

**AGREEMENT FOR CONSULTANT SERVICES
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
LENDERS CONSTRUCTION SERVICES, LLC
PROJECT NAME: JUVENILE HALL REPLACEMENT FACILITY CONSTRUCTION
PROJECT
PROJECT NUMBER: 170212**

This Agreement, entered into this 6 day of October, 2015, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Lenders Construction Services, LLC, a limited liability corporation, hereinafter referred to as "CONSULTANT," is made upon the following considerations:

WHEREAS, COUNTY, by and through its Department of Public Works on behalf of the Probation Department desires to retain the services of CONSULTANT to provide construction administration related assistance with the construction of a new full service, medium/maximum Security Juvenile Hall, which consists of an approximately 19,500 square feet (sf), single story building on approximately 0.6 acre of a 3 acre parcel of county-owned land in Eureka.; and

WHEREAS, such work involves the performance of professional and technical services of a temporary and occasional character, and COUNTY has no employees available to perform such services and is unable to hire employees for the performance thereof for the temporary period; and

WHEREAS, Pursuant to California Government Code Section 31000, COUNTY may retain independent contractors to perform special services for COUNTY or any department thereof; and

WHEREAS, CONSULTANT has represented that it is qualified to perform said services.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. OBLIGATIONS OF CONSULTANT:

- A. Professional Services. CONSULTANT agrees to furnish professional consulting services in accordance with the criteria, schedule and fiscal requirements set forth in Exhibit A – Scope of Services, Exhibit B – Project Schedule, Exhibit C – Project Budget and Exhibit D – Billing Rate Schedule, which are attached hereto and incorporated herein by reference. In providing such services CONSULTANT agrees to fully cooperate with the Humboldt County Department of Public Works Director or designee thereof, hereinafter referred to as "Director."
- B. Additional Services. No additional services shall be performed by CONSULTANT prior to the execution of a written amendment to this Agreement and the issuance of a separate "Notice to Proceed" authorizing the performance of such additional services. Any amendments authorizing the performance of additional services shall include a detailed description of such services, the dollar value thereof and the method by which such services shall be compensated.

2. OBLIGATIONS OF COUNTY:

- A. Provision of Necessary Data and Materials. COUNTY shall provide CONSULTANT with all background data necessary for CONSULTANT to complete the services required hereunder.

- B. COUNTY Representative. COUNTY shall designate a representative with complete authority to transmit instructions and information, receive correspondence, interpret policy and define decisions pertaining to this Agreement. COUNTY's representative shall have overall charge and responsibility of COUNTY's activities and obligations hereunder. All correspondence pertaining to the performance of CONSULTANT's duties and obligations contained herein shall be submitted to COUNTY's representative.
- C. Review of Submitted Materials. COUNTY shall thoroughly review all draft reports, sketches, proposals and other documents submitted by CONSULTANT. COUNTY shall provide CONSULTANT with a written response pertaining to the review of documents submitted by CONSULTANT within fifteen (15) calendar days from the receipt thereof.

3. TERM:

This Agreement shall begin upon execution by both parties and remain in full force and effect for a period of eight hundred fifty (850) calendar days, unless sooner terminated as provided herein.

4. TERMINATION:

- A. Breach of Contract. If, in the opinion of COUNTY, CONSULTANT fails to adequately perform the services required hereunder within the time limits specified herein, or otherwise fails to comply with the terms of this Agreement, or violates any ordinance, regulation or other law applicable to its performance herein, COUNTY shall have the right to cancel or terminate this Agreement immediately, upon notice.
- B. Without Cause. COUNTY may terminate this Agreement without cause upon thirty (30) days advance written notice. Such notice shall state the effective date of the termination.
- C. Insufficient Funding. COUNTY's obligations under this Agreement are contingent upon the availability of local, state and/or federal funds. In the event such funding is terminated, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated. COUNTY shall provide CONSULTANT seven (7) days advance written notice of its intent to terminate this Agreement due to insufficient funding.
- D. Compensation. In the event of any termination of this Agreement, CONSULTANT shall be entitled to compensation for uncompensated services rendered hereunder through and including the effective date of such termination. However, this provision shall not limit or reduce any damages owing to COUNTY resulting from a breach of this Agreement.

5. COMPENSATION:

The maximum amount payable by COUNTY for services rendered, and expenses incurred, by CONSULTANT pursuant to the terms and conditions of this Agreement is Five Hundred and Thirty Thousand Dollars (\$530,000). The specific rates and costs applicable to this Agreement shall be as set forth in Exhibit C – Project Budget.

