manage the construction phase including construction management, professional services, and other project related expenses as necessary to manage the project as long as the costs are within the project budget as approved by the Board of Supervisors.
4. Accept the formalized agreement between the District Attorney and the Hi-Tech Crimes Unit for the interim use of office space to support multi-jurisdictional investigations.
5. Authorize the Project Manager to issue a Request for Qualifications (RFQ) for on-call inspections services.
6. Direct the Auditor-Controller to decrease appropriations in the amount of \$276,447 for the Chief Executive Office Criminal Justice Facilities Fund as detailed in the Budget Journal form.

**FISCAL IMPACT: (Continued)**

On November 13, 2008, 12 bids were received and opened. Through a blind bid process comprised of six sequestered team members it was determined the lowest responsible bid was Simile Construction Service, Inc. A total of 12 bids were received from Iomlan Construction Services, Inc., of Turlock, California, Diede Construction, Inc., of Lodi, California, SLS Constructors, Inc., of Rocklin, California, Menghetti Construction, of Modesto, California, Howard S. Wright, of West Sacramento, California, Greg Opinski Construction, Inc., of Merced, California, Harris Builders, Inc., of Hilmar, California, Gowan Construction, of Tracy, California, Brown and Son Construction, of Manteca, California, Owens Construction, of Colfax, California, Simile Construction Services, Inc., of Modesto, California, and JHK Construction, of Escalon, California. The basis of award was the base bid. The bids ranged from \$395,000 to \$545,000 for the base bid.

At this time the Chief Executive Office is returning to the Board for approval to award a construction contract to Simile Construction Services, Inc. for the lump sum amount of \$395,000 for the tenant and site improvements for the unfinished space of the 5th floor of the 12th Street Office Building. The lowest responsible bid of \$395,000 is below the estimate of probable construction cost of \$656,697 and well within the approved budget. Staff is also recommending to decrease the overall project budget in the Chief Executive Office Criminal Justice Facilities Fund by \$276,447, from \$1,012,000 to \$735,553. The \$276,447 will be fall back to fund balance in the Chief Executive Office Criminal Justice Facilities budget given the excellent bid environment and low bid received for the project.

The Board is also being asked to authorize the staff to issue a Request for Qualifications (RFQ) for on-call inspections services. An integral part of the planning

and design as well as construction of any capital project is the professional services needed to support each project. Inspections, which are required by law, are critically important to support efforts for each capital project. Funds are budgeted in each capital project effort for code and required inspections.

## **DISCUSSION:**

### Background

The District Attorney's Office moved into the new 12th Street Office Building in the fall of 2006. This office building is a six-floor structure with the 3<sup>rd</sup>, 4<sup>th</sup> and a portion of the 5<sup>th</sup> floor occupied by the Offices of the Stanislaus County District Attorney. Tenant improvements have been completed on Floors 3, 4, and half of 5<sup>th</sup> floor, with the other half of the 5th floor left unfinished for future District Attorney Office expansion.

There has been staffing growth to meet workload demands since the original program was completed for the initially improved space allocated to the District Attorney as part of the original 12th Street Construction project. The initial program was adopted several years ago. The space now being recommended for improvement was originally set aside for future growth for just this purpose. The District Attorney's offices were not fully built out at the time of the move and certain District Attorney staff continue to occupy the fourth floor of their former space in the Stanislaus County Courthouse. The objective is to fully build out the District Attorney space in order to move the DA staff to the 12th Street Building, while maintaining field workstations for District Attorney staff use at the Courthouse with convenient access to the courtrooms.

On October 30, 2007, the Board of Supervisors approved the project for the architectural services for tenant and site improvements for the remaining county space on the 5th Floor of the 12th Street Building. The Project Manager issued a Request for Proposals with Architectural firms to design the space. On November 29, 2007 a total of eight (8) proposals were received. An evaluation team comprised of staff from the Chief Executive and the District Attorney Offices evaluated the proposals, and ranked the proposal of Architecture Plus, Inc. (API) as the most qualified proposal to complete the architectural design work.

