

**AGREEMENT
(Design-Build)**

THIS AGREEMENT, dated this _____ day of _____, 2015 by and between T.B. Penick & Sons, Inc., whose place of business is located: 15435 Innovation Drive, San Diego, CA 92128 ("Design-Build Entity"), and San Mateo County ("Owner"), acting under and by virtue of the authority vested in Owner by the laws of the State of California.

COUNTY OF SAN MATEO PROJECT NO. PC008

SKYLONDA FIRE STATION NO. 58 REPLACEMENT PROJECT

WHEREAS, upon receipt of approval of Owner's contract award to Design-Build Entity from the County Board of Supervisors, Owner's conditional award of the Contract will become unconditional.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Design-Build Entity and Owner agree as follows:

ARTICLE 1 - SCOPE OF WORK OF THE CONTRACT

1.01 Work of the Contract

- A. Design-Build Entity hereby agrees to serve as the stipulated sum Design-Build Entity for the Project identified herein, inclusive of complete planning, design and engineering services, construction management services, complete permitted plan sets, construction services, completion and commissioning services, and turnover of a complete, functional and legally operable Project, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents ("Work").
- B. Without limiting the foregoing, Work specifically includes the following Enhancements:
 - 1. Additive Enhancements: \$0 (Exhibit A in Schedule 1-A)
 - 2. Voluntary Enhancements: \$127,500 (Exhibit B1-27 in Schedule 1-B, Document 00 4200 of T.B. Penick & Sons, Inc. Proposal dated September 9, 2015)

1.02 Price for Completion of the Work

- A. Owner shall pay Design-Build Entity the following Contract Sum of six million two hundred forty-nine thousand nine hundred and ninety-nine dollars (\$6,249,999.00) for completion of Work in accordance with Contract Documents (including Additive and Voluntary Enhancements identified in paragraph 1.01B above).

1.03 Allowances

- A. Contract Sum includes the following allowances (see Section 01 01 1100 para. 1.4A.1 and 1.4A.2)
 - 1. Not Used
- B. See also Section 01 2100 Allowances.

- C. Allowance Work will be authorized by Owner 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 2 - COMMENCEMENT AND COMPLETION OF WORK

2.01 Commencement of Work

- A. Design-Build Entity shall commence Work on **November 4, 2015**
- B. Owner reserves the right to modify or alter the Commencement Date.

2.02 Completion of Work

- A. Design-Build Entity shall achieve Final Completion of the entire Work no later than March 9, 2017.

2.03 Design and Construction Milestones

- A. Design-Build Entity shall also complete design and construction of the Project consistent with the following milestones.
 - 1. Certificate of Beneficial Occupancy of entire Project: Recorded by March 9, 2017.

2.04 Liquidated Damage Amounts

- A. Owner and Design-Build Entity recognize that time is of the essence of this Agreement and that Owner will suffer financial loss, if the Work is not completed within the time specified herein, taking into account any extensions thereof allowed in accordance with the Contract Documents.
- B. Consistent with terms, conditions, stipulations and limitations in Document 00 7253 (General Conditions) regarding liquidated damages, Design-Build Entity and Owner 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 Owner because of a delay in completion of the Work. Accordingly, in the event of delay in completion of the Work, or any applicable portion, Owner and Design-Build Entity agree that Design-Build Entity shall pay Owner as liquidated damages the number of Dollars provided below:
 - 1. As liquidated damages for delay, Design-Build Entity shall pay Owner fifteen-hundred dollars (\$1,500) for each day that expires after the time specified herein for Design-Build Entity to achieve the Final Completion of the entire Work (paragraph 2.02A above), until achieved.

2.05 Scope of Liquidated Damages

- A. Measures of liquidated damages shall apply cumulatively.
- B. Limitations and stipulations regarding liquidated damages are set forth in Document 00 7253 (General Conditions).

ARTICLE 3 - PROJECT REPRESENTATIVES AND STAFFING

3.01 Owner's Project Administrator

- A. Owner has designated the Director of Public Works as its Project Administrator to act as Owner's Representative in those matters relating to the Contract Documents that do not require Board of Supervisors approval.
- B. To the extent Board of Supervisors approval is not required, Project Administrator shall have authority over various matters pertaining to the Contract Documents and shall have sole authority to modify the Contract Documents on behalf of Owner, to accept work, and to make decisions or actions binding on Owner, and shall have sole signature authority on behalf of Owner. By this clause, Project Administrator is not assigned any rights or obligations that require Board of Supervisors approval.
- C. Owner may assign all or part of the Project Administrator's rights, responsibilities and duties to a Construction Manager, or other Owner Representative.
- D. Exceptions to the foregoing Article 3.01 shall be in accordance with Public Contract Code 20142 in which case authority has been delegated to its Deputy Director of Public Works.

