

AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement is made as of August 22, 2017 between the County of Solano, a political subdivision of the State of California, (referred to as 'Owner') and the Contractor: Solano County Roofing, Inc. for the following project:

The Project: NUT TREE AIRPORT –
 HANGAR A ROOF REHABILITATION PROJECT

The Owner and the Contractor agree as set forth below.

ARTICLE 1 **THE CONTRACT DOCUMENTS**

The Contract documents consist of this Agreement, the Notice to Bidders, Plans, Specifications, and Contractor's Bid Submittal which documents are incorporated into and made a part of this Agreement

ARTICLE 2 **THE WORK**

The Contractor shall perform all the Work required by the Contract Documents for the Project

ARTICLE 3 **TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

The Work to be performed under this Contract shall commence upon issuance of the Notice to Proceed is issued to the Contractor, and shall be carried out and completed according to the schedule set forth in the Specifications and Scope of Work.

ARTICLE 4 **CONTRACT SUM**

The County shall pay the Contractor for the performance of the Work, subject to additions and deductions by Change Order or as otherwise provided in the Contract Documents, the Sum of the Bid for a Contract Sum of \$81,700.

ARTICLE 5 **PROGRESS PAYMENTS**

Based upon Applications for Payment submitted to the Project Manager by the Contractor and Project Certificates for Payment issued by the Project Manager, the County shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents as follows:

Progress Payments: The Contractor shall on or before the first day of each month, make an estimate of the work performed during the preceding month and submit same to the Project Manager for checking and approval. On or about the 20th day of the month following the month in which the work was performed, the County shall pay to the Contractor ninety five (95%) percent of the value of said work in place, as checked and

approved by the Project Manager. The balance of five (5%) percent of the estimate shall be retained by the County until the time of final acceptance of said work.

The remaining retention would be held until 35 days after the Notice of Completion is filed with the Solano County Recorder's Office if the following requirements have been met:

1. The Contractor shall be seventy-five (75%) percent complete with the Work, not including stored materials.
2. The Work shall be on schedule.
3. The Contractor shall be maintaining a good practice of schedule and quality control as determined by the Project Manager.
4. Proof of payment to all sub-Contractors shall be provided to the County in the form of unconditional lien release upon progress payment prior to the following application.
5. There are no claims, pending or anticipated.
6. County is satisfied with Contractor's performance and with the Work completed up to, and including, the time of request for reduction in retention.

ARTICLE 6 **FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the County to the Contractor when the Work has been completed, the Contract fully performed, the Project Manager has issued a Project Certificate for Payment which approves the final payment due the Contractor, Board of Supervisors of Solano County has formally accepted the project as complete by Resolution and Notice of Completion filed by the County Recorder's Office.

ARTICLE 7 **INSURANCE, BONDS, AND INDEMNIFICATION**

7.1 Insurance.

- a. Contractor shall not commence work under this Contract until all insurance has been obtained that is required under this section and such insurance has been verified by the County, nor shall Contractor allow any Subcontractor to commence work on its Contract until all similar insurance required of the Subcontractor has been so obtained and approved. Contractor shall furnish the County with a copy of each required certificate of insurance, as provided below. Contractor shall have the following insurance coverage:

- b. Workers' Compensation Insurance and Employer's Liability Insurance.

Contractor shall maintain during the life of the Contract, Workers' Compensation Insurance and Employer's Liability Insurance for all of its employees employed on the project as described herein. Said insurance shall comply with the following:

- i. Workers' Compensation Insurance in compliance with the laws of the State of California and any applicable federal statutes.
- ii. Employers liability insurance of not less than one million dollars (\$1,000,000) each accident and one million dollars (\$1,000,000) each employee.

In signing the Contract, Contractor shall make the following certification, required by Section 1861 of the Labor Law: "I am 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 I will comply with such provisions before commencing the performance of the work of this contract."