6. PAYMENT:

CONSULTANT shall submit to COUNTY monthly progress reports and invoices which itemize all work completed as of the invoice date. All invoices submitted by CONSULTANT shall be in a format approved by, and shall include backup documentation as specified by, Director and the Humboldt County Auditor-Controller. CONSULTANT shall submit a final undisputed invoice for payment not more than thirty (30) days following the expiration or termination date of this Agreement. Payment for services rendered and expenses incurred hereunder shall be made within thirty (30) days after the receipt of approved invoices.

7. NOTICES:

Any and all notices required to be given pursuant to the terms of this Agreement shall be in writing and served personally, or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: County of Humboldt
Department of Public Works
Attn: Thomas Mattson
1106 Second Street
Eureka, California 95501

CONSULTANT: Lenders Construction Services, LLC
Attn: Jeffrey Smith
P.O. Box 6218
Eureka, California 95502

8. REPORTS:

CONSULTANT agrees to provide COUNTY with any and all reports which may be required by local, state or federal agencies for compliance with this Agreement. Reports shall be submitted no later than fifteen (15) calendar days after the end of each calendar quarter using the format required by the State of California as appropriate.

9. RECORD RETENTION AND INSPECTION:

A. Maintenance and Preservation of Records. CONSULTANT agrees to timely prepare accurate and complete financial, performance and payroll records relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work performed.

B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of CONSULTANT, and its subcontractors, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and other duly authorized agents of the State of California for a period of three (3) years after final payment under this Agreement. CONSULTANT hereby agrees to make

such records available during normal business hours to inspection, audit and reproduction by COUNTY and any duly authorized local, state or federal agencies. CONSULTANT further agrees to allow interviews of any of its employees who might reasonably have information related to such records by COUNTY and any duly authorized local, state or federal agencies. All examinations and audits conducted under this section shall be strictly confined to those matters connected with the performance of this Agreement.

- C. Audit Costs. In the event of an audit exception or exceptions, the party responsible for not meeting the requirements of the project shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because CONSULTANT's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

10. MONITORING:

CONSULTANT agrees that COUNTY has the right to monitor all activities related to this Agreement, including the right to review and monitor CONSULTANT's records, programs or procedures, at any time, as well as the overall operation of CONSULTANT's programs in order to ensure compliance with the terms and conditions of this Agreement. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of the results of services performed by CONSULTANT pursuant to the terms of this Agreement.

11. CONFIDENTIAL INFORMATION:

- A. Disclosure of Confidential Information. In performance of this Agreement, CONSULTANT may receive information that is confidential under local, state or federal law. CONSULTANT hereby agrees to protect all confidential information in conformance with any and all applicable local, state and federal laws and regulations, including, but not limited to: California Welfare and Institutions Code Sections 827, 5328 and 10850; California Health & Safety Code Sections 1280.15 and 130203; the California Confidentiality of Medical Information Act ("CMIA"); the federal Health Information Technology for Economic and Clinical Health Act, ("HITECH Act"); the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any current and future implementing regulations promulgated thereunder, including, without limitation, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations ("C.F.R.") Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.
- B. Continuing Compliance with Confidentiality Laws. The parties acknowledge that federal and state confidentiality laws are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws or regulations.

12. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

CONSULTANT certifies by its signature below that it is not a Nuclear Weapons Contractor, in that CONSULTANT is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components, as defined

by the Nuclear Free Humboldt County Ordinance. CONSULTANT agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor, as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if CONSULTANT becomes a Nuclear Weapons Contractor.

13. NONDISCRIMINATION COMPLIANCE:

- A. Professional Services and Employment. In connection with the execution of this Agreement, CONSULTANT shall not discriminate in the provision of professional services or against any employee or applicant for employment because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, or any other classification protected by local, state or federal laws and regulations. Nothing herein shall be construed to require employment of unqualified persons.
- B. Compliance with Anti-Discrimination Laws. CONSULTANT further assures that it will abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, California Welfare and Institutions Code Section 10000, CDSS MPP Division 21, United States Executive Order 11246, as amended, and any other applicable local, state and federal laws and regulations. Practices in hiring, compensation, benefits and firing are among the employment practices subject to this requirement.

