

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

DEPT: Chief Executive Office

BOARD AGENDA # B-8

Urgent

Routine

AGENDA DATE July 17, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Award the Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction Inc., and Related Actions

STAFF RECOMMENDATIONS:

1. Approve to award the construction contract for the Honor Farm Jail Bed Replacement Project to Diede Construction Inc., of Lodi, California for the lump sum amount not to exceed \$8,582,685.
2. Authorize the Project Manager to issue a Notice to Proceed upon receipt of proper insurance and bonds.
3. Authorize the Project Manager to initiate the project in August, of 2012 to recognize the start of construction.

(Continued on Page 2)

FISCAL IMPACT:

On June 26, 2010, a fire erupted at the Stanislaus County Sheriff's Honor Farm, completely destroying Barracks 1 and 2 and all of its contents. On May 24, 2011, the Board authorized the Auditor-Controller to establish a Special Revenue interest-bearing fund from the insurance proceeds for the construction of a replacement facility and for lost jail beds. At that time, the Board also approved to increase appropriations and estimated revenue of \$355,232 in a new capital project fund for the schematic phase of design for a replacement facility.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2012-373

On motion of Supervisor Chiesa, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

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)

4. Authorize the Project Manager to negotiate and sign contracts, work authorizations, and purchase orders for professional services needed in this phase of the project as long as they are within the approved project budget.
5. Authorize the Project Manager to negotiate and sign change orders up to \$25,000, consistent with the County's Change Order Policy, and as long as they are within the previously approved project budget.
6. Authorize the Project Manager to execute a contract to Twining for Code Required Testing Services with compensation on a unit price basis not to exceed 125% of their total proposal price of \$79,546.
7. Authorize the Project Manager to execute a contract to Miller Pezzoni and Associates, Inc. for the development of plans and specifications for the safety and reliability upgrades necessary to connect the new Honor Farm Jail Bed Replacement Project to the existing emergency power generator farm at the Public Safety Center for the lump sum amount not to exceed \$65,400.
8. Direct the Auditor-Controller to increase appropriations and estimated revenue for this project as detailed in the attached Budget Journal form.

FISCAL IMPACT: (Continued)

On December 6, 2011, the Board of Supervisors approved the schematic design as prepared by Lionakis and authorized the Project Team working with the Design Team to complete the design for future Board of Supervisors consideration and bidding. At that time, the Board of Supervisors approved to increase the Project Budget for design efforts through the bid and award phase of construction in the amount of \$948,243 for the project costs to complete design and preparation for bidding. The total allocated funds to date are \$1,303,475, which have been funded by insurance proceeds with no General Fund impact.

On May 15, 2012, the Board of Supervisors approved the plans and specifications for the 192 bed Honor Farm Jail Bed Replacement Project as prepared by Lionakis, and deemed the following seven general contractors as pre-qualified and approved to submit bids for the construction of the Honor Farm Jail Bed Replacement Project:

- ACME Construction, Inc. of Modesto, California;
- BRCO Constructors, Inc. of Loomis, California;
- C.T. Brayton & Sons, Inc. of Escalon, California;
- Diede Construction, Inc. of Lodi, California;
- Flintco Pacific, Inc. of Roseville, California;
- JL Bray & Son, Inc. of Salida, California; and
- Roebbelen Construction, Inc. of El Dorado Hills, California

Approval to Award the Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction Inc., and Related Actions
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Current Bid Results

On May 27, 2012, a total of four bid proposals were received from the following general contractors: ACME Construction, of Modesto, California; BRCO Constructors, Inc. of Loomis, California; Diede Construction, Inc. of Lodi, California; and Roebbelen Construction, Inc. of El Dorado Hills California. The bids were evaluated through a blind bid process, comprised of nine sequestered team members from the Sheriff's Office, the Chief Executive Office Capital Projects, and the Project Architect. The base bids ranged from \$8,318,750 to \$9,300,000. Staff received prices for the following four additive bid alternates which ranged from a credit of (\$148,000) to \$314,711:

- Alternate 1: Addition of the west outdoor recreation area;
- Alternate 2: Addition of detention furnishings;
- Alternate 3: Addition of food service equipment; and
- Alternate 4: Increased time of 60 calendar days for construction completion.

At this time, the Project Manager is returning to the Board of Supervisors for approval to award the construction contract to the lowest responsible bidder, Diede Construction Inc., of Woodbridge, California for the lump sum amount not to exceed \$8,582,685 for the base bid and additive alternates 1, 2, and 3, for the construction of the Honor Farm Jail Bed Replacement Project.

Establish Full Project Budget

The Board of Supervisors approved the initial project budget through the design and bidding phases. Now that the bidding has concluded successfully within the project budget estimate, staff recommends that the Board of Supervisors establish the full capital project budget as outlined in the source and uses chart below:

Honor Farm Jail Bed Replacement Project		<i>Recommended Sources June 17, 2012</i>
Insurance Proceeds		\$11,999,297
Total		\$11,999,297

Honor Farm Jail Bed Replacement Project		<i>Recommended Uses June 17, 2012</i>
Salaries and Wages (Administration, Construction Management Services, Sheriff Transition Sergeant and Transition Staff)		\$624,400
Services and Supplies (Code Required Testing, Legal Services, Emergency Power Design Consultant, Geotechnical Services, Building Permits, Utility Connections, Publication and Legal Notices, Printing, Postage, Office Supplies)		\$678,369
Architectural Services		\$966,000
Other Charges Government Fund		\$19,574
Structures and Improvements (Construction Contract, Generator Farm Improvements, Landscaping)		\$9,710,954
Total		\$11,999,297

With the Board of Supervisors approval of the construction contract, the total project budget recommended is \$11,999,297, which is consistent with the original estimated project budget of \$12 million for the construction of a 192 bed replacement facility completely funded by insurance proceeds with no impact to the General Fund.

DISCUSSION:

On June 26, 2010, a fire erupted at the Stanislaus County Sheriff's Honor Farm, completely destroying Barracks 1 and 2 and all of its contents. On July 13, 2010, the Board of Supervisors approved a Declaration of Emergency as a first step toward the clean-up of fire debris and replacement of the lost beds to be covered by the County's insurance. At that time, the Board of Supervisors also authorized the Chief Executive Officer or his designee to begin negotiations with the County's Insurer to settle the claim for the lost facility at the Stanislaus County Sheriff's Honor Farm and authorized the Chief Executive Office - Risk Management Division to negotiate an advance partial proof of loss payment to fund initial project costs to ensure the safety and security of the site and aid in the demolition, planning and design services for a replacement facility.

On April 5, 2011, the Board approved to accept the final update on the immediate action plan and ended the emergency declaration and on April 26, 2011, the Board of Supervisors authorized the Chief Executive Officer and County Counsel to finalize and execute the settlement agreement with the County's Insurer as a result of the fire.

Design/Construction of a New Replacement Facility

The fire that destroyed Honor Farm Barracks 1 and 2 created a significant challenge to provide jail beds to house inmates in Stanislaus County. On July 13, 2010, the Board of Supervisors authorized the Chief Executive Officer to contract for professional architectural design services with Lionakis of Sacramento, California to assist the County with evaluating replacement options at both the Honor Farm and the County's Public Safety Center (PSC).

The Stanislaus County Men's Honor Farm, located at 8224 West Grayson Road, Modesto, California, was originally constructed in the late 1950's with (3) 86-bed housing units and (1) 112-bed housing unit and is one of three (3) detention facilities managed by the Sheriff's Department. The classification type of the inmate housed at the Honor Farm has changed significantly over the past fifty years. The Honor Farm is currently classified by the Board of State and Community Corrections (BSCC) as a Type II facility, which is used for the detention of persons pending arraignment, during trial and upon court sentencing. Inmates currently being detained at the Honor Farm would not have been considered as an acceptable classification type for the Honor Farm at the time of the original 1989 Master Plan Implementation Architectural Program completed by Stone, Marraccini, Patterson/The Design Partnership. The classification type of inmate currently being housed at the Honor Farm will have a direct effect on the type of replacement facility to be considered for reconstruction and the siting of that reconstruction or replacement of space.

On December 6, 2011, the Board of Supervisors accepted the schematic design as prepared by Lionakis, and authorized the project team working with the design team to complete the design for construction of a replacement facility and seek pre-qualified general contractors for the construction of this replacement facility.

On May 15, 2012, the Board of Supervisors approved the plans and specifications for the 192 bed Honor Farm Jail Bed Replacement Project. The proposed project, as designed and approved through the construction document phase, will consist of a multi-tiered building constructed directly south of the existing minimum-security housing facility on the site of the Public Safety Center. Included will be site improvements, such as a continuation of the perimeter security fencing, new vehicular and pedestrian gates incorporated into the secure fencing, utility extensions and two outdoor recreation areas. Although the primary goal of this project is to provide a safe and secure jail-housing facility, it should also provide an environment that supports the operational requirements of the Sheriff's Department and facilitates the ability to provide programs for the inmates while detained.

At that time, the Board of Supervisors also approved the list of seven pre-qualified general contractors recommended by County staff, authorized the project manager to set the bid date, and to open and evaluate bids, and return to the Board to recommend a construction contract award for the construction of the 192 bed Honor Farm Jail Bed Replacement Project.

Today's Recommended Actions

The Project Team is pleased to present this recommendation to award a construction contract to Diede Construction, Inc. for the new modern jail facility to replace the County's Honor Farm. This project will be funded entirely by insurance proceeds. The successful completion of this project will allow for the closure of the Honor Farm and begin the consolidation of the County's Adult Detention facilities from three to two remaining facilities, the Downtown Jail and the Public Safety Center.

In addition to awarding the construction contract to Diede Construction, Inc. for the construction of the 192 bed Honor Farm Jail Bed Replacement Project as detailed in the Fiscal Impact section above of this staff report, as next critical steps for the project, staff recommends that the Board of Supervisors approve four additional key actions that will ensure the project proceeds through the construction phase of the project, including the following:

1. *Authorize the Project Manager to issue a Notice to Proceed upon receipt of proper insurance and bonds.*

This action will authorize the Project Manager to issue a Notice to Proceed to Diede Construction, Inc. contingent upon providing the County with proper insurance and bonds.

2. *Authorize the Project Manager to initiate the start of construction in August 2012 and Project to recognize the start of construction.*

This action will authorize the Project Manager to initiate the start of construction and recognize this important effort.

3. *Authorize the Project Manager to award a contract to Twining for Code Required Testing Services with compensation on a unit price basis not to exceed 125% of their total proposal price of \$79,546.*

On May 15, 2012, the Board of Supervisors authorized the Project Manager to issue a Request for Proposals (RFP) for Code Required Testing Services. On June 14, 2012, a total of five proposals were received from Twining of Sacramento, California; Construction Testing Services, Inc. of Stockton, California; Inspection Consulting, Inc. of Sacramento, California; Consolidated Engineering Laboratories of San Ramon, California; and Wallace Kuhl & Associates of Stockton, California. On June 25, 2012, Chief Executive Office Capital Projects staff reviewed and evaluated each proposal.

This action will authorize the Project Manager to award a contract to Twining, the proposer that best meets the needs and requirements of the County for code required testing services, with compensation on a unit price basis not to exceed 125% of their total proposal price of \$79,546. The building codes require that certain aspects of construction projects -- such as steel, welding, fireproofing, mortar compression and concrete compression -- are tested by independent testing firms to ensure the quality of the work.

4. *Authorize the Project Manager to award a contract to Miller Pezzoni and Associates, Inc. for the development of plans and specifications for the safety and reliability upgrades necessary to connect the new Honor Farm Jail Bed Replacement Project to the existing emergency power generator farm at the Public Safety Center site for the lump sum amount not to exceed \$65,400.*

On May 25, 2012, County staff issued a Request for Proposals (RFP) to initiate the design for the development of plans and specifications for the safety and reliability upgrades necessary to connect the new Honor Farm Jail Bed Replacement Project to the existing emergency power generator farm at the Public Safety Center site. Miller Pezzoni & Associates, Inc. was the sole respondent to the RFP on June 21, 2012. Today's Board action will allow the Project Manager to enter into a contract with Miller Pezzoni & Associates, Inc. for the lump sum amount not to exceed \$65,400.

Miller Pezzoni & Associates, Inc. is an experienced firm specializing in power system design, life safety systems and arc flash analysis. The local firm is knowledgeable of the existing and future needs of the County detention facilities at the Public Safety Center.