- c. Automobile and General Liability. Contractor shall have throughout the term of this Contract, policies of liability insurance covering automobile and general liability as follows:

- i. Owned/non-owned and hired automobile liability insurance with primary limits for bodily injury and property damage liability of not less than one million dollars (\$1,000,000) per accident. Umbrella and/or excess liability limits of not less than five million (\$5,000,000) per accident.
- ii. Commercial general liability and/or umbrella excess liability insurance providing coverage on an occurrence basis and with limits of not less than five million (\$5,000,000) each occurrence and annual aggregate for bodily injury and property damage liability combined including:
 - 1) Premises and operations liability coverage;
 - 2) Owner's and Contractor's protective liability coverage;
 - 3) Broad form property damage liability coverage including completed operations;
 - 4) Blanket contractual liability coverage;
 - 5) Deletion of any limitations relating to liability arising out of explosion, collapse or underground hazards;
 - 6) Personal and advertising injury liability coverage;
 - 7) For excavation and foundations, deletion of any limitation on coverage for bodily injury or property damage arising out of subsidence of soil or earth movement; and
 - 8) For demolition and/or hazardous materials removal, deletion of any limitation regarding asbestos and/or lead risk exposure.
 - 9) An endorsement specifying that policy aggregate limits apply separately to the project covered by this contract;

- 10) Errors & Omissions
- 11) Products and Completed Operations including five (5) year extension endorsement
- 12) Occurrence Definition to include "Assault and battery committed by, at the direction of or on behalf of any insured for the purpose of protecting the person or property of any insured or of others shall be deemed to be an occurrence."
- 13) Extended Personal Injury definition to include alienation of affections, discrimination, or humiliation.
- 14) Bodily Injury Definition to include mental anguish, shock, mental injury, humiliation, sickness, or disease sustained by a person, including death resulting from any of these at any time.
- 15) Exclusion Property Damage to the Insured's Work to read: "Property damage" to that particular part of "your work" that is defective or actively malfunctions. This exclusion applies only to the "products-completed operation" hazard. It does not apply if the damaged work or the work out of which the damage arises was performed on Contractor's behalf by a subcontractor.
- 16) Contractual Liability – Municipal Work: The phrase "any other contract or agreement pertaining to your business," as included in the definition of an insured contract, includes an indemnification of a municipality required by ordinance and in connection with work performed for the municipality.
- 17) Professional Liability Insurance. Upon execution of this contract, Contractor shall obtain professional liability insurance with limits of at least five million dollars (\$5,000,000) per claim and aggregate which shall cover claims resulting from professional errors and omissions of Contractor and any of its consultants in connection with the work provided such claims arise during the period commencing upon the preparation of the construction documents and ending five (5) years following Final completion. Such insurance shall be in form reasonably acceptable to the County's Risk Manager.
- 18) Subcontractor Insurance. Contractor shall cause all subcontractors engaged to perform work required of Contractor pursuant to this Contract to have Workers' Compensation, Commercial General Liability/Umbrella and/or Excess Liability, and Automobile Insurance in a form and amount deemed appropriate by the Contractor for work performed under this Contract.

7.2 Indemnification.

- a. The Contractor will indemnify and defend the County of Solano and its respective officers, elective and appointive Board, employees and consultants against all loss, expense (including, but not limited to, attorneys' fees and court costs), damage, injury, liability, causes of action or claims of any kind or character (collectively "claims" and individually a "claim"), provided that such claim or claims is/are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself for claims not covered by insurance which is required under this Agreement) including loss of use resulting there from (except loss of use attributable to a claim otherwise insured as provided under this Agreement), in any way arising out of this Agreement or the Work, including but not limited to the acts or omissions of the Contractor, its partners, officers, directors, employees, agents, licensees, invitees, consultants, vendors, or subcontractors of any tier (collectively the "Contractor"). Such indemnification shall include, but not be limited to any claim arising from or caused by:
 - (i) any defect in the construction documents, or the design or construction of or materials used in the Work or in any machine, equipment, appliance, or other item of personal property installed or located therein;
 - (ii) any defect in the preparation of soils or in the design and accomplishment of grading;
 - (iii) any violation or alleged violation by any member of the Contractor of any law existing as of the date of this Agreement or hereafter enacted (provided that with respect to laws enacted after the date of the Design Build Agreement, the Contractor may be entitled to an adjustment in the Contract Sum and/or Contract Time as provided in the Design Build Agreement);
 - (iv) any negligent acts or omissions or other tortious conduct of the Contractor or any member of the Contractor;
 - (v) any accident on the job site or other casualty thereon;
 - (vi) any other cause whatsoever in connection with the Contractor's use of or activities on the job site or the Contractor's performance under this Agreement; and/or
 - (vii) the inaccuracy or incorrectness of any representation or warranty of the Contractor to the County of Solano under this Agreement. Notwithstanding the foregoing, the obligations of the Contractor in this paragraph are intended to apply only to third party claims arising out of the Agreement or the Work, and not to property damage to the County of Solano, which damage is treated elsewhere in this Agreement.
- b. Neither the County of Solano and its respective officers, elective and appointive Board, employees and consultants shall be liable for any loss or damage that may happen to the Work, or any part of it; nor to any of the materials or other items used

