

DOCUMENT 005213

AGREEMENT FORM

THIS AGREEMENT, dated this **12th** day of **November, 2024**, by and between **NG Builders LLC**, whose place of business is located at **1015 Stanislaus Way, Santa Rosa, CA 95401** ("Contractor"), and the COUNTY OF SONOMA, a political subdivision of the State of California ("County"), acting under and by virtue of the authority vested in the County by the laws of the State of California.

WHEREAS, County, by its Board Resolution No. _____ adopted on the **12th** day of **November, 2024** awarded to Contractor the following Contract:

**CONTRACT NUMBER #TBD
PINE MOUNTAIN VAULT REHABILITATION**

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. Notices to County

- 2.1 County has designated **Mike Volatile**, Senior Project Manager, to act as County's Representative(s), 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 engineering, architectural, inspection and general administrative functions, at any time with written 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 All notices or demands to County under the Contract Documents shall be to County's Representative, Mike Volatile at: spi-capital-projects@sonoma-county.org with "PINE MTN. VAULT REHAB" in the subject line of the email message or to such other person(s) and address(es) as County shall provide to Contractor.

Article 3. Contract Time and Liquidated Damages

- 3.1 Contract Time.
Contract Time commences on the date established in Document 005500 (Notice to Proceed). County reserves the right to modify or alter the Commencement Date of the Work. County may give a Notice to Proceed at any time within 60 Days after the Notice of Award. Contractor shall not do any Work at the Site prior to the date on which the Contract Time commences to run.

Contractor shall achieve Substantial Completion of the entire Work within **ONE HUNDRED TWENTY (120)** Days from the date when the Contract Time commences to run as provided in Document 007200 (General Conditions). Contractor shall complete the Work so that a Final Inspection Report can be issued in accordance with Section 017700 (Closeout Procedures) **ONE HUNDRED THIRTY FIVE (135)** Days from the date when the Contract Time commences to run as provided in Document 007200 (General Conditions).

3.2 Liquidated Damages.

County and Contractor recognize that time is of the essence of this Agreement and that County will suffer financial loss (see Paragraph 3.3 below), 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 Article 14 of Document 007200 (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 **Three thousand dollars (\$3,000.00)** for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.
- 3.2.2 **Three thousand dollars (\$3,000.00)** for each Day that expires after the time specified herein for Contractor to achieve Final Inspection Report 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 project administrative (such as Project management and consultant expenses) and cost damages suffered by County as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from County (for example, delay claims of other contractors, subcontractors, tenants, or other third parties), and defense costs thereof.

Article 4. Contract Sum

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

TOTAL CONTRACT SUM	\$394,960.00
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(Amount in Words)

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 003119 (Existing Condition Information), or which may appear in the Drawings. Contractor accepts the determination set forth in these Documents and Document 007200 (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 005213) 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 007200 (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 following Subcontractors pursuant to the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*:

Name of Subcontractor and Location of Mill or Shop	Description of Work: Reference To Bid Items	Subcontractor's License No.
Fogg Construction	Plastering	844981
Smook Electrical	Electrical	1075887
JMS Mechanical	HVAC	811562

5.9 Contractor has designated **Nicholas Gutierrez**, Project Manager, to act as Contractor's Representative(s), who will represent Contractor in performing Contractor's duties and responsibilities and exercising Contractor's rights and authorities in Contract Documents. Contractor has also designated **Nicholas Gutierrez**, Superintendent, to act as Contractor's Superintendent. Contractor may change the individual(s) acting as Contractor's Representative(s), or delegate one or more specific functions to one or more specific Contractor's Representatives, at any time upon prior written notice and approval and without liability to County, but Contractor is limited to two representatives.

Article 6. Contract Documents

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

- Document 005100 Notice of Award
- Document 005213 Agreement Form
- Document 005500 Notice to Proceed
- Document 006113.13 Performance Bond Form
- Document 006113.16 Payment Bond Form
- Document 006400 Affidavit of Release of Liens Form
- Document 006536 Warranty Form
- Document 007200 General Conditions
- Document 007300 Supplementary Conditions
- Document 007316 Insurance Requirements
- Document 007373 Statutory Requirements - Apprenticeship Program
- Document 009113 Addenda
- Division 01 Sections General Requirements
- Volume-2 Sections Technical specification sections
- Volume-3 Drawings Plan set of drawings

6.2 There are no Contract Documents other than those listed in this Document 005213, Article 6. Document 003119 (Existing Condition Information), Document 003126 (Existing Hazardous Materials Information), and the information supplied through these documents, are not Contract Documents. The Contract Documents may only be amended, modified, or supplemented as provided in Document 007200 (General Conditions).

Article 7. Miscellaneous

7.1 Terms and abbreviations used in this Agreement are defined in Document 007200 (General Conditions) and Section 014200 (References) 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 Contract Code §4100 *et seq.*
- 7.4 The Contract Sum includes all allowances (if any).
- 7.5 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with 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.
- 7.6 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at the Facilities Development and Management Division 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.
- 7.7 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).
- 7.8 This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Sonoma, 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 Sonoma County. Both parties hereby waive their rights under California Code of Civil Procedure Section 394 to file a motion to transfer any action or proceeding arising out of the Contract Documents to another venue.
- 7.9 Contractor accepts the claims procedure established by Article 12 of Document 007200 (General Conditions), as established under Section 930.2 of the California Government Code.

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

COUNTY:

Certificates of Insurance and Guaranty are on file with and reviewed as to substance for County by:

CONTRACTOR:

Department Head/Public Infrastructure

[Contractor's name]

Reviewed as to form by County Counsel:

Federal ID # _____

County Counsel

By: _____
[Signature]

Date: _____

Date: _____

[Please print name here]

Title: _____
[If Corporation: Chairman, President, or Vice President]

COUNTY OF SONOMA
A Political Subdivision of the State of California

Chair, Board of Supervisors

By: _____
[Signature]

Date: _____

Date: _____

[Please print name here]

Attest:

Clerk of the Board of Supervisors

Title: _____
[If Corporation: Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer]

END OF DOCUMENT