Once the design solution is finalized, staff will return to the Board of Supervisors for approval of the final design. At that time, the Project Manager will request Board approval to issue a notice inviting bids for the construction of the emergency generator power system reliability upgrades to connect the new Honor Farm Jail Bed

Replacement Facility. Sources for this critical repair are included in the total project budget that is recommended for approval today.

Schedule

If approved by the Board of Supervisors, the Project Manager will issue a Notice to Proceed for the project upon finalization of the contract and the County's receipt of all necessary bonds and insurance. The expected construction duration is twelve months, with completion expected in the Summer of 2013.

POLICY ISSUES:

Approval of this action supports the Board's Priorities of A Safe Community and Efficient Delivery of Public Services by designing a replacement facility for lost jail beds.

STAFFING IMPACTS:

Staffing Analysis

The Honor Farm currently houses 86 inmates who are overseen by 16.5 allocated positions with an operational cost of \$1,859,000 annually to fund these positions.

The Community Corrections Phase II Plan funded through State Public Safety (Corrections) Realignment with the passage of Assembly Bill 109 (AB 109) will provide funding to reopen 72 beds that were closed as a result of budget reductions implemented in the prior fiscal year. As a result of this additional funding, the Sheriff requested to add back 6.84 positions during the Fiscal Year 2011-2012 at a total estimated annual cost of \$735,040 to be completely funded by AB 109.

As previously reported to the Board of Supervisors, with the full build out of a replacement facility at the Public Safety Center, and the closure of the Honor Farm during Fiscal Year 2013-2014, staff believes the transfer of the existing 16.5 positions funded by existing appropriations in the Sheriff Detention budget of \$1.83 million, and the reallocation of the 6.84 positions at a total estimated annual cost of \$735,040 completely funded by AB 109.

With the full build out of a replacement facility at the Public Safety Center, and the closure of the Honor Farm during Fiscal Year 2013-2014, staff believes the transfer of the existing 16.5 positions funded by existing appropriations in the Sheriff Detention budget of \$1.83 million, and the reallocation of the 6.84 positions funded by AB 109 Realignment totaling \$735,040 will together be sufficient to staff the replacement 192 bed facility.

It is anticipated this staffing pattern will provide the supervision necessary to maintain span of control and to ensure that transportation and administrative services required outside the new 192 bed replacement facility and beyond the management required if simply monitored by PSC staff.

Approval to Award the Construction Contract for the Honor Farm Jail Bed Replacement
Project to Diede Construction Inc., and Related Actions
Page 8

CONTACT PERSON:

Patricia Hill Thomas, Chief Operations Officer. Telephone 209-525-6333.

Database
Balance Type
Data Access Set

FMSDBPRD.CO.STANISLAUS.CA.US.PROD
Budget
County of Stanislaus

DO NOT CHANGE
DO NOT CHANGE
DO NOT CHANGE

Ledger
Budget
Category
Source
Currency
Period
Batch Name
Journal Name
Journal Description
Journal Reference
Organization
Chart Of Accounts

* List - Text County of Stanislaus
List - Text LEGAL BUDGET
* List - Text Budget - Upload
* List - Text CEO MEL
* List - Text USD
List - Text JUL-12
Text
Text JV CEO100215
Text Establish Budget for HF Replace
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List - Text Stanislaus Budget Org
Accounting Flexfield

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Upl	Fund (4 char)	Org (7 char)	Account (5 char)	GL Project (7 char)	Location (6 char)	Misc. (6 char)	Other (5 char)	Debit incr appropriations decr est revenue * Number	Credit decr appropriations incr est revenue * Number	Line Description Text
	1680	0016126	85850	0000000	000000	000000	00000	10695822		In Op Trsnf Out
	2075	0061135	46600	0000000	000000	000000	00000		10695822	Inc Op Trsnf In
	2075	0061135	50000	0000000	000000	000000	00000	378000		Inc Salaries
	2075	0061135	50120	0000000	000000	000000	00000	65000		Inc PSC
	2075	0061135	62400	0000000	000000	000000	00000	28754		Inc Own Cntgcy
	2075	0061135	62470	0000000	000000	000000	00000		49700	Dec State Review
	2075	0061135	62600	0000000	000000	000000	00000	2800		Inc Off Supplies
	2075	0061135	62630	0000000	000000	000000	00000	18200		Inc Printing Svsc
	2075	0061135	62730	0000000	000000	000000	00000	4900		Inc Postage
	2075	0061135	63400	0000000	000000	000000	00000	750		Inc Eng Svcs
	2075	0061135	63430	0000000	000000	000000	00000	65400		Inc Desgn Conslts
	2075	0061135	64150	0000000	000000	000000	00000	100000		Inc Cde Req Tst
	2075	0061135	64210	0000000	000000	000000	00000	194219		Inc Inspectors
	2075	0061135	64220	0000000	000000	000000	00000	194940		Inc Arch Fees
	2075	0061135	64600	0000000	000000	000000	00000		27775	Dec Const Mngr
	2075	0061135	66210	0000000	000000	000000	00000		6250	Dec Bldg Pmts
	2075	0061135	73511	0000000	000000	000000	00000	1050		Inc Auditor CAP
	2075	0061135	73512	0000000	000000	000000	00000	1750		Inc Purch CAP
	2075	0061135	73514	0000000	000000	000000	00000	100		Inc RM CAP
	2075	0061135	73530	0000000	000000	000000	00000	10000		Inc Utility
	2075	0061135	73580	0000000	000000	000000	00000	1960		Inc PW ENG CAP
	2075	0061135	74120	0000000	000000	000000	00000	420		Inc P/UP Del CAP
	2075	0061135	74130	0000000	000000	000000	00000	350		Inc Data Proc CAP
	2075	0061135	80300	0000000	000000	000000	00000	8582685		Inc Construction
	2075	0061135	80311	0000000	000000	000000	00000	400000		Inc Srtc Impr
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Totals: 21475368 10779547

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Exp Inc Operating Transfer out from Insurance Proceeds; Inc Operating Transfer in to Cap Project Budget			
Establish budget and increase appropriations through construction completion			
Requesting Department		CEO	Auditors: Office Only
Mark E. Loeser	<i>Patricia Johnson</i>	Data Entry	
Prepared by	Supervisor's Approval	Keyed by	Prepared By
10-Jul-12	7/10/12		7/10/12
Date	Date	Date	Date

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement For **Professional Services** is made and entered into by and between the **County of Stanislaus** ("County") and **Twining** ("Consultant"), on July 17, 2012.

Introduction

WHEREAS, the County has a need for professional services relating to the **Specialty Inspection Services** for the **Honor Farm Bed Replacement Project at the PSC**; and

WHEREAS, Consultant is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

Terms and Conditions

1. Scope of Work

1.1 Consultant shall furnish to County upon execution of this Agreement or receipt of County's written authorization to proceed, those services and work set forth in **Exhibit A (Scope of Work)** which is attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by Consultant under this Agreement, including without limitation electronic data files, are the property of Consultant; provided, however, County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, Consultant may copyright the same, except that, as to any work which is copyrighted by Consultant, County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, provided that any use of such work for any purposes other than those provided in this Agreement shall be without risk or liability to Consultant.

1.3 Services and work provided by Consultant under this Agreement will be performed in a timely manner in accordance with a schedule of work set forth in **Exhibit C (Schedule)**.

1.4 Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions. Consultant represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement.

1.5 If Consultant deems it appropriate to employ a subconsultant in connection with the performance of the services under this Agreement, Consultant will so advise County and seek County's prior approval of such employment.

2. Compensation

2.1 Consultant shall be compensated on a **UNIT PRICE basis** for services as provided in **Exhibit D (Pricing Proposal)** attached hereto. Consultant's costs, which are normally considered to be "reimbursable expenses," such as copying charges, travel and hotel expenses are included within the Unit Prices charged by Consultant and Consultant shall not be entitled to separate or additional reimbursement of any reimbursable expenses. Stanislaus County is not limited to the use of funds as estimated per item. Unused funds from one item price may roll-up to other items as required so long as the total contract award does not exceed 25% of the total proposal price. If the total contract amount for all items exceeds the agreement award amount by greater than 25%, County has the right to re-advertise or negotiate with Consultant new item rates to fulfill the contract period.

2.2 Except as expressly provided in this Agreement, Consultant shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement, including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, Consultant shall not be entitled by virtue of this Agreement to consideration in the form of health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever. Overtime inspections compensated on a **UNIT PRICE basis** for services as provided in **Exhibit D (Pricing Proposal)** attached hereto.

2.3 Consultant shall provide County with a monthly or a quarterly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which County shall pay in full within 30 days of the date each invoice is approved by County. The statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, and a reasonable itemization of costs.

2.4 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Consultant under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Consultant. County has no responsibility or liability for payment of Consultant's taxes or assessments.

3. Term

3.1 The duration of Consultant's contract will be for a period of 480 calendar days (approximately 16 months) at the established item prices. If the total contract amount for all items exceeds the agreement award amount by greater than 25%, County has the right to re-advertise or negotiate with Consultant new item rates to fulfill the contract period. County has the option to extend services at the item prices for an additional 120 Days.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 County may terminate this agreement upon 15 days prior written notice. Termination of this Agreement shall not affect County's obligation to pay for all fees earned and reasonable costs necessarily incurred by Consultant, subject to any applicable setoffs.

3.4 At the option of County, this Agreement may be terminated on the occurrence of (a) bankruptcy or insolvency of Consultant, or (b) sale of Consultant's business.

4. Representatives.

Each party shall designate a representative, authorized to act on the party's behalf with respect to this Agreement. Consultant hereby designates **Finnegan Mwape** as Project Manager. Owner hereby designates **Patricia Hill Thomas** as Project Manager. The parties or such authorized representatives shall render required decisions promptly, to avoid unreasonable delay in the progress of Consultant's services. Each party may delegate all or some of its representative's role and function to some other representative.

5. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Consultant to provide the services and work described in Exhibit A must be procured by Consultant and be valid at the time Consultant enters into this Agreement. Further, during the term of this Agreement, Consultant must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Consultant at no expense to County.

6. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in this Agreement, Consultant shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Consultant to provide the services under this Agreement. Consultant - not County - has the sole responsibility for payment of the costs and expenses incurred by Consultant in providing and maintaining such items.

7. Insurance

7.1 Consultant shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

7.1.1 **General Liability.** Commercial general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of **no less than Two Million Five Hundred Thousand Dollars (\$2,500,000)** per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Consultant under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

7.1.2 **Professional Liability Insurance.** Professional errors and omissions (malpractice) liability insurance with limits of **no less than One Million Dollars (\$1,000,000) aggregate.** Such professional liability insurance shall be continued for a period of no less than one year following completion of Consultant's work under this Agreement.

7.1.3 **Automobile Liability Insurance.** If Consultant or Consultant's Board, officers, employees, agents or representatives utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury and property damage liability with limits of **no less than One Million Dollars (\$1,000,000) per incident or occurrence.**

7.1.4 **Workers' Compensation Insurance.** Workers' Compensation insurance as required by the California Labor Code. In signing this contract, Consultant certifies under section 1861 of the Labor Code that Consultant is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that Consultant will comply with such provisions before commencing the performance of the work of this Agreement.

7.2 Any deductibles, self-insured retention's or named insureds must be declared in writing and approved by County. At the option of County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retention's or named insureds, or (b) Consultant shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retention's, in which case, Consultant agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of Consultant's defense and indemnification obligations as set forth in this Agreement.

7.3 Consultant shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance as follows:

7.3.1 Name County Stanislaus County and its Board, officers, officials, employees and volunteers as additional insureds, but only with respect to liability arising out of the activities of the named insured.

7.4 Required Waiver of Subrogation: The Workers Compensation insurance shall include a waiver as follows:

7.4.1 For Workers' Compensation insurance, the insurance carrier shall waive all rights of subrogation against the Stanislaus County and its Board, officers, officials, employees and volunteers for losses arising from the performance of or the omission to perform any term or condition of this Agreement.

7.5 Consultant's insurance shall be primary and no other insurance or self-insured retention carried or held by County shall be called upon to contribute to a loss covered by insurance for the named insured.

7.6 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Stanislaus County and its Board, officers, officials, employees and volunteers.