14. DRUG-FREE WORKPLACE:

By signing this Agreement, CONSULTANT hereby certifies that CONSULTANT will comply with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350 et seq.) and will provide a drug-free workplace by doing all of the following:

- A. Drug-Free Policy. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.
- B. Drug-Free Awareness Program. Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about the following:
1. The dangers of drug abuse in the workplace;
 2. CONSULTANT's policy of maintaining a drug-free workplace;
 3. Any available counseling, rehabilitation and employee assistance programs; and
 4. Penalties that may be imposed upon employees for drug abuse violations.

- C. Drug-Free Employment Agreement. Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides services hereunder will:
1. Receive a copy of CONSULTANT's Drug-Free Policy Statement; and
 2. Agree to abide by the terms of CONSULTANT's Drug-Free Policy as a condition of employment.
- D. Noncompliance. Failure to comply with the above-referenced requirements may result in suspension of payments under this Agreement and/or termination thereof, and CONSULTANT may be ineligible for award of future contracts if COUNTY determines that the foregoing certification is false or if CONSULTANT violates the certification by failing to carry out the above-referenced requirements.

15. INDEMNIFICATION:

To the fullest extent permitted by law, and in accordance with California Civil Code Section 2782.8, CONSULTANT shall hold harmless, defend and indemnify COUNTY, its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney fees and other costs of litigation, arising out of, or in connection with, CONSULTANT's performance of, or failure to comply with, any of the obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of COUNTY.

16. INSURANCE REQUIREMENTS:

This Agreement shall not be executed by COUNTY, and CONSULTANT is not entitled to any rights hereunder, unless certificates of insurance, or other sufficient proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

- A. General Insurance Requirements. Without limiting CONSULTANT's indemnification obligations provided for herein, CONSULTANT shall, and shall require that all subcontractors hereunder, take out and maintain, throughout the entire period of this Agreement, and any extended term thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A; VII or its equivalent, against personal injury, death and property damage which may arise from, or in connection with, the activities of CONSULTANT, its agents, officers, directors, employees, licensees, invitees, assignees and subcontractors:
1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG0001), in an amount of Two Million Dollars (\$2,000,000) per occurrence for any one incident, including, but not limited to, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.
 2. Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000) combined single limit coverage. Such insurance shall include

coverage of all owned, non-owned and hired vehicles. Said coverage shall be at least as broad as Insurance Service Offices Form Code 1 (any auto).

3. Workers' Compensation Insurance, as required by the California Labor Code, with statutory limits and Employers' Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY, its agents, officers, officials, employees and volunteers. In the event CONSULTANT is self-insured, a Certificate of Permission to Self-Insure, signed by the California Department of Industrial Relations Administration of Self-Insurance shall be filed with the Clerk of the Humboldt County Board of Supervisors.
 4. Professional Liability Insurance – Error and Omission Coverage, including coverage in an amount no less than Two Million Dollars (\$2,000,000) for each occurrence (Four Million Dollars (\$4,000,000) general aggregate. Said insurance shall be maintained for the statutory period during which CONSULTANT may be exposed to liability. CONSULTANT shall require that such coverage be incorporated into its professional services agreements with any other entities.
- B. Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:
1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, its agents, officers, officials, employees and volunteers, are covered as additional insureds for liability arising out of the operations performed by or on behalf of CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY, its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:
 - a. Includes contractual liability.
 - b. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to as "XCU Hazards."
 - c. Is the primary insurance with regard to COUNTY.
 - d. Does not contain a pro-rata, excess only and/or escape clause.
 - e. Contains a cross liability, severability of interest or separation of insureds clause.
 2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice provisions set forth herein. It is further understood that CONSULTANT shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.
 3. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate

policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

4. For claims related to this Agreement, CONSULTANT's insurance is the primary coverage to COUNTY, and any insurance or self-insured programs maintained thereby are excess to CONSULTANT's insurance and will not be used to contribute therewith.
 5. Any failure to comply with the provisions of this Agreement, including breach of warranties, shall not affect coverage provided to COUNTY, its agents, officers, officials, employees and volunteers.
 6. CONSULTANT shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager or County Counsel. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000) shall be disclosed to, and approved by, COUNTY. If CONSULTANT does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and CONSULTANT agrees to pay the cost thereof. COUNTY is also hereby authorized to deduct the cost of said insurance from the monies owed to CONSULTANT under this Agreement.
 7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and CONSULTANT shall be required to purchase additional coverage to meet above-referenced aggregate limits.
- C. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms of this Agreement shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

