

CONTRACT

(Construction Agreement)
(Contra Costa County Standard Form)

1. **SPECIAL TERMS.** These special terms are incorporated below by reference.

(See Secs. 2,3) Parties: (Public Agency) **CONTRA COSTA COUNTY**

(Contractor) **Mark Scott Construction, Inc.
2835 Contra Costa Boulevard
Pleasant Hill, CA 94523**

(See Sec. 2) Effective Date: July 9, 2024 (See Section 4 for starting date.)

(See Sec. 3) The Work: **JOB ORDER CONTRACT - 027, AUTHORIZATION NO. W4011C, IN ACCORDANCE WITH CONTRACT DOCUMENTS PREPARED BY OR FOR THE DIRECTOR OF PUBLIC WORKS AND IN ACCORDANCE WITH THE ACCEPTED BID PROPOSAL.**

(See Sec. 4) Completion Time: As directed in Notice to Proceed issued to Contractor for each individual Job Order.

(See Sec. 5) Liquidated Damages: See Section 5

(See Sec. 6) Public Agency's Agent: Warren Lai, Deputy Public Works Director

(See Sec. 7) Contract Price: \$3,000,000.00 maximum value, \$25,000.00 minimum value

(See Sec. 8) Federal Taxpayers I.D. or Social Security No.: 68-0293061

2. **SIGNATURES & ACKNOWLEDGEMENT.**

Public Agency, By: _____ Date: _____
Warren Lai, Deputy Public Works Director

Recommended By: _____ Date: _____
Jeffrey K. Acuff, Capital Projects Division Manager

Contractor, hereby also certifying awareness of and compliance with Labor Code Sections 1861 and 3700 concerning Workers' Compensation Law,

By: _____
(Designate official capacity in the business)

(CORPORATE SEAL)

By: _____
(Designate official capacity in the business)

Note to Contractor: For corporations, the contract must be signed by two officers. The first signature must be that of the chairman of the board, president or vice-president; the second signature must be that of the secretary, assistant secretary, chief financial officer or assistant treasurer. (Civ. Code, Sec. 1190 and Corps. Code, Sec. 313.) The acknowledgment below must be signed by a Notary Public.

CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____) ss.

On the date written below, before me, the undersigned Notary Public, personally appeared the person(s) signing above for Contractor, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Dated: _____

[NOTARIAL SEAL]

Notary Public

3. **WORK CONTRACT, CHANGES.** (a) By their signatures in Section 2, effective on the above date, these parties promise and agree as set forth in this contract, incorporating by these references the material ("special terms") in Section 1.

(b) Contractor shall, at his own cost and expense, and in a workmanlike manner, fully and faithfully perform and complete the work; and will furnish all materials, labor, services and transportation necessary, convenient and proper in order fairly to perform the requirements of this contract, all strictly in accordance with the Public Agency's plans, drawings and specifications.

(c) The work can be changed only with Public Agency's prior written order specifying such change and its cost agreed to by the parties; and the Public Agency shall never have to pay more than specified in Section 7 without such an order.

4. **TIME: NOTICE TO PROCEED.** The term of the Contract is one year – 365 days and commences ninety (90) days after contract execution or upon the first Notice to Proceed, whichever comes first.

TERM: The term of the Job Order Contract will be either for one year or when issued Job Orders totaling the Maximum Contract Value including any options have been completed, whichever comes first. All Job Orders, to be valid, must be issued but not necessarily completed within one calendar year of the commencement date of the Contract. Supplemental Job Orders used to reconcile existing Job Orders may be issued after the one year calendar term.

JOB ORDER NOTICE TO PROCEED: Contractor shall start the work as directed in the Notice to Proceed issued to Contractor, for each individual Job Order, and shall complete it within the time specified in the Notice to Proceed or the detailed Scope of Work for the Job Order.