7.7 Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

7.8 Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days' prior written notice has been given to County. Consultant shall promptly notify, or cause the insurance carrier to promptly notify, County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

7.9 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A-VII; except as otherwise expressly approved by County.

7.10 Consultant shall require that all of its subcontractors be subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

7.11 At least ten (10) days prior to the date Consultant begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of Consultant. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

7.12 The limits of insurance described herein shall not limit the liability of Consultant and Consultant's officers, employees, agents, representatives or subcontractors.

8. Indemnification

8.1 **Indemnification**: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless County and its officers, agents, Board members, employees and representatives from and against any and all claims, suits, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, which are founded upon, arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Consultant, its officers, agents, Board members, employees, volunteers, representatives, contractors and subcontractors, excluding, however, such liabilities caused in part by the sole negligence, active negligence or willful misconduct of the County, its agents, Board members, employees, and representatives.

8.2 **Duty to Defend**: The duty of Consultant to indemnify and save harmless as set forth herein, shall include both the duty to indemnify and at Consultant's own cost and expense the duty to defend as set forth in Section 2778 of the California Civil Code. This duty to defend arises when such claim is made and shall be independent of any finding of the County's negligence. Consultant shall provide legal counsel reasonably acceptable to County.

8.3 **Duty to Cooperate**: Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the

investigation and disposition of any claim arising out of the activities under this Agreement. Specifically, Consultant shall take all steps necessary to assist the County in the defense of any claim brought by a contractor hired to construct the Project regarding any errors, flaws, and/or omissions in the plans or specifications of the Project.

8.4 Patent Rights: Consultant represents that professional services provided by Consultant pursuant to this Agreement do not infringe on any other copyrighted work. Consultant shall defend, indemnify and hold harmless County from all loss, cost, damage, expense, liability or claims, including attorneys' fees, court costs, litigation expenses and expert consultant or witness fees, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by County of any articles or services supplied under this agreement.

9. Status of Consultant

9.1 All acts of Consultant and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Consultant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Consultant has no authority or responsibility to exercise any rights or power vested in the County. It is understood by both Consultant and County that this Agreement shall not be construed or considered under any circumstances, to create an employer-employee relationship, partnership, or a joint venture.

9.2 At all times during the term of this Agreement, Consultant and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

9.3 Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Consultant in fulfillment of this Agreement. Consultant has control over the manner and means of performing the services under this Agreement. If necessary, Consultant has the responsibility for employing other persons or firms to assist Consultant in fulfilling the terms and obligations under this Agreement.

9.4 If in the performance of this Agreement any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging, or any other term of employment or requirements of law, shall be determined by Consultant.

9.5 Consultant is permitted to provide services to others during the same period service is provided to County under this Agreement; provided, however, such services do not conflict directly or indirectly with the performance of Consultant's obligations under this Agreement.

9.6 It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's assigned personnel under the terms and conditions of this Agreement.

9.7 As an independent contractor, Consultant hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

10. Records and Audit

10.1 Consultant shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static,

photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

10.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Consultant. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

11. Nondiscrimination

During the performance of this Agreement, Consultant and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation, sexual orientation, or gender. Consultant and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12. Assignment

This is an agreement for the services of Consultant. County has relied upon the skills, knowledge, experience and training of Consultant and Consultant's firm, associates and employees as an inducement to enter into this Agreement. Consultant shall not assign or subcontract this Agreement without the express written consent of County. Further, Consultant shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Consultant or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus
Chief Executive Office
Attn: Patricia Hill Thomas
1010 10th Street, Suite 6800
Modesto, CA 95354
(209) 525-4380 (phone)
(209) 525-4384 (fax)

To Consultant: Twining
Attne : Finnegan Mwape
1572 Santa Ana Avenue
Sacramento, CA 95838
(916) 649-9000 (phone)

15. Conflicts

Consultant represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Consultant represents to and agrees with County that Consultant has no present, and will have no future conflict of interest between providing County services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity which has any interest adverse or potentially adverse to County, as determined in the reasonable judgment of County.

16. Confidentiality

Any information, whether proprietary or not, made known to or discovered by Consultant during the performance of or in connection with this Agreement for County, will be kept confidential and not be disclosed to any other person. Consultant will immediately notify County in writing if it is requested to disclose any information made known to or discovered by during the performance of or in connection with this Agreement. These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services to County hereunder.

17. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

18. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

19. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first herein above written.



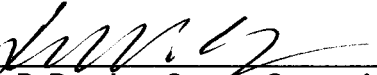
COUNTY OF STANISLAUS By: <u></u> "County"	TWINING By: <u></u> "Consultant"
APPROVED AS TO FORM: By: <u></u> John P. Doering, County Counsel	

EXHIBIT A
SCOPE OF WORK

A. GENERAL REQUIREMENTS

1. Consultant to be a fully-qualified testing laboratory meeting the requirements of ASTM E-329, Sections 3 through 8, and Section 11, and recognized by the ICBO Joint Committee on Special Inspection.
2. Consultant shall attend all meetings and conferences as requested by County or its agent.
3. Cost considerations are not to be considered as justification for breach of sound principles of quality assurance, inspection, and testing.
4. Consultant shall establish and maintain procedures to ensure that persons performing work are skilled in methods and practices needed to assure required quality levels. Remove and replace (at no additional cost to County) personnel who do not possess the required skills or who are not efficiently and effectively performing their assignments. Consultant should provide the Construction Manager with resumes of all personnel proposed to the project for approval. Consultant shall not reassign or replace approved personnel without the prior written approval of the Construction Manager.
5. Consultant shall be responsible for the quality of the services provided, and shall maintain the necessary facilities and equipment required to satisfy the testing specifications.
6. Consultant shall request a clarification from the Project Manager for missing or ambiguous information or requirements. In the case of conflict in the plans, specifications, and/or codes, the more stringent inspection or testing requirement shall apply.
7. Consultant may need to subcontract for certain specialized testing or inspection services. The use of such subconsultant will require prior County approval.
8. Section 01 40 05 Testing, of the Construction Project Manual (attached as Exhibit B) will form a part of this contract.

B. SCOPE

1. The scope of tests and inspections is based on the requirements of UBC Section 305, other referenced code requirements, and the various project plans and specifications. The services to be provided will be as directed by County's representative. Consultant will meet or communicate with the representative and/or construction contractor periodically to plan and schedule testing and inspection services.
2. The authorization to provide specific services will be issued by the Construction Manager using a Inspection Request Form. These requests will be issued by County's representative periodically throughout the construction period, as construction activities dictate. Contractor will not be authorized to place orders directly with the testing firm. County will not pay for the services requested by Contractor.

The Inspection Request Form describes the required test, location, and date required. It will be requested by Consultant and forwarded to County's representative for approval. Upon completion of the testing/inspection, Consultant will sign and date the forms which

will be verified by County's representative. Consultant will make a copy of the completed form which will be attached to Consultant's billing each month.

3. Consultant will maintain a monthly status report of the budget quantities and costs, quantities and cost expended through previous report period, quantities and cost this report period, and total quantities and cost to date. The status report will be submitted with the monthly billing.

C. TIME

Services shall start upon execution of the agreement and issuance of the first request.

The duration of Consultant's contract will be for a period of 360 calendar days (approximately 12 months) at the established item prices. If the total contract amount for all items exceeds the agreement award amount by greater than 25%, County has the right to re-advertise or negotiate with Consultant's new item rates to fulfill the contract period.

County has the option to extend services at the item prices for an additional 120 Days.

D. NOTICE

Consultant will be given one working day's notice prior to starting any new inspection/testing service.

E. CONFLICT OF INTEREST

Consultant cannot contract directly with the construction contractor or any subcontractors for any testing services.

F. ITEM PRICES

Stanislaus County is not limited to the use of funds as estimated per item. Unused funds from one item price may roll-up to other items as required so long as the total contract award does not exceed 25% of the total proposal price.

G. REIMBURSEMENT

1. **WORK HOURS:** Consultant will only be paid for actual hours worked except for a one-hour minimum for show-up time. Hourly Rates shall be complete including Administrative Costs, Managerial Costs, Reimbursable Expenses, Corporate Overhead, Overtime, Taxes, Travel, Reports, and Postage.
2. **MILEAGE:** The cost of mileage to and from the project are included in the item prices (sample pick up and delivery to the lab excepted).
3. **OUT OF TOWN INSPECTION:** Must have prior approval by County.
4. **UNIT PRICES:** Each unit price shall be complete, taking into consideration Personnel Costs, Administrative Costs, Managerial Costs, Reimbursable Expenses, Corporate Overhead, Overtime, Taxes, Travel, Reports, and Postage.

H. SUBCONSULTANTS

Consultant's subconsultants' time shall be paid at consultant's cost which should be included as part of the item prices.

END EXHIBIT A

EXHIBIT B

SECTION 01 40 05, TESTING

PART 1 - GENERAL

1.1 SECTION INCLUDES

- A. County's Testing Agency
- B. Quality Assurance
- C. Testing Agency's Duties
- D. Contractor's Responsibilities
- E. Test Procedures
- F. Payment For Testing
- G. Code Compliance Testing
- H. Contractor's Convenience Testing
- I. Request for Testing Procedures

1.2 COUNTY'S TESTING AGENCY

- A. County will employ and pay a testing agency, identified in the various Specification Sections as "the Testing Agency" and "Soils Engineer" to perform tests, inspections, and sampling of the work, including but not limited to:
 - 1. Earthwork.
 - 2. Concrete reinforcement, ingredients, and quality control.
 - 3. Structural steel.
 - 4. Metal decking and shear stud connectors.
 - 5. Roofing and waterproofing.
 - 6. Load bearing masonry.
 - 7. Sprayed fireproofing.
 - 8. Additional tests, inspections, and sampling required by the Specifications, County, or the Architect.
- 2. County's employment of the testing agency shall in no way relieve Contractor of its obligations to perform the work in accordance with Contract requirements.
- 3. County will back charge Contractor for costs incurred in the event Contractor's poor quality control of any material requires excessive repeated testing by County's Testing Agency. County may also back charge Contractor for extraordinary inspection caused by Contractor's failure to prosecute the work in a timely or orderly fashion. Back charges will be in the form of a deductive change order.
- 4. Contractor shall employ and pay for an approved Testing Laboratory to make tests demonstrating material compliance with the specifications and to prepare mix designs for concrete.

1.3 QUALITY ASSURANCE

- A. Qualifications of Testing Agents: Agencies, bureaus, or laboratories shall be acceptable to the Architect.
- B. Failure of Materials and Equipment Tested or Inspected:
 - 1. Contractor shall be charged for retesting and reinspection resulting from Contractor's noncompliance with the Contract as evidenced by tests and inspections by County's Testing Agency.
 - 2. Previous acceptance may be withdrawn and material of which tested samples are representative or equipment may be subject to removal and replacement by Contractor at its expense with material or equipment meeting specification requirements.
 - 3. County may refuse consideration of further samples of same brand or make for testing.
 - 4. At County's discretion, defective material and equipment may be permitted to remain in place subject to adjustment of Contract price.

1.4 TESTING AGENCY'S DUTIES

- A. Cooperate with Construction Manager and Contractor. Provide qualified personnel promptly upon notice.
- B. Perform required inspecting, sampling, and testing of materials and methods of construction.
 - 1. Comply with specified standards, other recognized authorities, and as specified.
 - 2. Check for compliance with Contract Documents.
- C. Promptly notify the Construction Manager and Contractor of observed irregularities or deficiencies in the work.
- D. Promptly submit reports to the following:
 - 1. Copies to building authorities
 - 2. Three copies each to Contractor's office and the Construction Manager.
 - 3. One copy to Contractor's site office.
- E. Reports shall include the date issued and date of test, Project title and number, testing agency's name and address, name and signature of inspector, date of inspection or sampling, record of temperature and weather, identification of product and Specification Section, location in Project, type of inspection or test, and observation regarding compliance with Contract Documents.
- F. Perform additional services as required by County.
- G. The testing agency is not authorized to release, revoke, alter, or enlarge on the requirements of the Contract Documents, approve or accept any portion of the work, and perform any of Contractor's duties.