COUNTY: County of Humboldt
Attn: Risk Management
825 5th Street, Room 131
Eureka, CA 95501

County of Humboldt
Department of Public Works
Attn: Thomas Mattson
1106 Second Street
Eureka, California 95501

CONSULTANT: Lenders Construction Services, LLC
Attn: Jeffrey Smith
P.O. Box 6218
Eureka, California 95502

17. RELATIONSHIP OF PARTIES:

It is understood that this is an Agreement by and between two independent contractors and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that

CONSULTANT shall not be entitled to any benefits to which COUNTY employees are entitled, including, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation. CONSULTANT shall be solely responsible for the acts or omissions of its agents, officers, directors, employees, licensees, invitees, assignees and subcontractors.

18. THIRD PARTY BENEFICIARIES:

CONSULTANT shall require that all subcontractors hereunder agree to be bound by the terms and conditions of this Agreement as applicable. However, nothing in this provision shall operate to confer any rights, remedies, obligations or liabilities upon any third parties.

19. COMPLIANCE WITH APPLICABLE LAWS:

CONSULTANT agrees to comply with all local, state and federal laws and regulations applicable to the services covered by this Agreement. CONSULTANT further agrees to comply with all applicable local, state and federal licensure and certification requirements.

20. PROVISIONS REQUIRED BY LAW:

This Agreement is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the provisions, terms or funding of this Agreement. This Agreement shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

21. SEVERABILITY:

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

22. ASSIGNMENT:

CONSULTANT shall not delegate its duties or assign its rights hereunder, either in whole or in part, without COUNTY's prior written consent. Any assignment by CONSULTANT in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by CONSULTANT to obtain supplies, technical support or professional services.

23. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this Agreement shall be fully binding upon, and shall inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and assigns.

24. NO WAIVER OF DEFAULT:

A. General Waivers. The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

B. Payment. In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement or any default which may then exist on the part of CONSULTANT. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach or default. COUNTY shall have the right to demand repayment of, and CONSULTANT shall promptly refund, any funds disbursed to CONSULTANT, which in the judgment of COUNTY were not expended in accordance with the terms of this Agreement.

25. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

26. AMENDMENT:

No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

27. STANDARD OF PRACTICE:

CONSULTANT warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. CONSULTANT's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances. It is hereby understood that COUNTY's acceptance of the services performed by CONSULTANT hereunder shall not operate as a waiver or release of any breach of this Agreement.

28. TITLE TO INFORMATION AND DOCUMENTS:

It is understood that any and all documents, information, and reports concerning the subject matter of this Agreement prepared and/or submitted by CONSULTANT shall become the property of COUNTY. However, CONSULTANT may retain copies of such documents and information for its records. In the event of termination of this Agreement, for any reason whatsoever, CONSULTANT shall promptly turn over all information, writings and documents Pertaining to the services provided hereunder to COUNTY without exception or reservation.

29. ADVERTISING AND MEDIA RELEASE:

All informational material related to this Agreement shall receive approval from COUNTY prior to being used as advertising or released to the media (television, radio, newspapers and internet). CONSULTANT shall inform COUNTY of all requests for interviews by media related to this Agreement before such interviews take place; and COUNTY is entitled to have a representative present at such interviews. All notices required by this provision shall be given to Director.

30. SUBCONTRACTS:

CONSULTANT shall obtain prior written approval from COUNTY before subcontracting any of the services to be delivered hereunder. Any and all subcontracts will be subject to all applicable provisions of this Agreement. CONSULTANT shall remain legally responsible for the performance of all terms and conditions of this Agreement, including work performed by third parties under subcontracts, whether approved by COUNTY or not.

31. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

32. ATTORNEY FEES:

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement from being performed, the prevailing party in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees, including the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorney's fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

33. SURVIVAL:

The duties and obligations of the parties set forth in Sections 4(D), 9, 11 and 15 shall survive the expiration or termination of this Agreement.

34. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in paragraphs 1 through 39 of this Agreement, paragraphs 1 through 39 of this Agreement shall have priority.

35. INTERPRETATION:

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

36. INDEPENDENT CONSTRUCTION:

The titles of the sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

37. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include, but not be limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

38. ENTIRE AGREEMENT:

This Agreement contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in its entirety any and all prior agreements of the parties.