3.02 Design-Build Entity's Project Manager and Key Personnel

- A. Design-Build Entity has designated **Owen Bingham** as its Project Manager / Project Executive to act as Design-Build Entity'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.~~ Design-Build Entity's Project Executive shall be the single point of contact for all Project communications between Owner and Design-Build Entity, and shall be responsible for distributing all communications from Owner and Owner's consultants (including without limitation from Bridging Architect or Construction Manager on Owner's behalf) to Design-Build Entity's Superintendent and others as Design-Build Entity deems appropriate.
- B. Design-Build Entity's Proposal lists the key personnel identified on Attachment 2 Design-Build Entity intends to provide to the Project to perform its design, construction and obligations under the Contract Documents, and their anticipated start times, anticipated duration of commitment to work on the Project, and for each duration percentage of commitment to work on the Project (together, "Key Personnel"). Design-Build Entity 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 Design-Build Entity shall maintain such staff or similar staff having all necessary licenses, certifications, experience and skills necessary to perform all obligations of the Contract Documents

Design-Build Entity may not change the identity of its Project Executive or any other Key Personnel without prior Owner written approval, which approval shall not be unreasonably withheld, provided such replacement has similar or greater experience and qualifications.

- C. Design-Build Entity acknowledges that the quality and qualifications of the Key Personnel were important factors in Owner's selection of Design-Build Entity for the Project. Design-Build Entity and Owner agree that the personal services of the Key Personnel is a material term of the Contract Documents, and substitution or removal or change in role or level of effort, of such Key Personnel would result in damages to the Owner, the measure of which would be impractical or extremely difficult to fix, and in lieu of which Owner and Design-Build Entity have agreed to liquidated damages as described below:
 - 1. For any substitution of any Key Personnel individual before the end of the individual's Project commitment period provided in Design-Build Entity's Key Personnel staffing schedule, Owner may assess once and Design-Build Entity shall accept liquidated

damages in the amount of six (6) times the gross monthly salary for the substituted Key Personnel.

- D. Liquidated damages for substitution of Key Personnel shall be deducted from the next applicable Application for Payment or, if insufficient, shall be paid by Design-Build Entity.
- E. No liquidated damages shall under be due under this paragraph 3.02 for any substitution required due to death, incapacity or employment termination of a Key Personnel.

3.03 Bridging Architect

- A. MWA Architects furnished the Bridging Documents (Performance Criteria and Concept Drawings) and shall have the rights assigned to Bridging Architect in the Contract Documents.

3.04 Construction Manager

- A. Owner intends to delegate certain of its Project Administrator's rights to Owner's Construction Manager and may delegate further rights with notice to Design-Build Entity.

ARTICLE 4 - CONTRACT DOCUMENTS

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

Document 00 4200	Proposal Form, attached hereto
Document 00 4316	Bond Accompanying Proposal
Document 00 4330	Subcontractors List and all amendments thereto, as set forth in Public Contract Code Section 20133
Document 00 5050	Notice of Recommendation to the Board of Supervisors by the Evaluation Committee
Document 00 5100	Notice of Conditional Award
Document 00 5200	Agreement
Document 00 5201	Bridging Documents & Annex 1
Document 00 5500	Notice to Proceed with Design
Document 00 5501	Notice to Proceed with Construction
Document 00 6113.13	Construction Performance Bond
Document 00 6113.16	Construction Labor And Material Payment Bond
Document 00 6530	Agreement and Release of Any And All Claims
Document 00 6325	Substitution Request Form
Document 00 6536	Guaranty
Document 00 7253	General Conditions
Document 00 7316	Supplementary Conditions – Insurance and Indemnification
Document 00 7380	Apprenticeship Programs
Document 00 9311	Addenda

Division 01 Sections identified in Document 00 0110 Table of Contents

Design-Build Entity's Proposal for San Mateo County date: September 9, 2015.

Final Construction Documents (following receipt of all approvals required by other Contract Documents), whether included in the final 00 0115 (Lists of Bridging Documents and Construction Documents) provided by Design-Build Entity in accordance with Section 01 1101 (Summary of Work – Design-Build Design Services) paragraph 2.02, Document 00 4330 (Subcontractors List) or otherwise.

RFP Addendum 1; Dated August 24, 2015

- 4.02** There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified or supplemented as provided in Document 00 7253 (General Conditions).

