

AGREEMENT
Division 005000

THIS AGREEMENT is made by and between the COUNTY OF MONTEREY, a political subdivision of the State of California, hereinafter called "COUNTY," and AUSONIO INCORPORATED, hereinafter called "CONTRACTOR." For reference purposes, the date of this Agreement is the date it is executed by the Public Works Director.

THE COUNTY AND CONTRACTOR hereby agree as follows:

ARTICLE 1 SCOPE OF WORK

CONTRACTOR shall, within the time stipulated, perform the contract as herein defined and shall furnish all work, labor, equipment, transportation, material, and services to construct and complete in a good, expeditious, workmanlike, and substantial manner, the project:

SCHILLING PLACE TENANT IMPROVEMENTS, PROJECT NO. 8862, BID NO. 10569.

All work shall be completed in strict conformance with the plans, specifications, and working details prepared by ARCHITECT, and the provisions of the documents listed in Article 6 below, and to the satisfaction of COUNTY.

ARTICLE 2 TIME FOR START AND FINAL COMPLETION

CONTRACTOR shall commence the work on the starting date established in the Notice to Proceed. The CONTRACTOR shall achieve Final Completion of the entire Work no later than One Hundred Forty-Five, (145) days from the date of commencement.

Additionally, CONTRACTOR shall coordinate their work with all other contractors whose work is affected by the scope of work defined in this Agreement. CONTRACTOR expressly agrees to provide appropriate labor, hours, rates, materials, and equipment in response to adjustments in the Project Schedule made by the Monterey County Director of Public Works or his/her designee during the course of the project in order to maintain the required progress.

ARTICLE 3 CONTRACT PRICE

County shall pay CONTRACTOR as full consideration for the performance of the contract, subject to any additions or deductions as provided in the contract documents, the Stipulated Sum of (*written amount*):

TEN MILLION, TWO HUNDRED SEVENTY THOUSAND, NINE HUNDRED AND SEVENTY-FIVE DOLLARS.,

(*numerical \$ amount*): \$ **10,270,975.00.**

The Stipulated Sum is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by County:

ADDITIVE ALTERNATES #1, #2, AND #3.

Unit prices, if any: **NOT APPLICABLE**

(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable)

Item	Units and Limitations	Price per Unit (\$0.00)
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Allowances included in the Stipulated Sum, if any: **NOT APPLICABLE**

(Identify allowances and state exclusions, if any, from the allowance price)

Item	Allowance
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Allowance Work will be authorized by County in writing, following change order procedures to determine cost, supporting documentation and authorization to proceed. Unused allowance amounts at Contract completion shall reduce the Contract Sum accordingly.

ARTICLE 4 LIQUIDATED DAMAGES

THE PARTIES AGREE THAT IN CASE ALL THE WORK CALLED FOR UNDER THE CONTRACT IN ALL PARTS AND REQUIREMENTS IS NOT COMPLETED WITHIN THE TIME SPECIFIED IN THE CONTRACT DOCUMENTS, DAMAGE WILL BE SUSTAINED BY COUNTY, AND THAT IT IS AND WILL BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO DETERMINE THE ACTUAL DAMAGE WHICH COUNTY WILL THEREBY SUSTAIN. THE PARTIES THEREFORE AGREE THAT CONTRACTOR WILL PAY TO COUNTY THE SUM SET FORTH IN THE SUPPLEMENTARY CONDITIONS, IF ANY, FOR EACH CALENDAR DAY OF DELAY UNTIL THE WORK IS COMPLETED AND ACCEPTED. CONTRACTOR AND HIS SURETY SHALL BE LIABLE FOR THE TOTAL AMOUNT THEREOF. CONTRACTOR AGREES TO PAY SAID LIQUIDATED DAMAGES ESTABLISHED HEREIN, AND FURTHER AGREES THAT COUNTY MAY DEDUCT THE AMOUNT THEREOF FROM ANY MONIES DUE OR THAT MAY BECOME DUE CONTRACTOR UNDER THE CONTRACT.

ARTICLE 5 NOTIFICATION OF THIRD-PARTY CLAIMS

COUNTY shall notify CONTRACTOR of the receipt of any third-party claim relating to the contract and is entitled to recover its reasonable costs incurred in providing the notification as provided in Public Contract Code Section 9201.

ARTICLE 6 COMPONENT PARTS OF THIS CONTRACT

The contract entered into by this Agreement consists of the following documents, all of which are component parts of the contract as if herein set out in full or attached hereto:

- Notice to Bidders
- Instructions to Bidders
- Bid, as accepted
- List of Subcontractors
- Noncollusion Declaration
- Workers' Compensation Certificate
- Iran Contracting Act Certification
- Contractor's Certification of Good-Faith Effort to Employ Monterey Bay Area Residents
- Written Plan to Recruit Monterey Bay Area Residents, when applicable
- Bid Bond or Bidder's Security
- Bidders Certifications
- Agreement
- Performance Bond
- Payment Bond
- Insurance Certificate
- Division 007100 General Conditions, Bid No. 10569
- Division 007300 Supplementary Conditions, Bid No. 10569
- Specifications and Drawings as Prepared by ARCHITECT (*refer to Volume Two and Three of Three attached to this Agreement that lists Section, Title, Date and Pages for Specifications; Number, Title and Date for Drawings.*)
- Appendices:
 - A - List of Drawings*
 - B - Preliminary Project Milestone Schedule*
 - C - Asbestos Survey Report*
 - D - Lead Containing Ceramic Report*
 - E - Fungal Assessment Report*
 - F - Exhibit "007200-1" Owner Controlled Insurance Program" Minimum Insurance Requirements; (N/A)*
 - G - Exhibit "0007200-2" Contractor Controlled Insurance Program" Minimum Insurance Requirements; (N/A)*
 - H - 007201 Owner Controlled Insurance Program (OCIP) Insurance Procedure Manual (if applicable) (N/A)*
 - I - 007202 Owner Controlled Insurance Program (OCIP) Safety Standards Manual (if applicable)(N/A)*
 - J - Monterey County Telecommunications Cabling and Pathway Systems*
 - K - Geotechnical Engineering Services Report*
- As issued, Project Addenda Nos: 1 & 2

All of the above-named contract documents are intended to be complementary. Work required by one of the above-named contract documents and not by others shall be done as if required by all.