1.5 CONTRACTOR'S RESPONSIBILITIES

- A. Initiate and coordinate tests and inspections required by Contract Documents and public authorities having jurisdiction of the work.
- B. Notify the Testing Laboratory through the Construction Manager a sufficient time in advance (but no less than 48 hours) of the manufacture of materials to be supplied which, by requirements of the Contract Documents, must be tested at the source of supply so that the Laboratory may arrange for testing.
- C. When changes of construction schedule are necessary during construction, coordinate all such changes with the Testing Laboratory required.
- D. When the Testing Laboratory is ready to test according to the established schedule, but is prevented from testing or taking specimens due to incompleteness of the work, all extra charges for testing attributable to the delay may be back-charged to Contractor and shall not be borne by County.
- E. Provide access, facilities, tools, and labor necessary for duties to be performed at the site by Testing Laboratory and Inspector including furnishing ladders, hoisting, lighting, water supply, and like services.
- F. Provide and maintain, for the sole use of the Testing Laboratory, adequate facilities for the safe storage and proper curing of concrete test cylinders on the Project site as required by ASTM C31.
- G. Furnish and deliver samples of materials to be tested at no extra cost to County. Test samples will be selected by the Inspector or Testing Laboratory and not by Contractor.
- H. Reports:
 - 1. Furnish copies of each test and inspection report, signed and certified by the Testing Laboratory supervising engineer as follows:
 - a. Construction Manager: Two copies.
 - b. Architect: One copy.
 - c. Structural Engineer (structural tests only): One copy.
 - d. Contractor: Two copies.
 - 2. Promptly process and distribute required copies of test reports and related instructions to assure necessary retesting and replacement of materials with the least possible delay in progress of the work.
 - 3. The reports shall include detailed information relative to progress and condition of work including variances from the Contract Documents, and stipulating dates, hours, and locations of the tests and inspections, as applicable.
- I. Records:
 - 1. Maintain correct records on an appropriate form for all inspections and tests performed,

instructions received from County or testing agency, and actions taken as a result of those instructions.

2. These records shall include evidence that the required inspections or tests have been performed (including type and number of inspections or tests, nature of defects, causes for rejection, etc.), proposed or directed remedial action, and corrective action taken.
 3. Document inspections and tests as required by each Section of the Specifications.
- J. If laws, ordinances, rules, regulations, or orders of public agency having jurisdiction require work to be inspected, tested, or approved by some authority other than County, or Contractor, Contractor shall give required notices and make arrangements, deliver to County the certificates of inspection, test, or approval of such public agency, and pay costs therefore unless otherwise provided in the Contract Documents.
- K. Completed Work: Should County require tests and inspections for work completed before final acceptance of entire work, furnish necessary facilities, labor, and materials to uncover or remove work in question to extent necessary.
1. If such work is found defective due to fault of Contractor, Contractor shall defray expense of removal, test, and inspections, and satisfactory reconstruction. Time extension may not be granted.
 2. If such work is found to conform to requirements of the Contract, Contractor shall be reimbursed by County for facilities, labor, and materials required for removal, and costs of satisfactory reconstruction in accordance with Contract amounts for extra work. Reasonable time extension shall be granted.

1.6 TEST PROCEDURES

- A. Testing:
1. Testing Laboratory will perform tests according to method(s) of test specified in these Specifications.
 2. If no procedure or test method is specified, testing shall conform to material specification references unless otherwise directed by County.
 3. The Testing Laboratory will tag, seal, label, record, or otherwise suitably identify the materials for testing. No materials shall be used in the work until the test reports are submitted and approved, excepting only the materials specified to be placed or installed prior to testing.
- B. Re-testing:
1. Repeat applicable tests at specified intervals, when:
 - a. The source of supply is changed.
 - b. The characteristics of the materials change or vary.
 - c. Unsatisfactory test results are received.
 2. Quantity and nature of additional testing, if required, will be determined by County.
 3. Additional tests shall be taken in the presence of the Construction Manager.
 4. Proof of noncompliance will make Contractor liable for any corrective action which County feels is prudent, including complete removal and replacement of defective materials.
 5. Nothing contained herein is intended to imply that Contractor does not have the right to have tests performed on any material at any time for his own information and job control so long as County does not assume responsibility for costs or for giving them consideration when appraising quality of materials.

1.7 PAYMENT FOR TESTING

- A. Initial Services:
1. County will pay for initial testing services requested by County.
 2. When initial tests indicate non-compliance with the Contract Documents, the costs of initial tests associated with that non-compliance will be deducted by County from the Contract Sum.
- B. When initial tests indicate non-compliance with the Contract Documents, subsequent retesting occasioned by the non-compliance shall be performed by the same testing agency.
- C. Reimburse County all or any part, as County may deem just and proper, of the inspection costs incurred by County due to:
1. Failure of materials to pass initial tests.

2. Contractor's failure to complete the work within the Contract time, and any previously authorized extensions thereof.
3. Claims between separate contractors.
4. Covering of work before the required inspections or tests are performed.
5. Additional inspections required for Contractor's correction of defective work.
6. Overtime costs for acceleration of work done for Contractor's convenience.

1.8 CODE COMPLIANCE TESTING

- A. Inspections and tests required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid for by Contractor, unless otherwise provided in the Contract Documents.

1.9 CONTRACTOR'S CONVENIENCE TESTING

- A Inspecting and testing performed exclusively for Contractor's convenience shall be the sole responsibility of Contractor.

1.10 REQUEST FOR TESTING PROCEDURES

- A. Testing will be performed as ordered by the Construction Manager. Contractor will follow the Construction Manager's procedures for requests for tests and inspections. The procedure will be as follows:
 1. Contractor will fill out the request for testing form provided by the Construction Manager.
 2. The request for test will be made Contractor at least 48 hours in advance of the needed date for the test.
 3. Contractor shall describe the test and the date the test is required. The request will be given to the Construction Manager for approval.
 4. The Construction Manager shall request the services from the testing agency.
 5. The testing agency will be provided a copy of the testing request which will be completed by the testing firm indicating the services provided.
 6. Contractor will provide a testing schedule which will be reviewed each week for the following week's work.

END OF EXHIBIT B

**EXHIBIT C
DRAFT SCHEDULE**

HONOR FARM BED REPLACEMENT CONSTRUCTION SCHEDULE

29,251 SF

DATE	ACTIVITY	WEEK DURATION	COMMENTS
	BID PHASE	Approx. 11	76 Days
5/15/2012	BOS APPROVAL TO ISSUE BID DOCUMENTS TO GC's		
5/16/2012	ISSUE BID DOCUMENTS TO GENERAL CONTRACTORS		
5/16/2012	ISSUE RFP TO SPECIALTY INSPECTION FIRMS		
6/14/2012	PROPOSALS DUE FROM SPECIALTY INSPECTION FIRMS		
6/27/2012	BIDS DUE FROM GENERAL CONTRACTORS		
7/17/2012	BOS APPROVAL TO AWARD CONSTRUCTION BID		
7/18/2012	ISSUE CONSTRUCTION CONTRACT		
7/18/2012	ISSUE CONTRACT TO SPECIALTY INSPECTION FIRM		
	CONSTRUCTION PHASE	Approx. 52	360 Days
7/30/2012	ISSUE NOTICE TO PROCEED TO GENERAL CONTRACTOR		
7/24/2013	SUBSTANTIAL COMPLETION		
	CLOSE OUT PHASE	Approx. 8	60 Days
9/22/2013	FINAL COMPLETION		

END EXHIBIT C

EXHIBIT D
PRICING PROPOSAL

DIV	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL COST
3	CAST-IN-PLACE AND PRECAST CONCRETE				
	Aggregate Test	4	EA	\$ 80.00	\$ 320.00
	Reinforcing Tests	2	EA	\$ 65.00	\$ 130.00
	Mix Designs	4	EA	\$ 105.00	\$ 420.00
	Reinforcing Placement Reinforcing Steel Welding Inspection	200	HRS	\$ 68.00	\$ 13,600.00
	Batch Plant Inspection	4	HRS	\$ 68.00	\$ 272.00
	Evaluate structural precast concrete fabricator's quality-control and testing methods	40	HRS	\$ 68.00	\$ 2,720.00
	Inspect Placing of Concrete	240	HRS	\$ 68.00	\$ 16,320.00
	Compression Tests	50	EA	\$ 20.00	\$ 1,000.00
	Obtain, prepare, and test cores drilled from hardened concrete to determine compressive strength – 3 cores per set	5	STS	\$ 60.00	\$ 300.00
	Observe pre-stressing of precast units	120	HRS	\$ 68.00	\$ 8,160.00
	Visually inspect all welds critical to precast connections	80	HRS	\$ 68.00	\$ 5,440.00
	SUBTOTAL CAST-IN-PLACE CONCRETE				\$ 48,682.00
4	MASONRY				
	Grout / Mortar Samples	20	STS	\$ 40.00	\$ 800.00
	CMU Compression Tests	3	STS	\$ 100.00	\$ 300.00
	Inspection Placing of Units	120	HRS	\$ 68.00	\$ 8,160.00
	Grout Compression Tests	25	STS	\$ 40.00	\$ 1,000.00
	Prisms (Sets of 3)	5	STS	\$ 100.00	\$ 500.00
	Reinforcing Steel Tests	20	HRS	\$ 68.00	\$ 1,360.00
	SUBTOTAL MASONRY				\$ 12,120.00

DIV	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL COST
5	STRUCTURAL STEEL				
	Test Unidentified Steel	8	HRS	\$ 68.00	\$ 544.00
	Shop Material Identification	12	HRS	\$ 68.00	\$ 816.00
	Shop Welding Inspection	60	HRS	\$ 68.00	\$ 4,080.00
	Field High Strength Bolting Inspection	20	HRS	\$ 68.00	\$ 1,360.00
	Field Steel Welding Inspection	20	HRS	\$ 68.00	\$ 1,360.00
	Metal Deck Welding Inspection	20	HRS	\$ 68.00	\$ 1,360.00
	Expansion and Epoxy Anchors Test & Inspection	36	HRS	\$ 68.00	\$ 2,448.00
	Mill Certs	20	HRS	\$ 68.00	\$ 1,360.00
	Field Bolting (Torque) Inspection w/Reports	12	HRS	\$ 68.00	\$ 816.00
	SUBTOTAL STRUCTURAL STEEL				\$ 14,144.00
7	ROOFING/FIREPROOFING				
	Roofing / Fireproofing Inspection	20	HRS	\$ 68.00	\$ 1,360.00
	Fireproofing Density Test Thickness Tests	8	EA	\$ 50.00	\$ 400.00
	SUBTOTAL ROOFING/FIRESTOPPING				\$ 1,760.00
	PROFESSIONAL SERVICES				
	Registered Profession Engineer (Written Permission from County Required in Advance)	16	HRS	\$ 125.00	\$ 2,000.00
	SUBTOTATL PROFESSIONAL SERVICES				\$ 2,000.00
	MISCELLANEOUS				
	Ceiling Grid Wire Pull-Out Test	8	EA	\$ 45.00	\$ 360.00
	Premium for Overtime Inspections	24	HRS	\$ 20.00	\$ 480.00
	SUBTOTAL MISCELLANEOUS				\$ 840.00
	GRAND TOTAL				\$ 79,546.00

END EXHIBIT D

**AGREEMENT
FOR
PROFESSIONAL SERVICES**

This Agreement For **Professional Services** is made and entered into by and between the **County of Stanislaus** ("County") and **Miller Pezzoni & Associates, Inc.** ("Consultant"), on July 17, 2012.

Introduction

WHEREAS, County has a need for professional services relating to the **Electrical Engineering Design and Construction Administration** for the **Emergency Power Safety and Reliability Upgrades to the Public Safety Center**; and

WHEREAS, Consultant is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

Terms and Conditions

1. Scope of Work

1.1 Consultant shall furnish to County upon execution of this Agreement or receipt of County's written authorization to proceed, those services and work set forth in **Exhibit A (Scope of Work)** which is attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by Consultant under this Agreement, including without limitation electronic data files, are the property of Consultant; provided, however, County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, Consultant may copyright the same, except that, as to any work which is copyrighted by Consultant, County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, provided that any use of such work for any purposes other than those provided in this Agreement shall be without risk or liability to Consultant.

1.3 Services and work provided by Consultant under this Agreement will be performed in a timely manner in accordance with a schedule of work set forth in Exhibit B (Schedule).

1.4 Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions. Consultant represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement.

1.5 If Consultant deems it appropriate to employ a subconsultant in connection with the performance of the services under this Agreement, Consultant will so advise County and seek County's prior approval of such employment.