39. AUTHORITY TO EXECUTE:

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

LENDERS CONSTRUCTION SERVICES, LCC:

By: 
Name: Jeffrey Smith
Title: PRESIDENT

Date: 9/21/15

COUNTY OF HUMBOLDT:

By: 
Estelle Fennell
Chair, Board of Supervisors

Date: 10/6/2015

(SEAL)

ATTEST:
Clerk of the Board

By: 

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: 
Risk Manager

- Exhibit "A" – Scope of Services
- Exhibit "B" – Project Schedule
- Exhibit "C" – Project Budget
- Exhibit "D" – Billing Rate Schedule

EXHIBIT A

SCOPE OF SERVICES

1 TASK #1: PRE-CONSTRUCTION

Contract Documents, Bid Review and Pre-construction

- 1.1 This task generally includes assisting the Humboldt County Public Works Department (Public Works) in a quality control role through bid award of the Project. The services include review existing County data, reports, plans, and other information regarding the Project. The services include an independent assessment of the accuracy of the information concerning adequacy of available plans, specification and associated reports.
- 1.2 The Construction Administrator will review the bids and provide Public Works assistance with evaluating bids in coordination with other consultants. Additionally, the Construction Administrator will produce a Construction Procedures Manual as well as be responsible for arranging the pre-construction meeting once the County issues a Notice to Proceed to the Contractor.
- 1.3 Pre-construction services shall include, but are not limited to, the following:
 - 1.3.1 Construction Administrator will review the Project Manual (specifications) for constructability and continuity and submit written reports to Public Works as necessary.
 - 1.3.2 Construction Administrator will review the construction drawings (plans) for constructability and continuity and submit written reports and redline mark-ups of working drawings to public works as necessary.
 - 1.3.3 Construction Administrator will review plan check comments from ICBO plan checker to gain familiarity with the codes and regulations governing the Project and submit written reports to Public Works as necessary.
 - 1.3.4 Construction Administrator will periodically attend coordination meetings with the design team to participate in constructability dialogue.
 - 1.3.5 Construction Administrator will review, edit and implement construction procedures, forms and documents in accordance with the construction policies established by Public Works.
 - 1.3.6 Construction Administrator will attend the pre-bid conference and other special meetings as requested by Public Works.
 - 1.3.7 Construction Administrator will assist Public Works concerning, and determine the acceptability of substitute materials and equipment proposed by bidders.
 - 1.3.8 Construction Administrator will provide assistance to Public Works in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services, as requested by Public Works.
 - 1.3.9 Construction Administrator will prepare the pre-construction conference agenda and arrange the pre-construction meeting.

2 TASK #2: PRE- RESIDENT CONSTRUCTION ADMINISTRATION
Construction Administration/Inspection/Observation

- 2.1 This scope of work generally includes assuming primary contact role with the Contractor, Public Works and associated consultants through completion of the project. The services include conveyance and coordination of all information concerning project construction. The Construction Administrator will maintain on-site presence as necessary to coordinate and schedule staff, answer questions, observe quality control activities, process progress reports and pay requests, and redline Record Drawing changes. Additionally, the Construction Administrator will monitor compliance with Plans and Specifications, acquire field measurements, provide entries in the construction diary, assist in pay request estimating, report non-compliance issues to the County and arrange and manage inspections as required in the contract documents.
- 2.2 The Construction Administrator shall maintain a Project Diary to record the construction history of the Project. The Project Diary will be made available to the County upon request for review during inspections or visits. The Project Diary should include, but not be limited to, the following information: weather conditions, job site conditions, work in progress, general location of work, equipment in use, Contractor's work force and hours worked, delivered materials, tests performed, failed tests (if any) and action taken, instructions to Contractors, record of telephone conversations and any verbal instructions received or authorizations granted, engineering field force activity and hours worked, and any delays to construction and the reason for delays.
- 2.3 Construction Administration services shall include, but are not limited to, the following:
- 2.3.1 Review, edit and implement construction procedures and documents in accordance with the construction policies established by Public Works.
- 2.3.2 Review Contractor's acceptance tests in accordance with the cited requirements and standard methods; evaluate all such tests made by the Contractor in the field and laboratory as necessary in accordance with Plans and Specifications. Monitor Contractor's performance of the required quality control tests. The Construction Administrator shall immediately bring any non-compliance issues to the attention of the Contractor and County.
- 2.3.3 Notify the Contractor of any failure of the work or materials to conform to the requirements of the Contract, Plans, or Specifications. The Construction Administrator may reject nonconforming materials and will notify the Contractor to suspend any work in question, until such issues can be referred to the County for a final decision.
- 2.3.4 Maintain daily records of the Contractor's progress and activities during the course of construction and include progress of all work. These records will document work in progress, quality and quantity of materials delivered, test locations and results, instructions provided to the Contractor, weather conditions, equipment use, labor requirements, safety problems, and required changes.
- 2.3.5 Prepare Contract Change Orders which include a cost estimate, cost/price analysis, and record of negotiations. The County, Owner's Representative, and Architect will prepare and negotiate all necessary interpretations and clarifications, additions and deletions to Contract Change Orders, and supplemental agreements as required. Construction Administrator will submit copies to County for final approval and signature before proceeding with the work.