5. **LIQUIDATED DAMAGES.** If the Contractor fails to complete this contract and this work within the time fixed therefor, allowance being made for contingencies as provided herein, he becomes liable to the Public Agency for all its loss and damage therefrom; and because, from the nature of the case, it is and will be impracticable and extremely difficult to ascertain and fix the Public Agency's actual damage from any delay in performance hereof, it is agreed that Contractor will pay as liquidated damages to the Public Agency the reasonable sum specified in Section 1, the result of the parties' reasonable endeavor to estimate fair average compensation therefor, for each calendar day's delay in finishing said work; and if the same be not paid, Public Agency may, in addition to its other remedies, deduct the same from any money due or to become due Contractor under this contract. If the Public Agency for any cause authorizes or contributes to a delay, suspension of work or extension of time, its duration shall be added to the time allowed for completion, but it shall not be deemed a waiver nor be used to defeat any right of the Agency to damages for non-completion or delay hereunder. Pursuant to Government Code Section 4215, the Contractor shall not be assessed liquidated damages for delay in completion of the work, when such delay was caused by the failure of the Public Agency or the owner of a utility to provide for removal or relocation of existing utility facilities.

SCHEDULE FOR LIQUIDATED DAMAGES (if liquidated damages are applicable on a Job Order)

Job Order Amount	Per Calendar Day
\$1.00 to \$25,000.00	\$235.00
\$25,001.00 to \$100,000.00	\$325.00
\$100,001.00 to \$250,000.00	\$410.00
\$250,001.00 to \$500,000.00	\$525.00
\$500,001.00 to \$1,000,000.00	\$750.00

6. **INTEGRATED DOCUMENTS.** The plans, drawings and specifications or special provisions of the Public Agency's call for bids, and Contractor's accepted bid for this work are hereby incorporated into this contract; and they are intended to cooperate, so that anything exhibited in the plans or drawings and not mentioned in the specifications or special provisions, or vice versa, is to be executed as if exhibited, mentioned and set forth in both, to the true intent and meaning thereof when taken all together; and differences of opinion concerning these shall be finally determined by Public Agency's Agent specified in Section 1.

7. **PAYMENT.** (a) For his strict and literal fulfillment of these promises and conditions, and as full compensation for all this work, the Public Agency shall pay the Contractor the sum specified in Section 1, except that in unit price contracts the payment shall be for finished quantities at unit bid prices.

(b) On or about the first of each calendar month, the Contractor shall be paid for all work done through the 15th of the preceding calendar month, as determined by Public Agency or its Agent, minus 5% thereof pursuant to Public Contract Code Section 9203, but not until defective work and materials have been removed, replaced, and made good.

8. **PAYMENTS WITHHELD.** (a) The Public Agency or its Agent may withhold any payment, or because of later discovered evidence nullify all or any certificate for payment, to such extent and period of time only as may be necessary to protect the Public Agency from loss because of:

- (1) Defective work not remedied, or uncompleted work, or
- (2) Claims filed or reasonable evidence indicating probable filing, or
- (3) Failure to properly pay subcontractors or for material or labor, or
- (4) Reasonable doubt that the work can be completed for the balance then unpaid, or
- (5) Damage to another contractor, or
- (6) Damage to the Public Agency, other than damage due to delays.

(b) The Public Agency shall use reasonable diligence to discover and report to the Contractor, as the work progresses, the materials and labor which are not satisfactory to it, so as to avoid unnecessary trouble or cost to the Contractor in making good any defective work or parts.

(c) 35 calendar days after the Public Agency files its notice of completion of the entire work, it shall issue a certificate to the Contractor and pay the balance of the contract price after deducting all amounts withheld under this contract, provided the Contractor shows that all claims for labor and materials have been paid, no claims have been presented to the Public Agency based on acts or omissions of the Contractor, and no liens or withhold notices have been filed against the work or site, and provided there are not reasonable indications of defective or missing work or of late-recorded notices of liens or claims against Contractor.

9. **INSURANCE.** (Labor Code Sections 1860-61) On signing this contract, Contractor must give Public Agency (1) a certificate of consent to self-insure issued by the Director of Industrial Relations, or (2) a certificate of Workers' Compensation insurance issued by an admitted insurer, or (3) an

exact copy or duplicate thereof certified by the Director or the insurer. Contractor is aware of and complies with Labor Code Section 3700 and the Workers' Compensation Law.