2. Compensation

2.1 Consultant shall be compensated in the **LUMP SUM Amount of Sixty-Five Thousand Four Hundred Dollars and No Cents (\$65,400.00)** for services as provided in **Exhibit C (Compensation)** attached hereto. Consultant's costs, which are normally considered to be "reimbursable expenses," such as copying charges, travel and hotel expenses are included within the hourly rate charged by Consultant and

Consultant shall not be entitled to separate or additional reimbursement of any reimbursable expenses.

2.2 Except as expressly provided in this Agreement, Consultant shall not be entitled to or receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement, including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, Consultant shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 Consultant shall provide County with a monthly or a quarterly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which County shall pay in full within 30 days of the date each invoice is approved by County. The statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, and a reasonable itemization of costs.

2.4 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Consultant under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Consultant. County has no responsibility or liability for payment of Consultant's taxes or assessments.

3. Term

3.1 The term of this Agreement shall be from the date of this Agreement until completion of the agreed upon services unless sooner terminated as provided below.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 County may terminate this agreement upon 15 days prior written notice. Termination of this Agreement shall not affect County's obligation to pay for all fees earned and reasonable costs necessarily incurred by Consultant, subject to any applicable setoffs.

3.4 At the option of County, this Agreement may terminate on the occurrence of (a) bankruptcy or insolvency of Consultant, or (b) sale of Consultant's business.

4. Representatives.

Each party shall designate a representative, authorized to act on the party's behalf with respect to this Agreement. Consultant hereby designates **Greg Miller** as Project Manager. County hereby designates **Patricia Hill Thomas** as Project Manager. The parties or such authorized representatives shall render required decisions promptly, to avoid unreasonable delay in the progress of Consultant's services. Each party may delegate all or some of its representative's role and function to some other representative.

5. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Consultant to provide the services and work described in Exhibit A must be procured by Consultant and be valid at the time Consultant enters into this Agreement. Further, during the term of this Agreement, Consultant must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Consultant at no expense to County.

6. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in this Agreement, Consultant shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Consultant to provide the services under this Agreement. Consultant - not County - has the sole responsibility for payment of the costs and expenses incurred by Consultant in providing and maintaining such items.

7. Insurance

7.1 Consultant shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

7.1.1 **General Liability**. Commercial general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of **no less than One Million Dollars (\$1,000,000)** per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Consultant under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

7.1.2 **Professional Liability Insurance**. Professional errors and omissions (malpractice) liability insurance with limits of **no less than One Million Dollars (\$1,000,000) aggregate**. Such professional liability insurance shall be continued for a period of no less than one year following completion of Consultant's work under this Agreement.

7.1.3 **Automobile Liability Insurance**. If Consultant or Consultant's Board, officers, employees, agents or representatives utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury and property damage liability with limits of **no less than One Million Dollars (\$1,000,000) per incident or occurrence**.

7.1.4 **Workers' Compensation Insurance**. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, Consultant certifies under section 1861 of the Labor Code that Consultant is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that Consultant will comply with such provisions before commencing the performance of the work of this Agreement.

7.2 Any deductibles, self-insured retention's or named insureds must be declared in writing and approved by County. At the option of County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retention's or named insureds, or (b) Consultant shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retention's, in which case, Consultant agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of Consultant's defense and indemnification obligations as set forth in this Agreement.

7.3 Consultant shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, naming Stanislaus County, its officers, officials, agents, employees, and volunteers as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of Consultant, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of Consultant; (c) premises owned, occupied or used by Consultant; and (d) automobiles owned, leased, hired or borrowed by Consultant. For Workers' Compensation insurance, the

insurance carrier shall agree to waive all rights of subrogation against Stanislaus County, its officers, officials, agents, employees, and volunteers for losses arising from the performance of or the omission to perform any term or condition of this Agreement by Consultant.

7.4 Consultant's insurance coverage shall be primary insurance regarding County and County's Board, officers, officials, agents, and employees. Any insurance or self-insurance maintained by the County or County's Board, officers, officials and employees shall be excess of Consultant's insurance and shall not contribute with Consultant's insurance.

7.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to County or its Board, officers, officials and employees.

7.6 Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

7.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days' prior written notice has been given to County. Consultant shall promptly notify, or cause the insurance carrier to promptly notify, County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

7.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A-VII; except as otherwise expressly approved by County.

7.9 Consultant shall require that all of its subcontractors be subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

7.10 At least ten (10) days prior to the date Consultant begins performance of its obligations under this Agreement, Consultant shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of Consultant. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

7.11 The limits of insurance described herein shall not limit the liability of Consultant and Consultant's officers, employees, agents, representatives or subcontractors.

8. Indemnification

8.1 Indemnification: To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), Consultant shall defend, indemnify, and hold harmless Stanislaus County, its officers, directors, officials, agents employees, and volunteers (collectively "**Indemnitees**") from and against any and all claims, suit, action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of an employee of Consultant or its Subconsultants) expense and liability of every kind, nature, and description, at law or equity, that arises out of, pertain to, or relate to (including without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) any negligence, recklessness, or willful misconduct of Consultant, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "**Liabilities**"). Such obligations to defend, hold harmless and indemnify and Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities.

8.2 **Duty to Defend:** Consultant shall defend, indemnify and hold harmless the Indemnitees from all loss, cost damage, expense, suit, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by Owner, or any of the other Indemnitees of articles or Services to be supplied in the performance of this Agreement.

8.3 County shall include a provision in the construction contract with the general contractor on the Project requiring the general contractor to indemnify Consultant for damages resulting from the negligence of the general contractor and its subcontractors. County shall also include a provision in the construction contract with the general contractor on the Project requiring the general contractor to name Consultant as an additional insured on its Comprehensive General Liability insurance coverage. If Consultant has the opportunity to review the construction contract prior to bidding, the risk of an inadvertent omission of such provisions is on Consultant.

8.4 Consultant shall place in its subconsulting agreements and cause its Subconsultants to agree to indemnities and insurance obligations in favor of County and other Indemnitees in the exact form and substance of those contained in this Agreement.

8.5 County acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the [any] Project site is outside of Consultant's responsibilities and expertise and is not included in the scope of Services Consultant is to perform nor included in Consultant's insurance. County shall hire an expert consultant in this field if the Project involves such materials. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Consultant shall be responsible to coordinate with County's expert consultant as required by Article 2.3 of Appendix A, Services To Be Provided By Consultant.

8.6 **Duty to Cooperate:** Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement. Specifically, Consultant shall take all steps necessary to assist County in the defense of any claim brought by a contractor hired to construct the Project regarding any errors, flaws, and/or omissions in the plans or specifications of the Project.

8.7 **Patent Rights:** Consultant represents that professional services provided by Consultant pursuant to this Agreement do not infringe on any other copyrighted work. Consultant shall defend, indemnify and hold harmless County from all loss, cost, damage, expense, liability or claims, including attorneys' fees, court costs, litigation expenses and expert consultant or witness fees, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by County of any articles or services supplied under this agreement.

9. Status of Consultant

9.1 All acts of Consultant and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Consultant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Consultant has no authority or responsibility to exercise any rights or power vested in the County. It is understood by both Consultant and County that this Agreement shall not be construed or considered under any circumstances, to create an employer—employee relationship, partnership, or a joint venture.

9.2 At all times during the term of this Agreement, Consultant and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

9.3 Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Consultant in fulfillment of this Agreement. Consultant has control over the manner and means of performing the services under this Agreement. If necessary, Consultant has the responsibility for employing other persons or firms to assist Consultant in fulfilling the terms and obligations under this Agreement.

9.4 If in the performance of this Agreement any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging, or any other term of employment or requirements of law, shall be determined by Consultant.

9.5 Consultant is permitted to provide services to others during the same period service is provided to County under this Agreement; provided, however, such services do not conflict directly or indirectly with the performance of Consultant's obligations under this Agreement.

9.6 It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's assigned personnel under the terms and conditions of this Agreement.

9.7 As an independent contractor, Consultant hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

10. Records and Audit

10.1 Consultant shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

10.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Consultant. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

11. Nondiscrimination

During the performance of this Agreement, Consultant and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation, sexual orientation, or sex. Consultant and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12. Assignment

This is an agreement for the services of Consultant. County has relied upon the skills, knowledge,

experience and training of Consultant and Consultant's firm, associates and employees as an inducement to enter into this Agreement. Consultant shall not assign or subcontract this Agreement without the express written consent of County. Further, Consultant shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Consultant or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: **County of Stanislaus
Capital Projects
1010 10th Street, Suite 2300
Modesto, CA 95354
(209) 525-4380 (phone)
(209) 525-4384 (fax)**

To Consultant: **Miller Pezzoni & Associates, Inc.
909 15th Street, Suite 7
Modesto, CA 95354
(209) 575.1312 (phone)
(209) 575.0813 (fax)**

15. Conflicts

Consultant represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Consultant represents to and agrees with County that Consultant has no present, and will have no future conflict of interest between providing County services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity which has any interest adverse or potentially adverse to County, as determined in the reasonable judgment of County.

16. Confidentiality

Any information, whether proprietary or not, made known to or discovered by Consultant during the performance of or in connection with this Agreement for County, will be kept confidential and not be disclosed to any other person. Consultant will immediately notify County in writing if it is requested to disclose any information made known to or discovered by during the performance of or in connection with this Agreement. These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services to County hereunder.

17. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not

be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

18. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

19. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first herein above written.

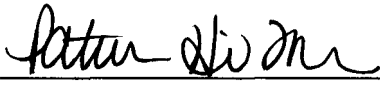
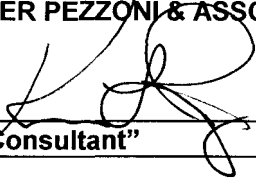

COUNTY OF STANISLAUS By:  "County"	MILLER PEZZONI & ASSOCIATES, INC. By:  "Consultant"
APPROVED AS TO FORM: By:  County Counsel	

EXHIBIT A

SCOPE OF WORK

1. Upgrade Generator Synchronization System:

Provide complete electrical engineering design services for the replacement of the existing obsolete analog synchronization system at the SOC Emergency Power Yard, intended to significantly improve system reliability. The scope of proposed electrical engineering services includes the detailed review and documentation of existing conditions and loading.

Prepare complete plans and specifications for new digital synchronization equipment, including new load-sharing and regulation modules within each engine. Provide new cabinets as may be required.

Working with manufacturers representatives, develop the software parameters and operational characteristics for the CPU Unit. Provide for Dual Redundant Programmable Logic Controller with UPS back-up power source with remote alarm capabilities.

Design interim phasing and back-up systems intended to provide emergency power during the construction phase of the project, Specify Testing and Certification procedures to ensure a fully functional system is provided. Coordinate this element of the proposed work with the Distribution Panel replacement, as outlined herein.

2. Replace Obsolete Distribution Panels:

Design the replacement of the existing obsolete Distribution Panels 1 & 2 in which existing breakers are found to be unreliable and not operating per specifications. Provide for new panels and breakers of current manufacture. Re-configure the emergency distribution system as planned under a previous project, to eliminate the cascaded ATS units and to provide specific priority load blocks to enable the system to accommodate increased loads and to provide priority load shedding capabilities.

Design the placement of new panels within the service yard and interconnected into the existing system. Provide for interim connections and phasing to provide emergency power during construction.

3. Add New Arc Blast Safety Wall:

Design new CMU Arc Blast safety wall along the west, north and south sides of the primary switchgear intended to provide protection against the effects of Arc Blast as defined by NFPA-70E and our previous Arc Flash Analysis Report. Provide complete structural engineering and related details and plans and specifications for the new wall.

4. Conduit Stubs for Emergency Power for Distribution Project:

Provide conduits and connections into new Distribution Panels in yard intended to provide the emergency power connection raceway system from the Yard for the new Honor Farm Replacement project. Based upon project load data provided, design a series of load shedding measures intended to ensure that the new project may be constructed and operated utilizing the existing three generators with updated Synchronization Equipment without the need to add a fourth generator at this time. Provide complete plans, specifications and emergency load analysis.

The above described design services include complete construction administration services, including cost projections, bid review, submittal review and RFI response. Review project at rough-in and final stages, prepare correction notices as may be required.