On February 5, 2008, the Board of Supervisors authorized the contract with API for architectural services for the tenant and site improvements for the unfinished space of the 5th floor of the 12<sup>th</sup> Street Office Building for use by the Office of the District Attorney. Since that time, a final design, established through meetings between the Chief Executive Office Capital Projects staff, District Attorney staff, and the architect was completed. In order to complete all the areas requested the project expense was estimated to be \$1,012,000. The project includes extended partitions to provide some sound insulation, a fire annunciation system required by the Fire Marshal consistent with new code requirements adopted since the building was constructed, furniture,

fixtures and equipment and modifications to the District Attorney's conference room along with the recommended tenant improvements to build out the shell space with both offices and open office areas.

On October 7, 2008, the Board of Supervisors approved the design, plans and specifications for the tenant and site improvements of the unfinished space of the 5th floor. The Board also approved proceeding with the construction phase of the project, approving the issuance of a notice inviting bids on October 8, 2008, receiving bids on November 13, 2008 no later than 2:00 p.m. It was also noted that the completion of this project will allow the District Attorney to vacate certain spaces still being used in the Courthouse in accordance with the County's Interim Use Agreement with the Courts.

The build-out of the 5th floor will meet current and future needs of the District Attorney, but is recommended to be completed now. In the interim, the local Hi-Tech Crimes staff would use some of the space not yet needed by the District Attorney. Staff are requesting the Board to accept a formalized agreement for the interim use of this space as outlined in the attached agreement (Interim Agreement for Use of the District Attorney Office Space) between the District Attorney and the Hi-Tech Crimes Unit to support multi-jurisdictional investigations. The Stanislaus County District Attorney's office has recognized an increase in the need for high tech analysis of computers and cell phones connected not only to high profile felony cases, but to virtually all types of investigations and prosecutions.

Additionally, on October 7, 2008 the Board approved a contract with the Keller Group to furnish and install furniture, fixtures and equipment (FF&E) for the unfinished space of the 5th floor of the 12th Street Office Building, with a not to exceed amount of \$122,135 funded completely by Public Facility Fees (PFF) funding.

At this time the Chief Executive Office is returning to the Board for approval to award a construction contract to Simile Construction Services, Inc. for the lump sum amount of \$395,000 for the tenant and site improvements for the unfinished space of the 5th floor of the 12th Street Office Building. Twelve bids were received for this project as noted in the Fiscal Impact section of this report. A strong level of competitive bids were received. The county has had outstanding experience recently with Similie Construction who constructed the tenant improvements at the County's Paradise Medical Clinic. The lower bid will allow the overall project budget to decrease from \$1,012,000 to \$735,553 with the savings to will fall to the fund balance of the Chief Executive Office Criminal Justice Facilities budget as recommended in this report.

Finally, it is recommended that a Request for Qualifications (RFQ) for on-call inspections services be issued. An integral part of the planning and design as well as construction of any capital project is the professional services needed to support each project. Inspections, which are required by law, are critically needed to support efforts

Approval to Award the Construction Contract for the Tenant and Site Improvements of the Unfinished Space of the 5th floor of the 12<sup>th</sup> Street Office Building to the Lowest Responsible Bidder, Simile Construction Service, Inc.-Chief Executive Office  
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for each capital project. Over the next year, the County anticipates a continued need for on-call contract inspection services during the construction of several projects.

If approved by the Board of Supervisors, construction is expected to begin in Winter 2008, and be completed by Summer 2009.

**POLICY ISSUES:**

Approval of this action furthers the implementation of the Master Plan for the 12<sup>th</sup> Street project approved on October 8, 2002, and supports the Board's Priority of *A safe community, Effective partnerships, and Efficient delivery of public services.*

**STAFFING IMPACT:**

There is no anticipated additional staffing impact at this time. Existing Capital Projects staff will coordinate this project with the District Attorney.

ATTACHMENTS AVAILABLE  
FROM YOUR CLERK

## County of Stanislaus: Auditor-Controller Legal Budget Journal

Database  
Set of Books

FMS11IDB.CO.STANISLAUS.CA.US.PROD  
County of Stanislaus

Balance Type		Budget	
Category	* List - Text	Budget - Upload	
Source	* List - Text		
Currency	* List - Text	USD	
Budget Name	List - Text	LEGAL BUDGET	
Batch Name	Text	CEO Criminal Justice Facilities Fund	
Journal Name	Text	Decrease in Appropriations	
Journal Description	Text	District Attorney Tenant and Site Improvements	
Journal Reference	Text	November 25, 2008	
Organization	List - Text	Stanislaus Budget Org	