- 2.3.6 Evaluate and determine the acceptability of substitute materials and equipment proposed by the Contractor. Construction Administrator will relay the Contractor's suggestions on Drawing or Specification modification to the Architect. The Architect will evaluate and provide the Construction Administrator a response to report those suggestions to the County.
- 2.3.7 Furnish the County with weekly construction progress and inspection reports.
- 2.3.8 Prepare and distribute Project correspondence, which includes, but is not necessarily limited to, information requests, trouble reports, field directives and cost change requests. All documentation shall be in accordance with the Humboldt County Department of Public Works procedures during mobilization and construction.
- 2.3.9 Prepare and submit periodic estimates, including the final estimate, during the construction project. The Construction Administrator will determine the amount owed to the Contractor and will recommend those payment amounts in writing to the County. The Construction Administrator will submit payment recommendations to the Architect and County for concurrence. The payment recommendations will demonstrate that work has progressed to the point indicated for payment and that, to the Construction Administrator's best knowledge, information, and belief, the quality of such work is in accordance with the Contract Documents. The Construction Administrator will make payment recommendations from information that is gathered during on-site visits, provided by the Contractor, reviewed from payment applications and accompanying data and schedules, and/or measured in the field.
- 2.3.10 Conduct an inspection to determine if the work is completed and ready for final acceptance. After consultation with the County, the Construction Administrator will furnish the Contractor with a list of items that were observed and that require completion or correction.
- 2.3.11 Arrange for inspection of the finished work by the State, County, Contractor and Architect when the Project is complete and ready for final acceptance. After final inspection and acceptance, the Construction Administrator will prepare and submit the final cost estimate for the work to the County for consideration.
- 2.3.12 Perform observations and periodic inspections of the Project in order to monitor the Contractor's compliance to the Project Plans and Specifications.
- 2.3.13 Monitor the Contractor's compliance with the operations and safety and immediately bring any non-compliance issues to the attention of the Contractor.
- 2.3.14 Establish and conduct weekly construction progress meetings with the County, Architect and Contractor to discuss pertinent construction issues such as progress of the work, schedules, submittals, costs, safety and security.
- 2.3.15 Facilitate coordination with utility contractors and include in meetings as necessary (AT&T, Suddenlink, City of Eureka, and PG&E).

3 TASK #3: PROJECT CLOSE-OUT

- 3.1 During the Operation/Project Close-Out services shall include, but are not limited to, the following:
- 3.1.1 Assist in start-up, testing and placing in operation special equipment and systems.
 - 3.1.2 Provide assistance in connection with completion of punchlist work, including but not limited to, preparing the initial comprehensive punchlist and conducting no more than two follow up site visits (with follow up punchlisting if necessary) in addition to other responsibilities under this Agreement.
 - 3.1.3 Assist County in coordination of training County's staff to operate and maintain equipment and systems as necessary.
 - 3.1.4 Assist County in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.
 - 3.1.5 Together with County, visit the Project to observe any apparent defects in the completed construction, assist County in consultations and discussions with Contractor concerning correction of such deficiencies, and make recommendations as to replacement, correction, or diminished value of defective work.
 - 3.1.6 Together with County, coordinate, prepare and submit all final required deliverables under Title 24 and anything else required by ANY GOVERNING REGULATORY AGENCY for its final Project approval.
 - 3.1.7 Advise and assist County in construction matters for a period up to 12 months following completion of the project, but such assistance is not to exceed 20 hours of service.