END OF EXHIBIT A

EXHIBIT B
SCHEDULE

Consultant Action	Date Expected
Contract Documents Executed	July 17, 2012
Commence Project Scoping & Attend Kick Off Meeting	July 30, 2012
Complete Preliminary Design for Review by County	September 14, 2012
Submit Project Schedule and Budget	September 14, 2012
Complete Final Design	October 12, 2012
Attend Pre-Bid Procurement Meeting	TBD-October to November 2012
Assist with Design Documents for County Competitive Procurement	November 16, 2012
Evaluation of Bids	December 14, 2012
Construction Administration Phase	December 14, 2012 to April 12, 2013
Test and Check Evaluation with Contractor	April 15, 2013
Complete Test and Check of Contractor Improvements	June 7, 2013
Contract Closeout Procedures and Meeting	June 21, 2013
Consultant to Attend Weekly Meetings	Weekly-TBD by County

END OF EXHIBIT B

EXHIBIT C
COMPENSATION

This is an appendix attached to, and made a part of, the Professional Services Agreement dated _____ (“**Agreement**”) between Stanislaus County (“**County**”) and Miller Pezzoni & Associates, Inc. (“**Consultant**”), for the provision of professional services (“**Services**”).

1. **COMPENSATION TO CONSULTANT.** The total compensation by County to Consultant for work performed under this agreement including all labor and other direct costs (ODC’s) shall not exceed Sixty-Five Thousand Four Hundred Dollars and No Cents (\$65,400.00), unless amended by County. County expressly reserves the right to deny any payment or reimbursement requested by Consultant which is in excess of the contract limit, unless such payment is approved by County as an Additional Service, as set forth below. The total compensation to Consultant shall not exceed the following for each phase (including basic services and ODC’s):

1.1.	Upgrade Generator Synchronization System	\$39,500.00
	• Includes loan recording and testing	
1.2	Replace Obsolete Distribution Panels	\$14,900.00
1.3	Add New Arc Blast Safety Wall	\$6,500.00
	• Includes structural engineering of wall	
1.4	Conduit Stubs for Emergency Power for New Distribution Project:	\$4,500.00
TOTAL NOT TO EXCEED		\$65,400.00

2. **PAYMENT.**

2.1 For work completed and upon submittal of monthly invoice statements in duplicate, County shall pay Consultant for services rendered in an amount not to exceed the phase totals set forth in Section 1.

2.2 Invoices shall be submitted for progress payment not more than once each month unless otherwise approved by County. Progress payments shall be based on the percentage of services completed through the end of the billing period.

2.3 When submitting invoices, Consultant shall provide an updated schedule that will be the basis of payment and that will certify that the percentages claimed are true and accurate representations of Consultant’s progress to date, and that notwithstanding such percentages or the payment therefore, Consultant remains fully responsible for satisfactorily completing all Services. County may adjust any progress payment so that it corresponds with the percentage of completion as determined by County. Adjustment of any progress payment will be reasonably negotiated with Consultant.

2.4 Consultant shall provide copies of all Subconsultant Agreements to County as the Agreements are finalized and executed between Consultant and SubConsultant.

2.5 Consultant and/or its Subconsultants shall not provide services to the Construction Contractor or any Subcontractor under separate agreement for any part of this Project.

3. **NOTICE TO PROCEED.** Consultant shall not commence work until a Notice to Proceed is issued by County. County has no obligation to issue Notices to Proceed for all phases. If the Project is delayed or suspended for a phase beyond 30 days, termination may be mutually agreed to by the parties.

4. This agreement shall not be considered as giving exclusive authority to Consultant for performing all services pertaining to the design and/or construction of the project. County may perform or may not

perform, or have this work herein performed by others.

5. Prior to release of retention and/or final payment pursuant to this Agreement, or prior to settlement upon termination of this Agreement, and as a condition precedent thereof, Consultant shall execute and deliver to Owner a Conditional Release of all Fee Claims arising pursuant to or by virtue of this Agreement, other than such claims, if any, as may be specifically excepted from the operation of the Release for reasons and in amounts set forth therein.
6. For purposes of changes in services, hourly rates will be submitted for approval for each staff member of Consultant, and Consultant's Subconsultant's with a resume that justifies the level of proposed rates. These rates will apply to base and extra services. County has the right if it deems necessary to audit the actual records. Rates will be based on salary, a reasonable audited overhead rate, and a profit of no more than 10%. (Note: Marketing will not be included in the overhead.)

CONSULTATION SERVICES:

Investigative/Expert Witness	<u>\$275.00 Per Hour</u>
Professional Consultation	<u>\$250.00 Per Hour</u>

ENGINEERING SERVICES:

Principal Engineer	<u>\$180.00 Per Hour</u>
Associate Engineer	<u>\$130.00 Per Hour</u>
Assistant Engineer	<u>\$ 80.00 Per Hour</u>
Cadd Operator	<u>\$ 60.00 Per Hour</u>
Technician	<u>\$ 70.00 Per Hour</u>
Clerical	<u>\$ 50.00 Per Hour</u>

END OF EXHIBIT C

AGREEMENT

THIS AGREEMENT, dated this 17th day of July, 2012, by and between DIEDE CONSTRUCTION, INC. ("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 Agenda Item No. B-8 adopted on the 17th day of July, 2012 awarded to Contractor the following contract:

**Honor Farm Bed Replacement at
The Public Safety Center
200 E. Hackett Rd, Modesto, CA**

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. Project Representatives and Staffing

- 2.1 **Project Manager:** County has designated **Patricia Hill Thomas** its **Project Manager**, to act as County's Representative, who will represent County in performing County's duties and responsibilities and exercising County's rights and authorities in Contract Documents. County may change the individual(s) acting as County's Representative(s), or delegate one or more specific functions to one or more specific County's Representatives, including without limitation on general administrative functions, at any time with notice and without liability to Contractor. Each County's Representative is the beneficiary of all Contractor obligations to County, including without limitation, all releases and indemnities.
- 2.2 **Construction Manager:** County has designated **Don Phemister** to act as **Construction Manager**. County may assign all or part of the County Representative's rights, responsibilities and duties to Construction Manager. County may change the identity of the Construction Manager at any time with notice and without liability to Contractor.
- 2.3 **Architect / Engineer:** County has designated **Lionakis** to act as **Architect/Engineer**. County may change the identity of the Architect/Engineer at any time with notice and without liability to Contractor.
- 2.4 **Contractor's Project Executive and Dedicated Staff**
 - 2.4.1 Contractor has designated **Paul Bickford** as its **Project Executive** to act as Contractor's Representative in all matters relating to the Contract Documents. For the

construction phase, the Project Manager shall be resident at the Project Site and shall be devoted solely to the Project. Contractor may not change the identity of its Project Manager without prior County written approval, which approval shall not be unreasonably withheld provided such replacement has similar or greater experience and qualifications.

2.4.2 Contractor's Statement of Qualifications provides an organization chart and lists the key personnel Contractor intends to provide to the Project to perform its obligations under the Contract Documents, including but not limited to, their position, responsibility, resume and qualifications. Contractor represents that such staff have the necessary licenses, experience and qualifications to satisfactorily perform the requirements of the Contract Documents and that at all times Contractor shall maintain such staff or similar staff having all necessary licenses, certifications, experience and skills necessary to perform all obligations of the Contract Documents.

2.5 All notices or demands to County under the Contract Documents shall be in writing and directed to County's Project Manager at:

1010 Tenth Street, Suite 6800
Modesto, CA 95354

or to such other person(s) and address(es) as County shall provide to Contractor. Except as otherwise expressly provided herein, notices shall be dispatched by facsimile transmission, overnight delivery and/or U.S. mail. Except as otherwise expressly provided herein, notices dispatched by facsimile or overnight delivery shall be deemed received on the business day following dispatch. Notices dispatched by U.S. mail shall be deemed received on the third business day following dispatch.

Article 3. Contract Time and Liquidated Damages

3.1 Contract Time.

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

3.1.2 Contractor shall achieve Substantial Completion of the Project described in the Contract Documents within 360 Days from the date established in the Notice to Proceed.

3.1.3 Contractor shall achieve Final Completion of the entire Work and be ready for Final Payment in accordance with Section 01 77 00 (Contract Closeout) within 60 Days from Substantial Completion of Construction.

3.2 Liquidated Damages.

County and Contractor recognize that time is of the essence of this Agreement 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. Consistent with Document 00 70 00 (General Conditions), 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 As liquidated damages for delay, Contractor shall pay County \$7,500 (Seven Thousand Five Hundred Dollars) per day for each calendar day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.

3.2.2 As liquidated damages for delay, Contractor shall pay County \$7,500 (Seven Thousand Five Hundred Dollars) per day for each calendar 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, damages arising from a loss of matching funding supplied by the State of California as a result of delay in completion of the Work, 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. See Document 00 70 00 (General Conditions), paragraph 15.E.

Article 4. Contract Sum

4.1 County shall pay Contractor the Contract Lump Sum (Contract Sum) for completion of Work in accordance with Contract Documents as follows:

Eight Million Five Hundred Eighty Two Thousand Six Hundred Eighty Five and no/100 dollars (\$8,582,695.00).

The Contract Sum includes all allowances and alternates. The following allowance and alternate items and amounts are included within (not in addition to) the Contract Sum:

Allowance (Construction Manager's Field Office)	\$ 100,000
Alternate 1 (West Outdoor Recreation Area):	\$ 29,433
Alternate 2 (Detention Equipment):	\$ 156,374
Alternate 3 (Food Service Equipment):	\$ 78,128

Article 5. Contractor's Representations

In order to induce County to enter into this Agreement, 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 are identified in Document 00 31 32 (Geotechnical Data and Existing Conditions), or which may appear in the Drawings. Contractor accepts the determination set forth in these Documents and Document 00 70 00 (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 00 52 00) 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 00 70 00 (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.
- 5.5 Contractor has given 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 County is acceptable to Contractor.

- 5.6 Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.
- 5.7 Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Contractor.
- 5.8 Contractor has listed the Subcontractors in Attachment 1 pursuant to the Subcontractor Listing Law, California Public Contracting Code §4100 *et seq.*

Article 6. Contract Documents

- 6.1 Contract Documents consist of the following documents, including all changes, addenda, and modifications thereto:

- Document 00 51 00 Notice of Award
- Document 00 52 00 Agreement
- Document 00 55 00 Notice to Proceed
- Document 00 61 00 Construction Performance Bond
- Document 00 62 00 Construction Labor and Material Payment Bond
- Document 00 63 00 Guaranty
- Document 00 65 00 Agreement and Release of Any and All Claims
- Document 00 66 00 Substitution Request Form
- Document 00 67 00 Escrow Bid Documents
- Document 00 68 00 Escrow Agreement for Security Deposit in Lieu of Retention
- Document 00 70 00 General Conditions
- Document 00 73 00 Supplemental Conditions
- Document 00 82 10 Insurance
- Document 00 82 20 Apprenticeship Program
- Addenda 1 and 2
- Divisions 1 through 33
- Drawings Listed in Document 00 01 15.

- 6.2 There are no Contract Documents other than those listed in this Document 00 52 00, Article 6. Document 00 31 32 (Geotechnical Data and Existing Conditions), and the information supplied therein, are not Contract Documents. The Contract Documents may only be amended, modified or supplemented as provided in Document 00 70 00 (General Conditions).

Article 7. Miscellaneous

- 7.1 Terms used in this Agreement are defined in Document 00 70 00 (General Conditions) and Section 01 42 00 (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 Agreement for or on behalf of County or acting as an employee, agent, or representative of County, liable on this Agreement 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 Contracting Code §4100 *et seq.*
- 7.4 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 Section 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.
- 7.5 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 Section 1861 of the Labor Code, 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.
- 7.6 Should any part, term or provision of this Agreement 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 Agreement 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).
- 7.7 This Agreement 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 the Superior Court of the State of California for the County of El Dorado. Contractor accepts the Claims Procedure in Document 00 70 00, Article 12, established under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5.