Upl	Fund	Org	Acc't	GL Proj	Loc	Misc	Other	Debit		Credit		Period Upper case MM-YY List - Text	Line Description Text
								incr appropriations decr est revenue (format > number > general)		decr appropriations incr est revenue			
PB	2026	61304	80300	4525	0	0	0				261697		Dec Approp
PB	2026	61304	80570	4525	0	0	0				14750		Dec Approp
								0		276447			

**Totals:** 0 276447

**Explanation:** Decrease in appropriations in the Criminal Justice Facilities Fund as a result of bid for construction and build out of the District Attorney unfinished space coming in below project estimates

Requesting Department Mark E. Laese Signature 11/21/08 Date	CEO Patricia DiMarco Signature 11/21/08 Date	Data Entry Keyed by Date	Auditors Office Only Approved By 11/24/08 Date
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## INTERIM AGREEMENT FOR USE OF THE DISTRICT ATTORNEY OFFICE SPACE

### High-Tech Crimes Unit

The County is completing the tenant improvements for the unfinished space on the 5<sup>th</sup> floor of the 12<sup>th</sup> street office for current and future needs of the District Attorney at a cost of \$1,012,000. The County has an agreement with the Courts to vacate certain spaces still being used in the Courthouse for certain District Attorney space.

It is anticipated that some of the newly improved space will be vacant for an unspecified period of time until the staffing demands of the DA's office requires its full use.

THIS INTERIM AGREEMENT FOR USE OF DISTRICT ATTORNEY OFFICE SPACE, made and entered into on this 25<sup>th</sup> Day of November, 2008 (the "Agreement"), by and between the Stanislaus County District Attorney's Office (SC/DA), a Stanislaus County Department, having an address at 832 12<sup>th</sup> Street, Modesto, CA. 95354, and the High-Tech Crimes Unit, a local multi-jurisdictional investigations task force.

- A. SC/DA is the primary tenant of a building known as the 12<sup>th</sup> Street Office Building located at 832 12<sup>th</sup> Street, Modesto, CA. 95354 on the 5<sup>th</sup> Floor. (The "12<sup>th</sup> Street Office Building"),
- B. SC/DA has authorized the High Tech Crimes Unit (the "HTCU") to act as its agent in the disposition limited office spaces in the 12<sup>th</sup> Street Office Building on the 5<sup>th</sup> Floor,
- C. HTCUC is a recognized local multi-jurisdictional investigations task force.
- D. HTCUC desires to use office space on the 5<sup>th</sup> Floor of the 12<sup>th</sup> Street Office Building occupied by the District Attorney for the purpose of carrying out its activities as multi-jurisdictional law enforcement agency.

NOW THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the parties hereto do hereby mutually agree as follows:

1. Designated Space. SC/DA does hereby allow HTCUC to use upto approximately 2,000 square feet of office space at the SC/DA expense, and HTCUC does hereby agree to use, for the term and upon the conditions hereinafter provided, the locations within the 5<sup>th</sup> Floor of the 12<sup>th</sup> Street Office Building occupied by the District Attorney's office as more particularly described on Exhibit A attached hereto (such locations being hereinafter collectively referred to as the "Designated Space"). HTCUC accepts possession of the Designated Space in "as is" condition existing on the date of possession is delivered to HTCUC, without requiring any alterations, improvements, or decorations to be made by SC/DA at SC/DAs expense.

2. Term. Right to Terminate. The term of this Agreement shall be on an interim basis, (hereinafter to as the "Term"), commencing on the 25<sup>th</sup> day of November, 2008 (hereinafter called the "Commencement Date"). SC/DA has the right to terminate this Agreement and shall provide HTCUC a six month written notice to vacate from the Designated Space.

3. Use. HTCUC shall use and occupy the Designated Space solely for such purposes as are consistent with the HTCUC mission as a multi-jurisdictional investigation agency and which are permissible in accordance with the Stanislaus County policies:

Stanislaus County reserves the right to create new rules and regulations to govern the use of the Designated Space at its discretion. The Designated Space shall not be used for any other purpose without the prior written consent of SC/DA. HTCUC shall not use or occupy the Designated Space for any unlawful purpose, and will comply with all present and future laws, ordinances, regulations, and orders of all governments, government agencies and any other public authority having jurisdiction over the Designated Space.