4 TASK #4: ADDITIONAL SERVICES

- 4.1 All Services identified in the Agreement are "Basic Services". County may request Consultant to provide services in addition to Basic Services, referred to hereafter as ("Additional Services"). Additional Services must be authorized by County in writing prior to performance. Consultant shall be compensated for Additional Services as provided herein, unless the parties agree on lump sum compensation for particular work activities.
- 4.2 Compensation for Additional Services. Consultant shall be compensated for Additional Services as set forth in Exhibit D- Billing Rates.
- 4.3 Services. The following services shall be considered Additional Services:
- 4.3.1 Changes in scope, such as revisions of approved reports or Construction Documents. Changes in schedule can be a change in scope only if Consultant has fully performed its scheduling and coordination responsibilities herein required and the changes in schedule are in addition to these responsibilities.
 - 4.3.2 Required out-of-county travel beyond a 300-mile limit.

- 4.3.3 Preparing to serve or serving on behalf of County as an expert witness (but not as a percipient witness) in connection with any arbitration, administrative or other proceeding or legal proceeding.
- 4.3.4 Assisting in actual claims resolution efforts when such claims arise from matters unrelated to Consultant's performance.
- 4.3.5 Providing construction phase Services beyond the contract period, but only to the extent the additional duration increases Consultant's Scope of Services (for example, Punchlist and Close-out Services, whenever performed, shall be Basic Services.)
- 4.3.6 Additional Services shall not include work or services necessary because of Consultant's errors, omissions or conflicts of any type in Consultants' reports, Plans and Specifications prepared. All such services shall be performed at no cost to County, including, but not limited to, any required corrections or revisions to reports, plans or specifications that are a result of any errors or omissions by Consultant. Nor shall Additional Services include work performed prior to written notice and written agreement upon the Additional Services.
- 4.3.7 Extra costs resulting from excusable delay provided consultant shows that the costs claimed (i) resulted from time and/or expenses actually incurred in performing Services, (ii) were incurred by Consultant as a direct result of the delay and not otherwise within Consultant's scope of Services, and (iii) are documented to County's satisfaction. (For example, and not by way of limitation, contract punchlist and final inspection Services, whenever performed, and Services related to correcting deficiencies in Consultant's work, shall be within Basic Services and not entitle Consultant to Additional Services.)

END OF EXHIBIT A

EXHIBIT B
PROJECT SCHEDULE

The work shall be completed by Consultant and reviewed by County within the time frames identified as follows:

<u>Tasks</u>	<u>Time for Completion</u>
Task #1: Pre-Construction	Task #1 is complete when County issues the construction contractor a written Notice to Proceed.
Task #2: Resident Construction Administration	Allow 610 calendar days for construction, which begins with the issuance of a Notice to Proceed to the construction contractor.
Task #3: Project Close-out	90 Calendar days after County records a Notice of Completion for the project.

END OF EXHIBIT B

EXHIBIT C
PROJECT BUDGET

1 Basis of Compensation as a Fixed Fee

- 1.1 Excluding Additional Services only, the fixed fee identified in the Agreement shall be full compensation for all Services required, performed or accepted under this Agreement, and shall include without limitation, costs for Expenses as identified below necessary to perform the Services.
- 1.2 Progress payments for Services shall be made monthly based upon Consultant's percentage completion of the Services as determined by County, unless County and Consultant expressly agree otherwise.

2 Payment Procedures / Work Breakdown Structure

- 2.1 The Work will be performed by task with the maximum compensation assigned to each task for Construction Administration Services as follows:

- 2.1.1 Task #1: Pre-Construction:

Completion of Task #1	<u>\$45,000</u>
Expenses: Included in Basic Services	

- 2.1.2 Task #2: Resident Construction Administration:

Completion of Task #2	<u>\$460,000</u>
Expenses: Included in Basic Services	

- 2.1.3 Task #3: Project Close-out:

Completion of Task #3	<u>\$25,000</u>
Expenses: Included in Basic Services	

- 2.2 Basic Services Fee Defined. The total fee for all Basic Services is calculated as follows:

- 2.2.1 Construction Administration Services Fee Total: \$530,000

- 2.2.2 Maximum Services Fee Total: \$530,000

- 2.2.3 Expenses: Included in Basic Services

- 2.3 All billings and requests for progress payments shall require a written invoice from Consultant in a form acceptable to County. County shall make payment on approved amounts within each invoice within 30 days of receipt.

- 2.4 Expenses. Consultant's expenses are included in the compensation for Basic Services, and include actual out of pocket expenditures made by Consultant and subconsultants on behalf of County in the interest of PROJECT. No additional compensation shall be due for Consultant's expenses.