10. **BONDS.** On signing this contract Contractor shall deliver to Public Agency for approval good and sufficient bonds with sureties, in amount(s) specified in the specifications or special provisions, guaranteeing his faithful performance of this contract and his payment for all labor and materials hereunder.

11. **FAILURE TO PERFORM.** If the Contractor at any time refuses or neglects, without fault of the Public Agency or its agent(s), to supply sufficient materials or workers to complete this agreement and work as provided herein, for a period of 10 days or more after written notice thereof by the Public Agency, the Public Agency may furnish same and deduct the reasonable expenses thereof from the contract price.

12. **LAWS APPLY.** General. Both parties recognize the applicability of various federal, state, and local laws and regulations, especially Chapter 1 of Part 7 of Division 2 of the Labor Code (beginning with Section 1720, and including Sections 1735, 1777.5, and 1777.6 forbidding discrimination). The parties specifically stipulate that the relevant penalties and forfeitures provided in the Labor Code, especially in Sections 1775 and 1813 concerning prevailing wages and hours, as well as Section 1776 concerning certified payroll records, shall apply to this agreement . .

13. **SUBCONTRACTORS.** Public Contract Code Sections 4100-4114 are incorporated herein.

14. **WAGE RATES.** (a) Pursuant to Labor Code Section 1773, the Director of the Department of Industrial Relations has ascertained the general prevailing rates of wages per diem, and for holiday and overtime work, in the locality in which this work is to be performed, for each craft, classification, or type of worker needed to execute this contract, and said rates are as specified in the call for bids for this work or are on file with the Public Agency, and are hereby incorporated herein.

(b) This schedule of wages is based on a working day of 8 hours unless otherwise specified; and the daily rate is the hourly rate multiplied by the number of hours constituting the working day. When less than that number of hours are worked, the daily wage rate is proportionately reduced, but the hourly rate remains as stated.

(c) The Contractor, and all his subcontractors, must pay at least these rates to all persons on this work, including all travel, subsistence, and fringe benefit payments provided for by applicable collective bargaining agreements. All skilled labor not listed above must be paid at least the wage scale established by collective bargaining agreement for such labor in the locality where such work is being performed. If it becomes necessary for the Contractor or any subcontractor to employ any person in a craft, classification or type of work (except executive, supervisory, administrative, clerical or other non-manual workers as such) for which no minimum wage rate is specified, the Contractor shall immediately notify the Public Agency which shall promptly determine the prevailing wage rate therefor and furnish the Contractor with the minimum rate based thereon, which shall apply from the time of the initial employment of the person affected and during the continuance of such employment.

15. **HOURS OF LABOR.** Eight hours of labor in one calendar day constitutes a legal day's work, and no worker employed at any time on this work by the Contractor or by any subcontractor shall be required or permitted to work longer thereon except as provided in Labor Code Sections 1810-1815.

16. **APPRENTICES.** Properly indentured apprentices may be employed on this work in accordance with Labor Code Sections 1777.5 and 1777.6, forbidding discrimination.

17. **PREFERENCE FOR MATERIALS.** The Public Agency desires to promote the industries and economy of Contra Costa County, and the Contractor therefore promises to use the products, workers, laborers and mechanics of this County in every case where the price, fitness and quality are equal.

18. **ASSIGNMENT.** The agreement binds the heirs, successors, assigns, and representatives of the Contractor; but he cannot assign it in whole or in part, nor any monies due or to become due under it, without the prior written consent of the Public Agency and the Contractor's surety or sureties, unless they have waived notice of assignment.

19. **NO WAIVER BY PUBLIC AGENCY.** Inspection of the work and/or materials, or approval of work and/or materials inspected, or statement by any officer, agent or employee of the Public Agency indicating the work or any part thereof complies with the requirements of this contract, or acceptance of the whole or any part of said work and/or materials, or payments therefor, or any combination of these acts, shall not relieve the Contractor of his obligation to fulfill this contract as prescribed; nor shall the Public Agency be thereby estopped from bringing any action for damages or enforcement arising from the failure to comply with any of the terms and conditions hereof.