Article 8. Notices and Communications

- 8.1 All correspondence, submittals, communications, claims, notices, demands and any other type of Project-related communication, to County or Contractor under or relating to the Contract Documents, shall be in writing and directed to County's Representative or Contractor's Project Representative, respectively, as they are identified in this Agreement, at such Project address as a party shall designate.
- 8.2 All communications made prior to execution of this Agreement shall be in writing and directed to the person(s) and address(es) County or Contractor may designate.
- 8.3 Except as otherwise expressly provided herein, notices shall be dispatched by facsimile transmission, overnight delivery by reputable courier service, receipted hand delivery and/or U.S. mail. Except as otherwise expressly provided herein, notices dispatched by facsimile or overnight delivery shall be deemed received on the business day following dispatch. Notices dispatched by U.S. mail or by receipted hand delivery shall be deemed received on the third business day following dispatch or on execution of the receipt, respectively. Notices dispatched by PDF email shall be deemed received only upon personal return email acknowledging receipt of such notice.

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

COUNTY:
COUNTY OF STANISLAUS

CONTRACTOR:
DIEDE CONSTRUCTION, INC.

By: Patricia Hill Thomas
(Signature)

By: _____
(Signature)

Patricia Hill Thomas
(Please print name here)

Steven L. Diede
(Please print name here)

Title: Chief Operations Officer/
Assistant Executive Officer

Title: President

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

Attest: [Signature]
(Signature)

Lillian K. Diede
(Please print name here)

Title: Secretary/Treasurer

(If Corporation: Secretary, Asst. Secretary, Chief Financial Officer, or Asst. Treasurer)

632667, A, B, C2, C8, C15, C27, C39, C61/D28, ASB, HAZ
State Contractor's License No. Classification

12/31/13 68-0257126
Expiration Date Taxpayer ID No.

APPROVED AS TO FORM AND LEGALITY this _____ day of _____, 2012.

By: [Signature]
John P. Doering, County Counsel

Designated Representatives:

COUNTY

Name: Patricia Hill Thomas
Chief Operations Officer/
Title: Assistant Executive Officer
1010 10th St, Ste 8800
Address: Modesto, CA 95354
Phone: (209) 525-4380
Facsimile: (209) 525-4333

DIEDE CONSTRUCTION

Name: Steven L. Diede
Title: President
Address: P.o. Box 1007, Woodbridge, CA 95258
(209) 369-8255
Phone: _____
Facsimile: (209) 368-0600

END OF DOCUMENT

DOCUMENT 00 43 00

SUBCONTRACTORS LIST

Bidder submits the following information as to the subcontractors Bidder intends to employ if awarded the Contract.

LODI, CA.		
AM STEPHENS CONAS. INC. LODI	GRADING AND PAVING	404 923
ALL COMMERCIAL FENCE, WYOMING	FENCING	823 030
SANBURN BACKHOE, VICTOR	UNDERGROUND UTILITIES	805514
CMC ROBAR, FRESNO	REINFORCING STEEL	778 010
CTV PRECAST, OLIVENHURST JOHN MASONRY INC., SACRAMENTO	PRECAST CONCRETE	940 919
JOHN MASONRY INC., LODI	MASONRY	255 403 (SD)
WELDWAY INC. OREGON CENTRAL POINT OREGON	STRUCTURAL STEEL	483 859
AG CABINETS/MILWAUKEE,	ARCHITECTURAL CASEWORK	437 553
BRUNK INDUSTRIES, OREGON	CEMENTITIOUS FIBERBOARDING	384 264
CALIFORNIA SOURCE PLY INC. ROLLIN	THERMOPLASTIC POLYOLEFIN	402255 (S)
VMB MEMBRANS INC. SACRAMENTO	JOINT SEALANTS	8989

BEYBERRY, COLORADO (SD)		
SHAWA DETENTION SYSTEM, MARYSVILLE, CA. (SD)	DETENTION DOORS AND FRAMES	900955 (SD)
MICHAEL'S GLASS INC.	GLASS AND GLAZING	954492
KENT LATHING INC. MODOC	GYPSUM BOARD	389461
C.L.T. TILE, STOCKTON		604803
P.C. TILE, FAYERS (SD)	TILE	4055861 (SD)
SACRAMENTO, CA. (SD)		
SWIRIDOFF WARE. CO. (SD)	ACOUSTIC CEILING	317839 (SD)
MARK OF PAPERS, MARIETTA (SD)	FLOORING - RESILIENT, CARPET	278787 (SD)
T&A PAINTING, MANTONA		883658
LML PAINTS, PRIZES ALL LIVERMORE (SD)	PAINTING	958520 (SD)
LODI, CA.		
CENICAL FIRE PROTECTION INC.	FIRE SPINKLER SYSTEM	488547
SIMINI'S PLUMBING, SACRAMENTO		
BE PLUMBING CO. LIVERMORE (SD)	PLUMBING	850431
SACRAMENTO (SD)		
MODERN AIR, MARIETTA (SD)		569680 (SD)
VICTORIAN MECHANICAL INC. FAYERS (SD)	HVAC & SHEETMETAL	929944 (SD)
LML ELECTRIC, LIVERMORE		958920
B&H ELECTRIC INC. LODI (SD)	ELECTRICAL	698435 (SD)

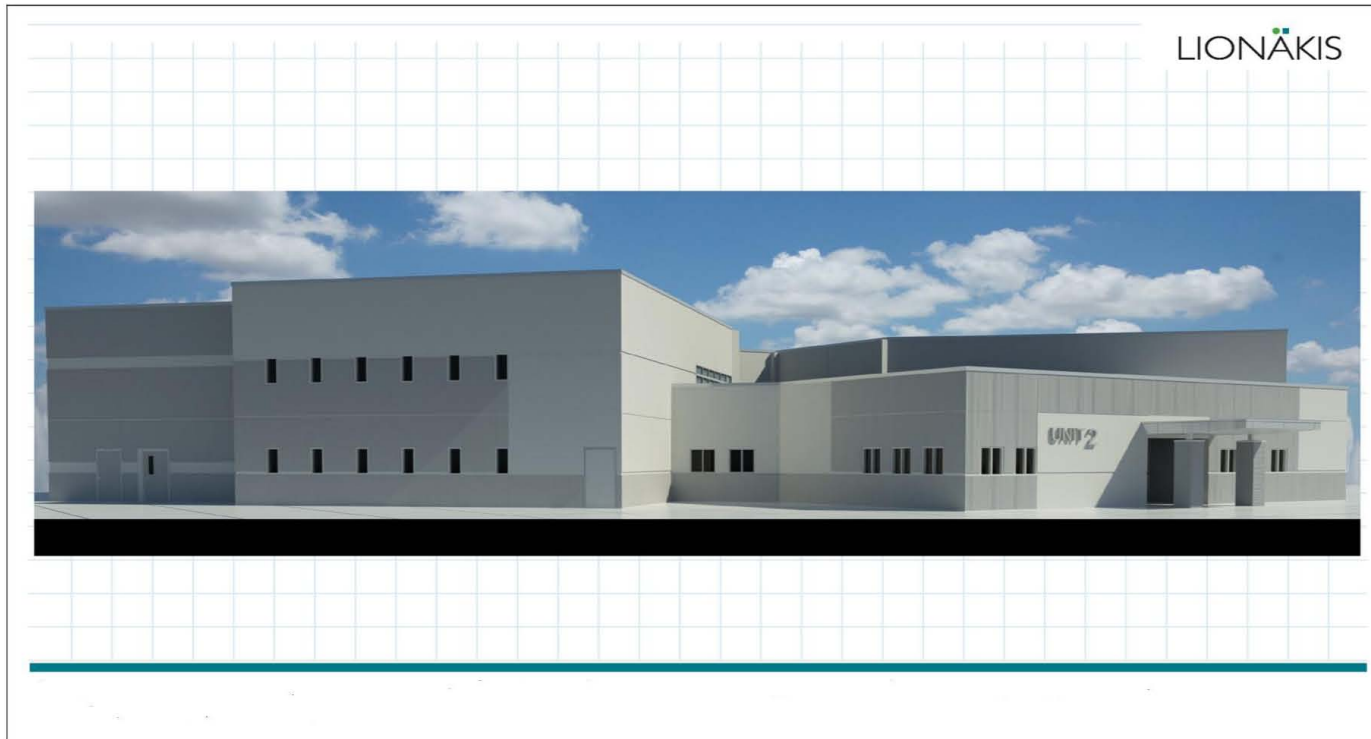
(Bidd

	TESTA AMERICA, RANCHO CROCKER	FLASHING & SHEET METAL	804500
	T3 INC., FREMONT HINTHAMPSON INC. STOCKTON	ACOUSTIC CEILING	805810 258611
3)	AVANT FLOORING, SACRAMENTO MODESTO, CA	FLOORING	241990 (SD)
	ANDERHOLTZ MASONRY SACRAMENTO, CA.	MASONRY	718720
	BT MANCINI CO. INC.	STEEL DECK	229210
	NORRANT SECURITY GROUP NORRANT SECURITY ACADEMY		
5)	LEGG INC. - LIVERMORE	RETENTION DOORS AND FRAMES	764727
	MODERN AIR, MERCED		509080
8)	DILLIS TECH, RANCHO CROCKER	HYAL SHEET METAL	828203 (SD)
	ADVANCED ROOFING, OAKDALE	ROOFING	829540

END OF DOCUMENT

Honor Farm Jail Bed Replacement Project:

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions



Stanislaus County Board of Supervisors Meeting
July 17, 2012
Item B-8

Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions



Adam Christianson
Sheriff-Coroner

Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions



Patricia Hill Thomas
Chief Operations Officer

Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions

Project Background:

June 26, 2010

Fire destroyed Barracks 1 & 2 at the Honor Farm – 172 Minimum Security Beds lost.



Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions

Project Background:

- | | |
|-----------------------|---|
| April 26, 2011 | Board of Supervisors authorized finalization of settlement with County Insurer as a result of the fire. |
| May 24, 2011 | Design contract with Lionakis is approved. |

Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions

Project Background:

- December 6, 2012 Board of Supervisors accepted the schematic design.
- May 15, 2012 Board of Supervisors approved the final plans and specifications.

Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions

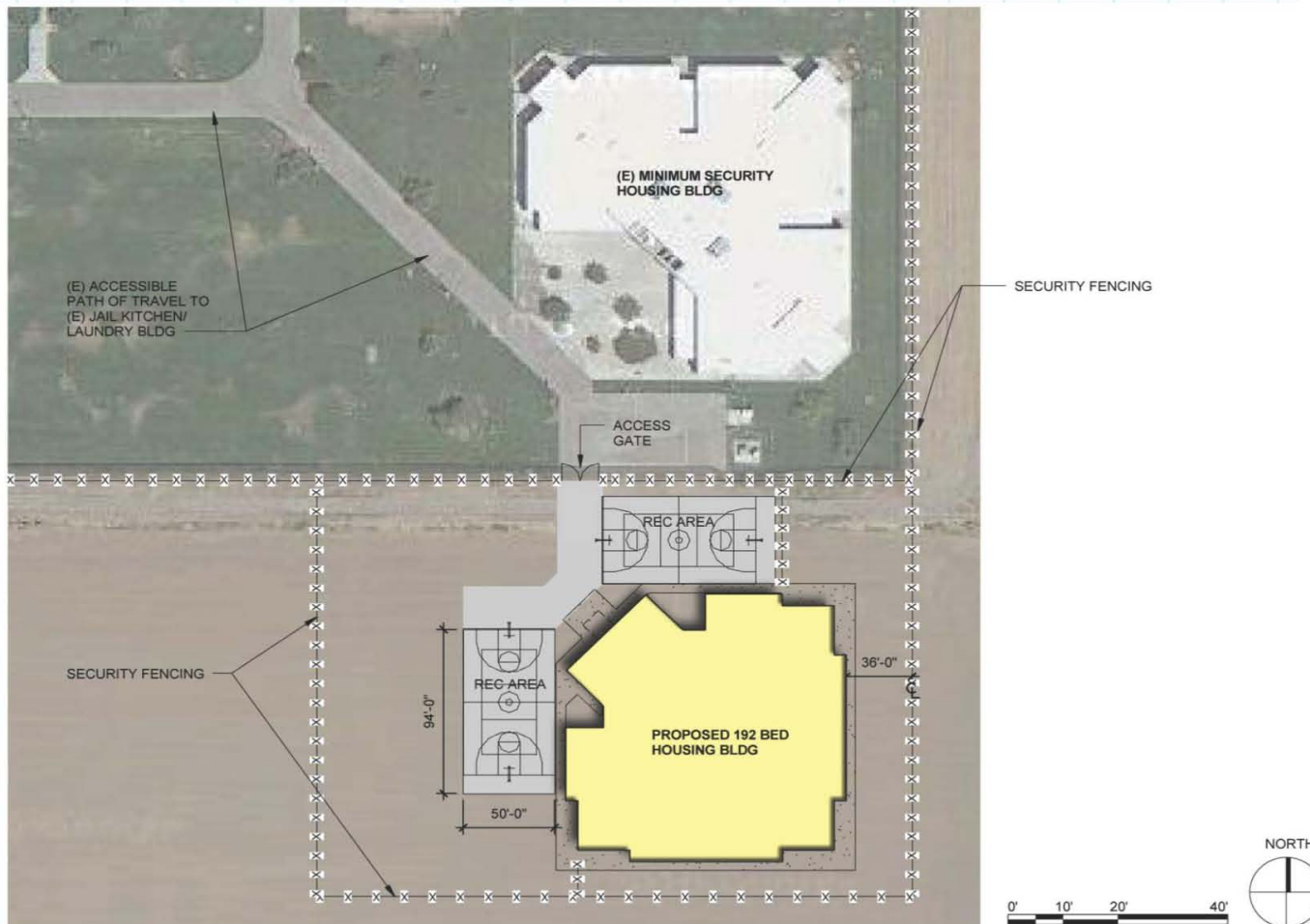
Project Background:

- | | |
|--------------|---|
| May 15, 2012 | Board of Supervisors authorized the Project Manager to issue a Request for Proposal (RFP) for Code Required Testing Services. |
| May 15, 2012 | The Board of Supervisors pre-qualified seven General Contractors. |

Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions

LIONAKIS



Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions

Bid Background: On June 27, 2012, a total of four base bid proposals were received from the following pre-qualified general contractors:

Diede Construction, Inc.	Lodi, California	\$8,318,750
Roebellen Contractors, Inc.	El Dorado Hills, California	\$8,460,000
ACME Construction, Inc.	Modesto, California	\$9,132,000
BRCO Constructors, Inc.	Loomis, California	\$9,300,000

Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions

Bid Evaluation: Bids evaluated--blind bid process comprised of nine sequestered team members from the Sheriff's Office, the Chief Executive Office, Capital Projects, and the Project Architect.

Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions

Bid Results: The base bids ranged from \$8,318,750 to \$9,300,000. Staff received prices for the following four additive bid alternates which ranged from a credit of (\$148,000) to \$314,711:

Alternate 1: Addition of the west outdoor recreation area;

Alternate 2: Addition of detention furnishings;

Alternate 3: Addition of food service equipment; and

Alternate 4: Increased time of 60 calendar days for construction completion.

Honor Farm Jail Bed Replacement Project

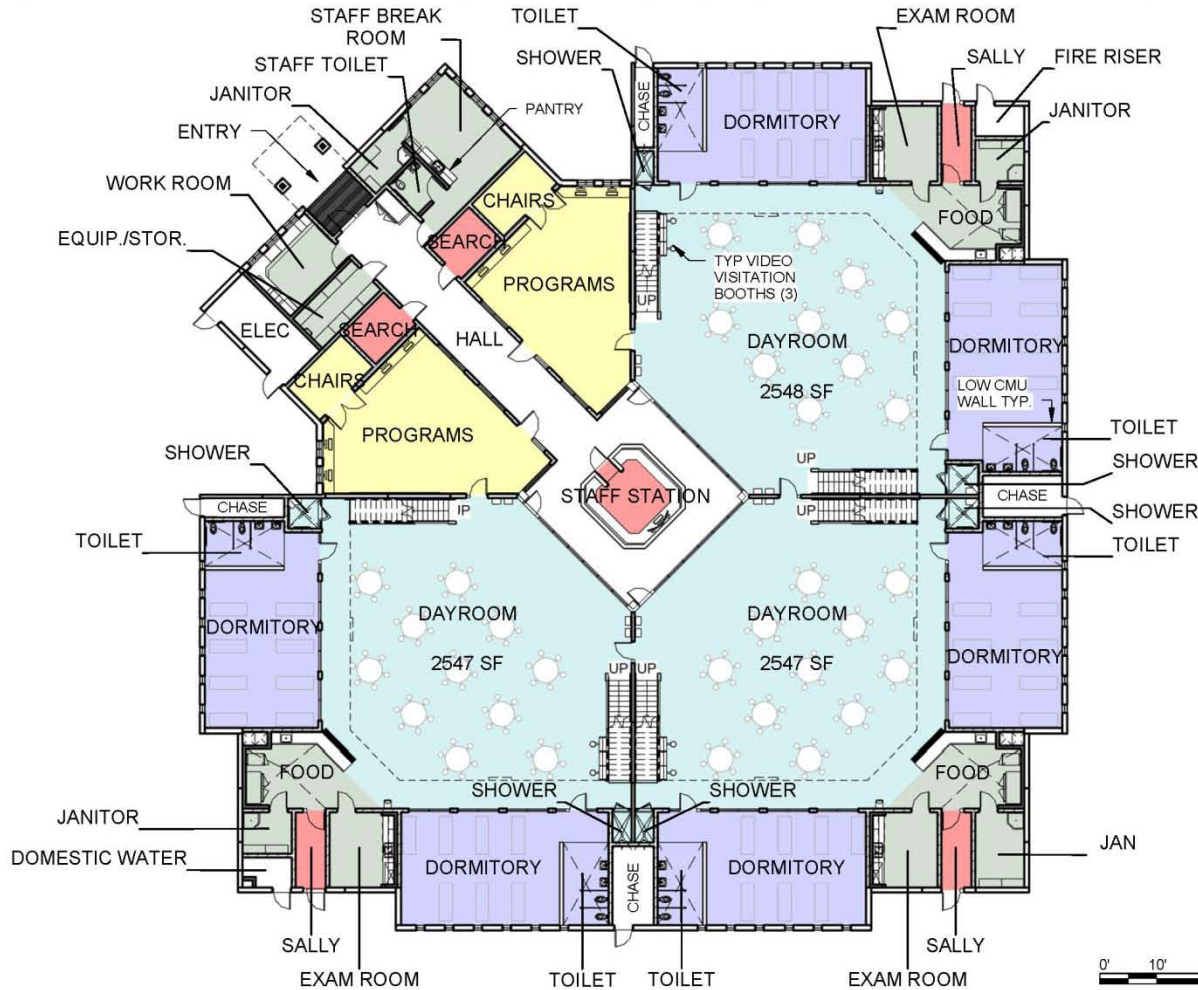
Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions

Bid Results:

Staff recommends the Board of Supervisors award the construction contract to the lowest responsible respondent, Diede Construction, Inc. of Lodi, California for the lump sum amount not to exceed \$8,582,685. The recommended amount includes the base bid of \$8,318,750, additive alternates (1) \$29,433, (2) \$156,374, and (3) \$78,128, for the construction of the Honor Farm Jail Replacement Bed Project.

Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions



3- DORMITORY HOUSING
UNITS OF 64 BEDS EACH =
192 TOTAL BEDS

20,248 SF FIRST LEVEL
8,505 SF UPPER TIER
28,753 TOTAL SF

COLOR LEGEND

- DAYROOM
- PROGRAM
- SECURE CORRIDOR
- SLEEPING UNIT
- SUPPORT/STAFF
- UTILITY SPACES

Recommendation to Proceed to Construction!

Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions

Establish Full Project Budget:

The total project budget recommended is \$11,999,297, consistent with original estimates of \$12 million for the construction of a 192 bed replacement facility, completely funded by insurance proceeds with no impact to the General Fund.

Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions

Recommendations:

1. Approve to award the construction contract for the Honor Farm Jail Bed Replacement Project to Diede Construction Inc., of Lodi, California for the lump sum amount not to exceed \$8,582,685.
2. Authorize the Project Manager to issue a Notice to Proceed upon receipt of proper insurance and bonds.

Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions

Recommendations:

3. Authorize the Project Manager to initiate the project in August of 2012 and to recognize the start of construction.
4. Authorize the Project Manager to negotiate and sign contracts, work authorizations, and purchase orders for professional services needed in this phase of the project as long as they are within the approved project budget.

Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions

Recommendations:

5. Authorize the Project Manager to negotiate and sign change orders up to \$25,000, consistent with the County's Change Order Policy, and as long as they are within the previously approved project budget.
6. Authorize the Project Manager to execute a contract to Twining Laboratories for Code Required Testing Services with compensation on a unit price basis not to exceed 125% of their total proposal price of \$79,546.

Honor Farm Jail Bed Replacement Project

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions

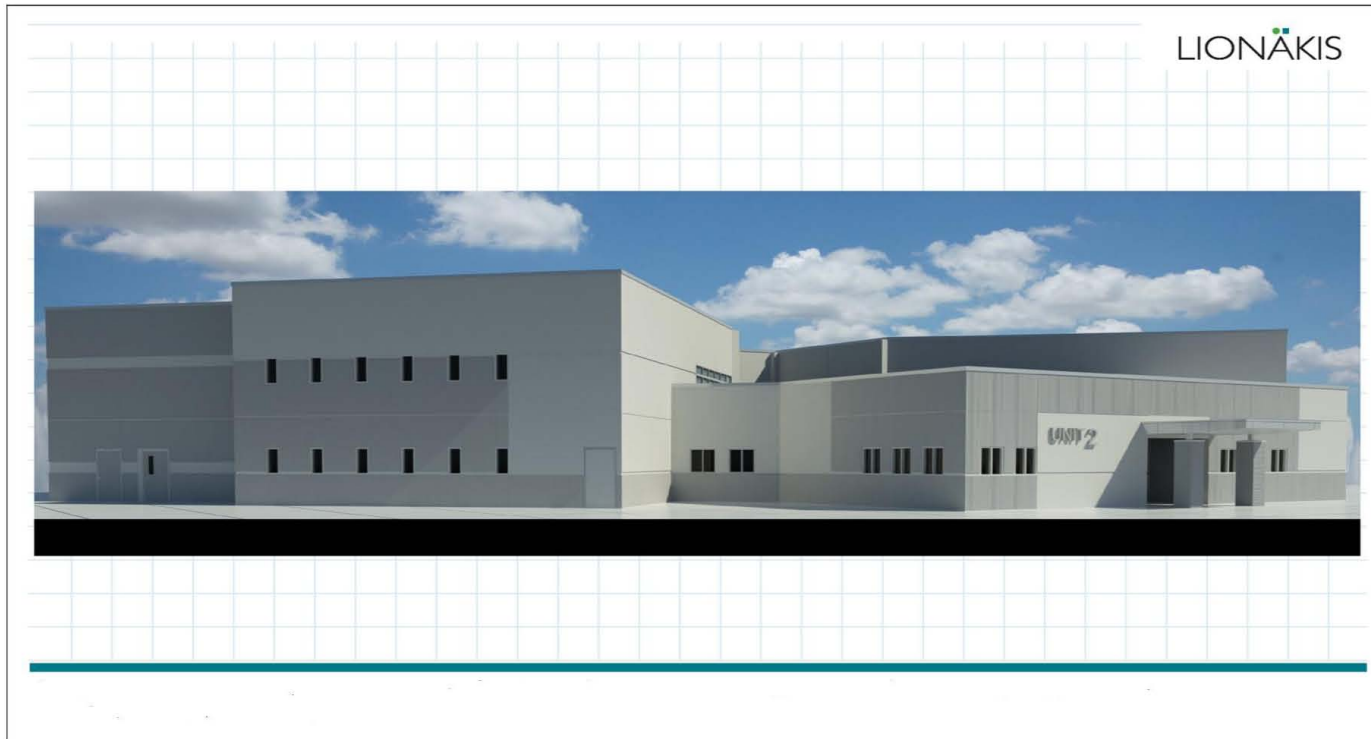
Recommendations:

7. Authorize the Project Manager to execute a contract to Miller Pezzoni and Associates, Inc. for the development of plans and specifications for the safety and reliability upgrades necessary to connect the new Honor Farm Jail Bed Replacement Project to the existing emergency power generator farm at the Public Safety Center for the lump sum amount not to exceed \$65,400.

Questions?

Honor Farm Jail Bed Replacement Project:

Approval of a Construction Contract for the Honor Farm Jail Bed Replacement Project to Diede Construction, Inc. and Related Actions



Stanislaus County Board of Supervisors Meeting
July 17, 2012
Item B-8