IN WITNESS WHEREOF, the parties have duly executed four (4) identical counterparts of this instrument, each of which shall be for all purposes deemed an original thereof, on the dates set forth below.

ARTICLE 7 - NOTICES

All notices to CONTRACTOR and COUNTY (including requests, demands, approvals or other communications other than ordinary course Project communications) in connection with the Project shall be in writing and shall include the word "NOTICE" in the subject line and shall be directed as follows.

County of Monterey

RMA - Department of Public Works
Atten: Judy Jeska
168 West Alisal – 2nd Floor
Salinas, CA 93901-2438

with a copy to:

Ausonio Incorporated
Atten: Andrew P. Ausonio
11420 A Commercial Parkway
Castroville, CA 950112

- A. Notice shall be sufficiently given for all purposes as follows:
- a. When personally delivered to the recipient, notice is effective on delivery.
 - b. When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
 - c. When delivered by reputable delivery service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
 - d. Notice by facsimile or electronic mail shall not be allowed or constitute "Notice" under this paragraph.
- B. Any correctly-addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.
- C. Either party may, by written notice given at any time or from time to time require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address, by giving the other party notice of the change in any manner permitted by this paragraph.
- D. The provisions of this paragraph shall not alter, modify or excuse any legal or contractual requirement relating to claims under Division 00 7100 (General Conditions).

ARTICLE 8 – OTHER PROVISIONS

- A. In order to induce COUNTY to enter into this Agreement, CONTRACTOR represents that it is duly organized, existing and in good standing under applicable state law; is licensed to perform all aspects of the Work; will employ only persons and subcontractors and designers with all required licenses and certifications; that CONTRACTOR is duly qualified to conduct business in the State of California; that CONTRACTOR has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein; and that the Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on CONTRACTOR.
- B. CONTRACTOR shall not assign any portion of the Contract Documents.

- C. 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).
- D. 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 COUNTY is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- E. In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, CONTRACTOR or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time COUNTY tenders final payment to CONTRACTOR, without further acknowledgment by the parties.
- F. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at COUNTY's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code §§ 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every CONTRACTOR will be required to secure the payment of compensation to his employees. 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.
- G. COUNTY shall have the right to review all phases of CONTRACTOR's design of deferred submittals including, but not limited to, drawings, specifications, shop drawings, samples and submittals, as specified in the Contract Documents. Such review and other action shall not relieve CONTRACTOR of its responsibility for a complete design of deferred submittals complying with the requirements of the Contract Documents; but rather, such review shall be in furtherance of COUNTY's monitoring and accepting the design of deferred submittals as developed and issued by the CONTRACTOR, consistent with these Contract Documents. CONTRACTOR's responsibility to design deferred submittals and construct the Project in conformance with the Contract Documents shall be absolute.

H. This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Monterey, 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 for the County of Monterey.

COUNTY OF MONTEREY

By: _____

Name: Benny J. Young

Title: Interim Director of Public Works

Date: June , 2016

APPROVED AS TO FORM

CONTRACTS/PURCHASING

By: Deputy Purchasing Agent _____

Name: Mike Derr

Title: Contracts/Purchasing Officer / *Supervisor*

Date: *May 18,* June , 2016

APPROVED AS TO FORM & LEGALITY

COUNTY COUNSEL

By: Mary Grace Perry _____

Name: Mary Grace Perry

Title: Deputy County Counsel

Date: *May 17,* June , 2016

APPROVED AS TO FISCAL TERMS

COUNTY AUDITOR-CONTROLLER

By: Gary Giboney _____

Name: Gary Giboney

Title: Chief Deputy Auditor-Controller

Date: *May 18,* June , 2016

APPROVED AS TO INDEMNITY/
INSURANCE LANGUAGE

RISK MANAGEMENT
COUNTY OF MONTEREY

By: Steven F. Mauck _____

Name: Steven F. Mauck

Title: Risk Manager *Stephen Schumaker*

Date: *May 17,* June , 2016

CONTRACTOR: AUSONIO INCORPORATED

By: _____

Principal Name: Andrew P. Ausonio

Title: President/Secretary

Date: *May 9,* 2016

By: _____

Principal Name2: Ignacio Cabatu

Title: Vice President

Date: *May 9,* 2016

COMPANY ADDRESS:

11420 A Commercial Parkway

Castroville, CA 95012

Contractor's License Type: B & A

License Number: 682308

License Expiration Date: 3/31/2018

NOTE: CONTRACTORS ARE REQUIRED TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD/P O BOX 26000/ SACRAMENTO CA 95826

INSTRUCTIONS: If bidder is a corporation, the full legal name of the corporation shall be set forth above together with the signatures of authorized officers or agents and the document shall bear the corporate seal; if bidder is a partnership, the full name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if bidder is an individual, his signature shall be placed above.