HTCUC allocated space on the 5<sup>th</sup> Floor of the 12<sup>th</sup> Street Office Building occupied by the District Attorney shall not be permitted to store any products other than those used to conduct normal business operations. HTCUC staff shall make all reasonable efforts to fit all items within the allocated cabinets or other office furniture within the designated office.

4. Assignment and Subletting.
  - A. HTCUC shall not assign, transfer, sell, mortgage, pledge, or encumber the right to use the Designated Space or sublet the whole or any part of the Designated Space.
  - B. SC/DA may, at its option, assign, transfer, sell, mortgage, pledge, or encumber the 5<sup>th</sup> Floor of the 12<sup>th</sup> Street Office Building occupied by the District Attorney, in whole or in part, including the Designated Space, at any time.

5. Alterations. HTCUC shall make no alterations, installations, additions or improvement (collectively, the "Alterations") in the Designated Space without SC/DA prior consent. This includes but is not limited to storage units, shelves and cabinets as well as desks and tables. Consent by SC/DA to HTCUCs Alterations shall not be unreasonably withheld or delayed. HTCUC, at its sole cost and expense, shall provide SC/DA with such plans and other information as SC/DA may reasonably request to allow SC/DA to evaluate such Alterations. If any Alterations are made without the prior written consent of SC/DA, SC/DA may correct or remove the same, and HTCUC shall be liable for any and all expenses incurred by SC/DA in the performance of this work. All Alterations shall be made at the HTCUC sole expense, and only by such contractors or mechanics are approved in writing by SC/DA, such approval not be reasonably withheld or delayed.

6. Maintenance by HTCUC. HTCUC, at its sole cost and expense, shall keep the Designated Space and the fixtures and equipment therein in safe and sanitary condition, shall take good care thereof, and shall suffer no waste or injury thereto.

7. General Cleanliness. The standards for cleanliness shall be determined by Stanislaus County at its discretion. Cleanliness includes, but is not limited to, maintaining a minimum level of storage in the Designated Space allowing County representatives and maintenance staff to easily and safely manage the Designated Space as well as power and data outlets which under no condition should be covered by any type of storage or clutter. If, at any time, the Designated Space does not meet the cleanliness standards of the County, HTCUC will be given written notice to comply with the standards as soon as possible.

8 Office Hours. HTCUC will provide the SC/DA with current operations criteria and policies and agree to modify such policies to ensure no additional County cost is required to operate the facility outside of normal County business.



9. Parking. SC/DA will allocate eight (8) parking spaces at the 12<sup>th</sup> Street Parking Garage for up to eight (8) HTCUCU staff, and an additional two (2) parking spaces for visiting law enforcement at the sole expense of SC/DA.

10. Entry for Inspections, Repairs, and Installations. HTCUCU shall permit SC/DA, or its agents, employees or contractors to enter the Designated Space solely occupied by HTCUCU at any time to examine, inspect, and protect the Designated Space.

11. Liability for Damage to Personal Property and Persons. All personal property of HTCUCU, its employees, agents, subtenants, business invitees, Agreements, customers, clients, family members, or guests in and on the Designated Space shall be and remain in and on the Designated Space at the sole risk of said parties and SC/DA shall not be liable to any such person or party for any damage to, or loss of personal property thereof.

12. Office Access. SC/DA will provide access to the space and furnishings. SC/DA will provide appropriate access and badges needed by HTCUCU.

13. No "Lease". The parties agree that this Agreement confers a limited right to use the Designated Space and does not constitute a "lease" under California law.

14. Notices. All notices or any other communications hereunder, including all notices required under California law, shall be in writing and shall be deemed duly given if delivered in person; by certified mail, return receipt requested; or by registered mail, postage prepaid to each party's usual place of business.

15. Benefit and Burden. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and each of their representative representatives, successors and permitted assigns.

16. Governing Law. This Agreement and the rights and obligations of SC/DA and HTCUCU hereunder shall be governed by the laws of the California.

17. Savings Clause. If any provision of this Agreement or the application thereof to any person or circumstance is to any extent held invalid, then the remainder of this agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of the Agreement shall be valid and inforce to the fullest extent permitted by law and to the extent consistent with the intent of the parties.

18. Entire Agreement. This Agreement, together with the Exhibits attached hereto and made a part hereof, contains and embodies the entire agreement of the parties hereto, with respect to the subject matter hereof, and no representations, inducements, or agreements, oral or otherwise, between the parties, with respect to the subject matter hereof, not contained and embodied in this Agreement and said Exhibits shall be of any force or effect. This Agreement may not be modified, changed, or terminated in whole or in part in any manner other than by an agreement in writing duly signed by all parties hereto.