ARTICLE 5 - MISCELLANEOUS

- 5.01** Terms and abbreviations used in this Agreement are defined in Document 00 7253 (General Conditions) and Section 01 4200 (References and Definitions) and will have the meaning indicated therein. Prior to executing this Agreement, Design-Build Entity has performed all required pre-construction investigations required and described in the Contract Documents.

- 5.02** Design-Build Entity shall include the following Owner addressees on all ordinary course Project communications:

Theresa Yee, Capital Projects Manager
County of San Mateo Department of Public Works
555 County Center, Fifth Floor
Redwood City, CA 94063

- 5.03** In addition to the above, all notices to Design-Build Entity and the other party (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.

San Mateo County

Jim Porter, Director
County of San Mateo Department of Public Works
555 County Center, Fifth Floor
Redwood City, CA 94063

T.B. Penick & Sons, Inc.

Owen Bingham, Project Executive
T.B. Penick & Sons, Inc.
15435 Innovation Drive
San Diego CA 92128

with a copy to:

Doug Koenig, Deputy Director
County of San Mateo Department of Public Works
555 County Center, Fifth Floor
Redwood City, CA 94063

- A. Notice shall be sufficiently given for all purposes as follows:

1. When personally delivered to the recipient, notice is effective on delivery.
2. When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
3. 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.
4. Notice by facsimile or electronic mail shall not be allowed or constitute "Notice" under this paragraph 5.03.

- 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 5.03.
 - D. The provisions of this paragraph 5.03 shall not alter, modify or excuse any legal or contractual requirement relating to claims under Document 00 7253 (General Conditions) Article 12.
- 5.04** In order to induce Owner to enter into this Agreement, Design-Build Entity 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 Design-Build Entity is duly qualified to conduct business in the State of California; that Design-Build Entity 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 Design-Build Entity.
- 5.05** Design-Build Entity shall not assign any portion of the Contract Documents.
- 5.06** 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).
- 5.07** It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of Owner or acting as an employee, agent, or representative of Owner, 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 Owner is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 5.08** In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Design-Build Entity 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 Owner tenders final payment to Design-Build Entity, without further acknowledgment by the parties.
- 5.09** 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 Owner'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 Design-Build Entity will be required to secure the payment of compensation to his employees. Design-Build Entity 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 Design-Build Entity shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

- 5.010** Owner shall have the right to review all phases of Design-Build Entity's design 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 Design-Build Entity of its responsibility for a complete design complying with the requirements of the Contract Documents; but rather, such review shall be in furtherance of Owner's monitoring and accepting the design as developed and issued by the Design-Build Entity, consistent with these Contract Documents. Design-Build Entity's responsibility to design and construct the Project in conformance with the Contract Documents shall be absolute.
- 5.11** This Agreement and the Contract Documents shall be deemed to have been entered into in the City of Redwood City, County of San Mateo, 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 San Mateo County.

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

**RECOMMENDED AND APPROVED
AS TO CONTENT:**

**SAN MATEO
BOARD OF SUPERVISORS**

By _____

By _____
President

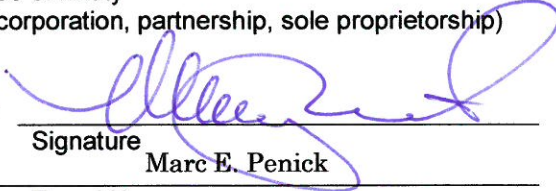
APPROVED AS TO FORM:

OFFICE OF THE COUNTY COUNSEL

DESIGN-BUILD ENTITY

T.B. Penick & Sons, Inc.

Type of Entity
(corporation, partnership, sole proprietorship)

By 
Signature Marc E. Penick

Typed Name
Chief Executive Officer

Title of Individual Executing
Document of behalf of Firm

By 
Signature Owen Bingham

Typed Name
Project Executive

Title of Individual Executing
Document of behalf of Firm

END OF DOCUMENT

KEY PERSONNEL
(See Agreement 3.02)

Position	Name	Start times, anticipated durations, and for each duration percentage of commitment to work on the Project
Design Principal	Marc Penick	
Project Executive	Owen Bingham	
General Contractor Principal	Owen Bingham	
DBE Project Director	Owen Bingham	
Design Project Manager	Anthony Damon	
Architect of Record	Jeff Katz	
Design Architect	Jeff Katz	
Project Architect	Nancie Constandse	
Project Manager	John Tiersma	
Design Manager	(role deleted per RFQ Addm #3)	
General Superintendent	Julian Moen	
MEP Superintendent	Al Berry	
Quality Control Manager	(role deleted per RFQ Addm #3)	
Project Controls Manager	(role deleted per RFQ Addm #3)	
Safety Manager	(role deleted per RFQ Addm #3)	