or employed in performing the Work; nor for injury to any person or persons, either workers or the public, for damage to property from any cause which might have been prevented by the Contractor, or the Contractor's employees or agents, against all of which injuries or damages the Contractor must properly guard.

- c. The Contractor shall indemnify and hold harmless the County of Solano and its respective officers, elective and appointive Board, employees and consultants, from all suits, actions or claims brought for, or on account of injuries or damages received or sustained by any person or persons, by or from the Contractor, the Contractor's employees or agents, in construction of the Work, or by or in consequence of the Contractor's failure to properly guard the same, or by or as a result of any act or omission of the Contractor, the Contractor's employees or agents.
- d. The Contractor's obligations as described above shall apply only if the Contractor is at fault or negligent (partly or wholly) on its part or on the part of the indemnified parties to the extent allowed by law. Said obligations shall not apply to injury, death, or damage to property to the extent arising from the negligence or the willful misconduct of said indemnified party or its officers, agents, servants, or independent Contractors who are directly responsible to the indemnified party, or for defects of design furnished by such persons but provided further that the foregoing limitations shall not apply to the extent reimbursable through any insurance required by this Agreement.
- e. These obligations of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right of indemnity or any other rights to which the County of Solano would otherwise be entitled.
- f. The Contractor shall cause all subcontracts to include the indemnification and hold harmless requirements set forth in this Article, in a form satisfactory to the County of Solano.

7.3 No Personal Liability.

No officer, elective and appointive Board member, employee, or consultant of the County of Solano will be personally responsible for liabilities arising under this Design Build Agreement.

7.4 Performance Bond and Payment Bonds.

- 7.4.1 The Contractor shall furnish to the County of Solano, prior to the awarding of any contract, a surety bond in favor of the County of Solano in the amount of not less than one hundred (100%) of the Contract Amount, to guarantee faithful performance of Contract and a payment bond, each in the form attached to the Bid Agreement. Bond shall guarantee repair or replacement of deficient, defective or faulty materials and workmanship for a period of one year following completion of the project unless otherwise required in the Contract Documents. The Bond shall be issued by a California admitted surety with a rating classification of "A XII" or better according to Best's Rating Service.
- 7.4.2 The County of Solano acknowledges that any faithful performance and payments bonds provided by the Contractor shall not apply to errors or omissions in the

furnishing of professional services in connection with architecture or engineering services provided by the Contractor or its consultants. The County of Solano waives and releases all claims against such sureties arising out of or relating to such professional errors and omissions; such release, however, does not apply to a failure to provide professional services where required under the Contract, and the performance bonds shall include the costs of such services. Professional Liability insurance shall be primary insurance in settling claims related to Errors and Omissions.

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 Notices shall be addressed as follow:

OWNER: Solano County-Nut Tree Airport
301 County Airport Road, Suite 205
Vacaville, CA 95688

CONTRACTOR: Solano County Roofing
4349 Cordelia Road
Fairfield, CA 94534

8.2 Prevailing Wages. The Contractor agrees that State Prevailing Wages apply to this Project and that the Contractor will pay the rates for each trade or craft and shall require the subcontractors on the project to pay the rates for each trade and craft. The Contractor agrees to repay the County any and all amounts paid to any subcontractor in violation of Public Contract Code Section 6109

ARTICLE 9
EXECUTION OF AGREEMENT

The parties have executed this Agreement as of the day and year first above written.

County:

By: Bryan E. Munro

Contractor: SOLANO COUNTY ROOFING

By: R JAY ALMSTROM

APPROVED AS TO FORM:

County Counsel of Solano County, California

By: Bernadette Curry-Peyman