IN WITNESS WHEREOF, SC/DA and HTCUC have caused this Agreement to be signed in their names by their duly authorized representatives and delivered as their act and deed, intending to be legally bound by its terms and provisions.

By: Alan Carter

Title: SGT.

Email: CARTER.A@MOPE5J0PD.COM

Date: 11/20/2008

By: 

Title: DISTRICT ATTORNEY

Email: BIRGIT.FLANAGAN@STANDA.ORG

Date: 11-21-08

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

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

Email: \_\_\_\_\_

Date: \_\_\_\_\_

Stanislaus County Capital Projects  
825 12<sup>th</sup> Street, Modesto, CA 95354  
Phone: (209) 525-4380 FAX: (209) 525-4385

# TRANSMITTAL

**TO:** Simile Construction Services, Inc.  
4725 Enterprise Way, Suite 1  
Modesto, CA 95356

**SUBJECT:** DISTRICT ATTORNEY'S 5<sup>th</sup> FLOOR TI'S

**DATE:** 12/18/08

We are sending you  X  attached   under separate cover the following material:

<input type="checkbox"/> Shop Drawings	<input type="checkbox"/> Change Order	<input type="checkbox"/> Specifications
<input type="checkbox"/> Copy of Letter	<input type="checkbox"/> Plans	<input type="checkbox"/> Computer Printout
<input type="checkbox"/> Prints	<input type="checkbox"/> Samples	<input type="checkbox"/> Updates

COPIES	DATE	DESCRIPTION
1		Fully executed Contract.

2008 DEC 19 PM 12:53  
BOARD OF SUPERVISORS


**REMARKS:**

For your use.

**COPIES:**

Lisa Sandoval, Auditor  
Liz King, BOS  
Patricia Hill Thomas  
File AQ 2.1.1(67)  
File DQ 2.2

**SIGNED:**

  
Norma Baker

**CONTRACT**

THIS CONTRACT, dated this **25th** day of **November, 2008**, by and between **Simile Construction Services, Inc** whose place of business is located at **4725 Enterprise Way Suite 1, Modesto, CA 95356** ("Contractor"), and the **COUNTY OF STANISLAUS** ("County"), acting under and by virtue of the authority vested in the County by the laws of the State of California.

WHEREAS, County, by its Board Agenda item No **B-13** adopted on the **25<sup>th</sup>** day of **November, 2008** awarded to Contractor the following Contract:

**DISTRICT ATTORNEY'S OFFICE TENANT IMPROVEMENTS**

at

**12<sup>TH</sup> STREET PLACE  
MODESTO, CALIFORNIA 95354**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and County agree as follows:

**Article 1. Work**

- 1.1 Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents.

**Article 2. Architect/Engineer and Project Manager**

- 2.1 **Architecture Plus, Inc. (API)** designed the Project and furnished the Plans and Specifications. **Architecture Plus, Inc. (API)** shall have the rights assigned to Architect/Engineer in the Contract Documents.
- 2.2 County has designated **Patricia Hill Thomas** as its Project Manager to act as County's Representative in all matters relating to the Contract Documents. The Project Manager shall have final authority over all matters pertaining to the Contract Documents and shall have sole authority to modify the Contract Documents on behalf of the County, to accept work, and to make decisions or actions binding on the County, and shall have sole signature authority on behalf of the County.
- 2.3 The County may assign all or part of the Project Manager's rights, responsibilities and duties to a Construction Manager.

**Article 3. Contract Time and Liquidated Damages**

- 3.1 Contract Time

Contractor shall commence Work on the date established in the Notice to Proceed. County reserves the right to modify or alter the Commencement Date of the Work.

Contractor shall achieve Substantial Completion of the entire Work within **120 Calendar Days** from the date when the Contract Time commences to run as provided in Document 00700 (General Conditions). Contractor shall achieve Final Completion of the entire Work and be ready for Final Payment in accordance with Section 01770 (Contract Closeout) **60** Calendar Days from the date when the Contract Time commences to run as provided in Document 00700 (General Conditions).