20. **HOLD HARMLESS & INDEMNIFICATION.** (a) Contractor promises to and shall defend, indemnify, save, and hold harmless the indemnitees from the liabilities as defined in this section.

(b) The indemnitees benefitted and protected by this promise are the Public Agency and its elective and appointive boards, commissions, officers, agents, and employees, together with any additional persons and entities, if any, listed in the Supplementary General Conditions (Division G).

(c) The liabilities protected against are any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses, or liabilities arising out of or in connection with the actions defined below for personal injury, sickness, disease, emotional injury, death, property damage (including loss of use), trespass, nuisance, inverse condemnation, patent infringement, or any combination of these, regardless of whether or not such liability, claim, or damage was foreseeable at any time before the Public Agency approved the improvement plans or accepted the improvements as completed, and including the defense of any suit(s) or action(s) at law or equity concerning these.

(d) The actions causing liability are any act or omission (negligent or non-negligent) in connection with the matters covered by this contract and attributable to the Contractor, subcontractor(s), supplier(s), trucker(s), anyone for whose acts the Contractor may be liable, or any officer(s), agent(s) or employee(s) of one or more of them.

(e) The promise and agreement in this section is not conditioned or dependent on whether or not any indemnitee has prepared, supplied, or approved any plan(s), drawing(s), specification(s), or special provision(s) in connection with this work or has insurance or other indemnification covering any of these matters.

(f) Except as prohibited by Civil Code Section 2782, the Contractor's obligations under this section shall exist regardless of the existence or degree of fault of the Public Agency or any indemnitee.

(g) The Contractor's obligations under this section shall extend to claims arising after the work is completed and accepted if the claims are related to alleged acts or omissions that occurred during the course of the work. Public Agency's inspection is not a waiver of full compliance with these requirements.

(h) The Contractor and the Contractor's insurance carrier(s) shall respond within 15 days to the tender of any claim for defense and indemnity by the Public Agency, unless this time has been extended by the Public Agency.

(i) With respect to third-party claims against the Contractor, the Contractor waives all rights of any kind to express or implied indemnity against the indemnitees.

(j) Nothing in this section is intended to establish a standard of care owed to any third party or to extend to any third party the status of a third-party beneficiary.

21. **EXCAVATION.** Contractor shall comply with the provisions of Labor Code Section 6705, if applicable, by submitting to Public Agency a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during trench excavation.

22. **RECORD RETENTION AND AUDITING.** Except for materials and records delivered to Public Agency, Contractor shall maintain and retain, for a period of at least five years after Contractor's receipt of the final payment under this contract, all records relating to this contract or to the work, including without limitation estimates, bids, shop drawings, submittals, subcontracts, personnel and payroll records, job reports and diaries, receipts, invoices, cancelled checks and financial records. Upon request by Public Agency, at no additional charge, Contractor shall promptly make such records available to Public Agency, or to authorized representatives of the state and federal governments, at a convenient location within Contra Costa County designated by Public Agency, and without restriction or limitation on their use.

23. **VENUE.** Any litigation involving this contract or relating to the work shall be brought in Contra Costa County, and Contractor hereby waives the removal provisions of Code of Civil Procedure Section 394.

24. **ENDORSEMENTS.** Contractor shall not in its capacity as a contractor with Contra Costa County publicly endorse or oppose the use of any particular brand name or commercial product without the prior approval of the Board of Supervisors. In its County contractor capacity, Contractor shall not publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely-accepted scientific basis for such claims or without the prior approval of the Board of Supervisors. In its County contractor capacity, Contractor shall not participate or appear in any commercially-produced advertisements designed to promote a particular brand name or commercial product, even if Contractor is not publicly endorsing a product, as long as the Contractor's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of Contra Costa County. Notwithstanding the foregoing, Contractor may express its views on products to other contractors, the Board of Supervisors, County officers, or others who may be authorized by the Board of Supervisors or by law to receive such views.

25. **USE OF PRIVATE PROPERTY.** Contractor shall not use private property for any purpose in connection with the work absent a prior, written agreement with the affected property owner(s).

(CC-1; Rev. 2-07)
(Form approved by County Counsel)