- 2.5 Consultant shall submit all billings with all necessary invoices, deliverables, or other appropriate evidence of performance, after which County shall make payment at the earliest practicable time.
- 2.6 Additional Services. County will pay the Consultant for Additional Services as agreed to in a written addendum or amendment (“amendment”) to this Agreement executed by County and the Consultant. Payment for all such Additional Services shall be as follows:
- 2.6.1 General. For Additional Services of Consultant’s professional staff engaged directly on the Project, on the basis of a lump sum negotiated between the parties, or, at County’s option, at Consultant’s Billing Rates plus Reimbursable Expenses Related to Additional Services up to a guaranteed maximum price (GMP).
- 2.6.2 Subconsultants. For Additional Services of subconsultants employed by Consultant to render Additional Services, the amount billed to Consultant therefore times five percent [5% or 1.05] for general and administrative expenses. For Additional Services billed on an hourly basis, Consultant agrees that all sub-consultant billing will be limited to a not-to-exceed amount upon prior written approval of County.
- 2.6.3 Amendments must be negotiated and signed by the Consultant and County prior to commencing work of Additional Services; otherwise, such costs are deemed within Basic Services.
- 2.7 **Definitions**
- 2.7.1 “Additional Services” mean services beyond the scope of the Services defined in this Agreement, identified as Additional Services in Appendix B Scope of Services.
- 2.7.2 “Billing Rates” shall be the hourly rates indicated on *Exhibit 1 to Appendix C: Compensation*. Where exact Billing Rates are not agreed upon and a multiplier method is used, then Billing Rates shall be calculated on the basis of “Actual Salary” (raw salary excluding all other salary related and/or fringe benefit costs of any type, nature or description), times the agreed multiplier. (Such multiplier shall include overhead, general and administrative expenses, employee fringe benefits, profit, interest on invested capital, readiness to serve, and all other contingencies and other considerations for the work of this Agreement.)
- 2.7.3 “Reimbursable Expenses Related to Additional Services” shall be limited to the list of reimbursable expenses listed in *Exhibit 1 to Appendix C: Compensation* and the specific expenses identified below. All other expenses are not reimbursable and are deemed included in the Billing Rate.
- 2.7.3.1 Travel Costs. The reasonable expense of travel costs incurred by Consultant when requested by County to travel out-of-county beyond a 300-mile limit from either the Project site, the Consultant’s office(s), or County’s office, incurred performing Additional Services.
- 2.7.3.2 Long Distance Telephone Costs. Long distance telephone calls and long distance facsimile costs incurred performing Additional Services.

- 2.7.3.3 Delivery Costs. Courier services and overnight delivery costs incurred performing Additional Services.
- 2.7.3.4 Reproduction Costs. Reproduction and postage costs of required plans, specifications, bidding and other documents required under this Agreement, if any, incurred performing Additional Services.
- 2.7.3.5 Calculation. County shall pay Consultant the actual cost of all Reimbursable Expenses Related to Additional Services times ten percent [10% or 1.1] for general and administrative expenses, up to the guaranteed maximum reimbursable expense cost (GMREC).

END OF EXHIBIT C

**EXHIBIT D
BILLING RATE SCHEDULE**

**LENDERS CONSTRUCTION SERVICES, LLC
Standard Billing Rate Schedule
Effective January 1, 2015**

Standard Billing Rates

Clerical	\$45 – 65 / hour
Accounting, Administrative Assistant	\$65 -- 95 / hour
Construction Observer/Inspector.....	\$95 – 150 / hour
Senior Associate	\$118 -- 150 / hour
Principal	\$125 – 160 / hour

Expenses

Out-Of-Pocket Direct Job Expenses cost plus 10%
Such as reproductions, sub-consultants / contractors, etc.

Travel Expense

Company or Personal Car Mileage\$0.90 / mile
Air and Surface Transportationcost plus 10%
Lodging and Sustenancecost plus 10%

Billing & Payment

Travel time is charged for work required to be performed out-of-office. A minimum of two hours will be billed for any work out-of-office.

Invoicing is on a monthly basis for work performed. Payment for services is due within 30 days from the date of the invoice. An interest charge of 1.5% per month is made on the unpaid balance starting 30 days after the date of invoice.

This schedule of billing rates is effective January 1, 2015, and will remain in effect until December 31, 2018, unless unforeseen increases in operational costs are encountered. We reserve the right to change rates to reflect such increases.

END OF EXHIBIT D