### 3.2 Liquidated Damages

County and Contractor recognize that time is of the essence of this Contract and that County will suffer financial loss in the form of Contract administration expenses (such as Project management and consultant expenses), if all or any part of the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with the Contract Documents. Contractor and County agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by County because of a delay in completion of all or any part of the Work. Accordingly, County and Contractor agree that as liquidated damages for delay Contractor shall pay County:

- 3.2.1 Two Thousand dollars (\$2,000.00) for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.
- 3.2.2 One Thousand dollars (\$1,000.00) for each Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

These measures of liquidated damages shall apply cumulatively and except as provided below, shall be presumed to be the damages suffered by County resulting from delay in completion of the Work.

- 3.3 Liquidated damages for delay shall only cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by County as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from County (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

## **Article 4. Contract Sum**

- 4.1 County shall pay Contractor the Lump Sum of **Three Hundred Ninety Five Thousand (\$395,000)** for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto.

**[Attachment]**

## **Article 5. Contractor's Representations**

In order to induce County to enter into this Contract, Contractor makes the following representations and warranties:

- 5.1 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- 5.2 Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, products specifications or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, which have been made available for Bidders or which may appear in the Drawings. Contractor accepts the determination set forth in these Documents and

Document 00700 (General Conditions) of the limited extent of the information contained in such materials upon which Contractor may be entitled to rely. Contractor agrees that except for the information so identified, Contractor does not and shall not rely on any other information contained in such reports and drawings.

5.3 Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Section 5.2 of this Document 00520) that pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00700 (General Conditions); and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

5.4 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

#### **Article 6. Contract Documents**

6.1 Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Document 00520	Contract
Document 00550	Notice to Proceed
Document 00610	Construction Performance Bond
Document 00620	Construction Labor and Material Payment Bond
Document 00700	General Conditions
Document 00800	Supplementary General Conditions
Document 00821	Supplementary Conditions – Insurance
Document 00910	Addenda 1 and 2
Specifications	Divisions 1 through 16
Drawings listed in Drawing No. A0, Cover Sheet	

6.2 There are no Contract Documents other than those listed in this Document 00520, Article 6. The Contract Documents may only be amended, modified or supplemented as provided in Document 00700 (General Conditions).

#### **Article 7. Miscellaneous**

7.1 Terms and abbreviations used in this Contract are defined in Document 00700 (General Conditions) and Section 01420 (References and Definitions) and will have the meaning indicated therein.

7.2 It is understood and agreed that in no instance are the persons signing this Contract for or on behalf of County or acting as an employee, agent, or representative of County, liable on this Contract or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the County is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

7.3 Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*

7.4 The Contract Sum includes all allowances (if any).

- 7.5 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time County tenders final payment to Contractor, without further acknowledgment by the parties.
- 7.6 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at County's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code §1861, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 7.7 Should any part, term or provision of this Contract or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Contract and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- 7.8 This Contract and the Contract Documents shall be deemed to have been entered into in the County of Stanislaus, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in Stanislaus County Superior Court. Contractor accepts the Claims Procedure in Document 00700, Article 12, as a claims procedure by agreement under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5.

IN WITNESS WHEREOF the parties have executed this Contract in quadruplicate the day and year first above written.

**CONTRACTOR: SIMILE CONSTRUCTION SERVICE, INC.**

By: [Signature]  
(Signature)

Its: President  
Title (If Corporation: Chairman, President or Vice President)

By: [Signature]  
(Signature)

Its: Sec/Treas  
Title (If Corporation: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer)

**COUNTY:**

**COUNTY OF STANISLAUS**

By: [Signature]  
(Signature)

Patricia Hill Thomas  
(Print Name)

Chief Operations Officer  
(Title)

Attest: [Signature]  
Secretary

Norma Baker  
(Print Name)

APPROVED AS TO FORM AND LEGALITY  
THIS 18 DAY OF November, 2008

By: [Signature]  
John Doering, County Counsel

COUNTY BOARD AGENDA ITEM NO. B-13

END OF DOCUMENT

*al*



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DOCUMENT 00400

**BID FORM**

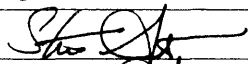
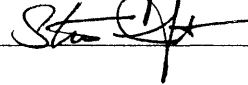
TO THE COUNTY OF STANISLAUS

THIS BID IS SUBMITTED BY:

SMILE CONSTRUCTION SERVICE, INC.  
(Firm/Company Name)

Re: County of Stanislaus, District Attorney's Office Tenant Improvements

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with the County of Stanislaus, ("County") in the form included in the Contract Documents, Document 00520 (Contract), to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Sum and within the Contract Time indicated in this Bid and in accordance with all other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Contract Documents, Document 00100 (Notice Inviting Bids), and Document 00200 (Instructions to Bidders), including, without limitation, those dealing with the disposition of Bid Security. This Bid will remain subject to acceptance for **60 Days after the day of Bid opening.**
3. In submitting this Bid, Bidder represents:
  - (a) Bidder has examined all of the Contract Documents and the following Addenda (receipt of all of which is hereby acknowledged).

Addendum Number	Addendum Date	Signature of Bidder
# 1	10.16.2008	
# 2	11.07.2008	

- (b) Bidder acknowledges receipt of Pre-Bid Conference minutes, if any.
  - (c) Bidder has visited the Site and performed all tasks, research, investigation, reviews, examinations, and analysis and given notices, regarding the Project and the Site, as set forth in Document 00520 (Contract), Article 5.
  - (d) Bidder has given the County prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by the County is acceptable to Contractor.
4. Based on the foregoing, Bidder proposes and agrees to fully perform the Work within the time stated and in strict accordance with the Contract Documents for the following sums of money listed in the following Schedule of Bid Prices:



**BID FORM**

**STANISLAUS COUNTY  
DISTRICT ATTORNEY'S OFFICE  
TENANT IMPROVEMENTS**

**BID OPENING DATE:  
NOVEMBER 13, 2008  
HOUR OF BID SUBMISSION:  
2:00 P.M.**

Honorable Board of Supervisors  
c/o Clerk of the Board  
County of Stanislaus  
1010 10<sup>th</sup> Street, 6<sup>th</sup> Floor, Suite 6700  
Modesto, California 95354

Dear Supervisors:

Pursuant to the Invitation to Bidders, and in compliance with the Instruction to Bidders, having reviewed the contract documents and the site(s) of the work, the undersigned hereby proposes to furnish all work, labor, materials, transportation, equipment, and services necessary, including State of California and local sales or use taxes, license, or permit fees, if any, for the construction of Tenant Improvements, District Attorney's Office, in Modesto, California, all in accordance with the specifications and drawings, and other contract documents, together with Addenda issued prior to or at the time of bidding, if any, now on file with the Construction Manager, for the sum of

THREE HUNDRED NINETY FIVE THOUSAND

Dollars (\$ 395,000 ) for the base bid.

			**Circle One**
Alternate 1	Delete all work on the 3 <sup>rd</sup> Floor, Reference Sheets A1.1, A1.2, A1.3, E2.1, E3.1, E4.1, and M2.0	\$ <u>39,562</u>	Add / <u>Deduct</u>
Alternate 2	Delete all work on the Remodeled District Attorney's Office Room 501. Reference Sheets A3.2 Detail 2, A3.4, And Detail 2 E3.2.	\$ <u>8,595 4,723</u>	Add / <u>Deduct</u>

All bid entries must be filled in. The Base Bid and all add/deduct Alternates must be completed. Any bid where all elements are not filled in will be considered to be **non-responsive**.

- The Owner, for cost and/or need considerations, may select the Base Bid as submitted and additive and/or deductive alternates submitted to determine the lowest bidder.
- Subcontractors for work included in all Bid items are listed on the attached Document 00430 (Subcontractors List).
- The undersigned Bidder understands that County reserves the right to reject this Bid.
- If written notice of the acceptance of this Bid, hereinafter referred to as Notice of Award, is mailed or delivered to the undersigned Bidder within the time described in Paragraph 2 of this Document 00400 or at any other time thereafter before it is withdrawn, the undersigned Bidder will execute and deliver the documents required by Document 00200 (Instructions to Bidders) within the times specified therein. These documents include, but are not limited to, Document 00520 (Contract), Document 00610 (Construction Performance Bond), and Document 00620 (Construction Labor and Material Payment Bond).

9. Notice of Award or request for additional information may be addressed to the undersigned Bidder at the address set forth below.
10. The undersigned Bidder herewith encloses cash, a cashier's check, or certified check of or on a responsible bank in the United States, or a corporate surety bond furnished by a surety authorized to do a surety business in the State of California, in form specified in Document 00200 (Instructions to Bidders), in the amount of ten percent (10%) of the Total Bid Price and made payable to "County of Stanislaus."
11. The undersigned Bidder agrees to commence Work under the Contract Documents on the date established in Document 00700 (General Conditions) and to complete all Work within the time specified in Document 00520 (Contract). The undersigned Bidder acknowledges that the County has reserved the right to delay or modify the commencement date. The undersigned Bidder further acknowledges County has reserved the right to perform independent work at the Site, the extent of such work may not be determined until after the opening of the Bids, and that the undersigned Bidder will be required to cooperate with such other work in accordance with the requirements of the Contract Documents.
12. The undersigned Bidder agrees that, in accordance with Document 00700 (General Conditions), liquidated damages for failure to complete all Work in the Contract within the time specified in Document 00520 (Contract) shall be as set forth in Document 00520 (Contract).

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

**IMPORTANT NOTICE:** If Bidder or other interested person is a corporation, give the legal name of corporation, state where incorporated, and names of president and secretary thereof; if a partnership, give name of the firm and names of all individual co-partners composing the firm; if Bidder or other interested person is an individual, give first and last names in full.

NAME OF BIDDER: SIMILE CONSTRUCTION SERVICE, INC.

licensed in accordance with an act for the registration of Contractors, and with license number: 794642

Expiration: 05.31.2009

CA

(Place of Incorporation, if Applicable)

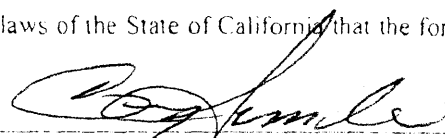
GUY SIMILE

(Principal)

(Principal)

(Principal)

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



(Signature of Bidder)



NOTE: If Bidder is a corporation, set forth the legal name of the corporation together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If Bidder is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership.

Business Address:

4725 ENTERPRISE WAY  
MODESTO, CA 95356

Contractor's Representative(s).

GUY SIMILE / PRESIDENT  
(Name/Title)

(Name/Title)

(Name/Title)

Officers Authorized to Sign Contracts

GUY SIMILE / PRESIDENT  
(Name/Title)

GINA SIMILE / SECRETARY  
(Name/Title)

(Name/Title)

Telephone Number(s):

(209) 545-6111  
(Area Code) (Number)

(Area Code) (Number)

Fax Number(s):

(209) 545-6112  
(Area Code) (Number)

(209) 545-6113  
(Area Code) (Number)

Date of Bid:

11.13.2008, 2pm

END OF DOCUMENT

DOCUMENT 00630

**GUARANTY**

TO: The County of Stanislaus ("County"), for construction of the **District Attorney's Office Tenant Improvements** located at **12<sup>th</sup> Street Place, Modesto, California.**

The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

Contractor hereby grants to County for a period of two years following the date of Substantial Completion of the Work completed, or such longer period specified in the Contract Documents, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers in connection with the Work.

Neither final payment nor use nor occupancy of the Work performed by the Contractor shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Contractor of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Contractor shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within two years, or longer if specified, from the date of Substantial Completion of the Work completed.

If within two years after the date of Substantial Completion of the Work completed, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be Defective, Contractor shall promptly, without cost to County and in accordance with County's written instructions, correct such Defective Work. Contractor shall remove any Defective Work rejected by County and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, County may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, County shall have all rights and remedies granted by law.

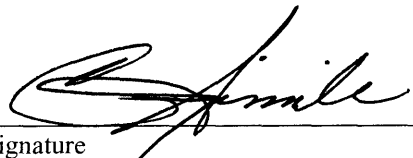
Inspection of the Work shall not relieve Contractor of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Contractor shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.

All abbreviations and definitions of terms used in this Agreement shall have the meanings set forth in the Contract Documents, including, without means of limitation, Document 00700 (General Conditions) and Section 01420 (References and Definitions).

The foregoing Guaranty is in addition to any other warranties of Contractor contained in the Contract Documents, and not in lieu of, any and all other liability imposed on Contractor under the Contract Documents and at law with respect to Contractor's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Guaranty and any warranty or obligation of the Contractor under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of the Contractor.

Date: November 26, 2008

SIMILE CONSTRUCTION SERVICE, INC  
Contractor's name

By:   
Signature

GUY SIMILE  
Print Name

PRESIDENT  
Title

4725 ENTERPRISE WAY, SUITE 1  
Street Address

MODESTO, CA. 95356  
City, State, Zip code

END OF DOCUMENT