

**DRAFTv3 CONSTRUCTION AGREEMENT
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
AQUATIC DESIGNING, INC.
CALIFORNIA LICENSE NO. 883082**

**CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS PUBLIC WORKS
CONTRACTOR REGISTRATION NO. 1000029831**

**PROJECT LOCATION: Humboldt County Fairgrounds, 1250 5th Street, Ferndale, CA 95536
PROJECT NUMBER: 163108A-1**

This Agreement, entered into this _____ day of _____, 2023, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as “COUNTY,” and Aquatic Designing, Inc., doing business as North Coast Fabricators, a California corporation, hereinafter referred to as “CONTRACTOR,” is made upon the following Considerations

WHEREAS, COUNTY, by and through its Department of Public Works – Facilities Management, desires to retain a qualified professional to provide design services of a professional engineer and construction services related to the installation of emergency temporary lateral bracing enhancements at the Ferndale Grandstands building; and

WHEREAS, CONTRACTOR represents that it is adequately trained, skilled, experienced and qualified to perform the construction services required by COUNTY.

NOW THEREFORE, in consideration of the foregoing and the mutual promises contained herein, the parties hereto mutually agree as follows:

1. SCOPE OF WORK:

The work to be performed by CONTRACTOR shall be as described in Exhibit A – Scope of Work, which is attached hereto and incorporated herein by reference as if set forth in full.

2. COMPENSATION:

COUNTY shall pay, and CONTRACTOR shall accept **XXX Hundred XXX Thousand XXX Hundred Dollars and 00/100 Cents (\$XXX,XXX.00)** as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this Agreement; also for all loss or damage, arising out of the work aforesaid, or from the actions of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of the work and for well and faithfully completing the work, and the whole thereof, in the manner, and according to the requirements set forth in, Exhibit A – Scope of Work. CONTRACTOR will be paid within thirty (30) days after completion and acceptance of the work.

3. AGREEMENT DOCUMENTS:

A. Complete Agreement. The complete Agreement between the parties hereto shall consist of the following, hereinafter referred to as the “Agreement Documents,” which are hereby incorporated into this Agreement by reference as if set forth in full, as applicable:

1. This Agreement;
2. Exhibit A – Scope of Work;
3. General Prevailing Wage Rates, as published by the California Department of Industrial Relations; and
4. Any addenda to any of the above-referenced documents, all of which are on file in the office of the Humboldt County Public Works Director.

B. Rights and Obligations. All rights and obligations of COUNTY and CONTRACTOR are fully set forth and described in the Agreement Documents. All of the Agreement Documents are intended to be complementary, so that any work called for in one and mentioned in the other is to be performed and executed the same as if mentioned in all said documents.

4. CONSTRUCTION SERVICES:

CONTRACTOR hereby agrees to perform all of the work required for the Project, as specified in the AGREEMENT DOCUMENTS. CONTRACTOR shall provide, furnish and supply all things necessary and incidental for the timely performance and completion of the work, including, without limitation, provision of all necessary labor, materials, equipment, transportation and utilities, unless otherwise specified in the Agreement Documents. CONTRACTOR further agrees to use its best efforts to complete the work in a professional and expeditious manner and to meet or exceed the performance standards required by the Agreement Documents.

5. BEGINNING OF WORK:

CONTRACTOR's receipt of the fully executed Agreement Documents will serve as the "Notice to Proceed" from COUNTY. Under no circumstances shall CONTRACTOR enter upon the site of work until in receipt of the "Notice to Proceed" or unless so authorized in writing by COUNTY.

6. TIME OF COMPLETION:

CONTRACTOR shall fully complete any and all work for the Project prior to August 14th, 2023. By executing this Agreement, CONTRACTOR expressly waives any and all claims for delayed early completion.

7. TIME LIMIT AND LIQUIDATED DAMAGES:

It is agreed by the parties to the Agreement that in case all the work called for under the Agreement in all parts and requirements is not finished or completed by the time of completion as set forth in Section 6 above, damage will be sustained by COUNTY, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which COUNTY will sustain in the event of and by reason of such delay; and it is therefore agreed that CONTRACTOR will pay to COUNTY the sum of **Two Hundred Fifty Dollars and 00/100 Cents (\$250.00)** per day for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed; and CONTRACTOR agrees to pay said liquidated damages herein provided for, and further agrees that COUNTY may deduct the amount thereof from any moneys due or that may become due CONTRACTOR under the Agreement.

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8. PREVAILING WAGE:

- A. **Prevailing Wage Rate.** Pursuant to Section 1770 of the California Labor Code, COUNTY has determined the Prevailing Wage Rate to be as listed by the Department of Industrial Relations, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94101, Phone: (415) 703-4780. Complete Certified Payrolls must be submitted to the Department of Public Works together with each application for payment.
- B. **Registration.** Pursuant to Section 1771.1(a) of the California Labor Code, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the California Public Contract Code, or engage in the performance of any contract for public work, as defined in Sections 1770 et seq. of the California Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the California Labor Code. It is not a violation of Section 1771.1(a) for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the California Business and Professions Code or by Section 10164 or 20103.5 of the California Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 of the California Labor Code at the time the contract is awarded.

9. INDEMNIFICATION:

- A. **Hold Harmless, Defense and Indemnification.** To the fullest extent permitted by law, and in accordance with California Civil Code Section 2782.8, if applicable, CONTRACTOR shall hold harmless, defend and indemnify COUNTY, the Humboldt County Fair Association and their agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages and liabilities of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, CONTRACTOR's negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of COUNTY, the Humboldt County Fair Association or their agents, officers, officials, employees and volunteers.
- B. **Effect of Insurance.** Acceptance of the insurance required by this Agreement shall not relieve CONTRACTOR from liability under this provision. This provision shall apply to all claims for damages related to CONTRACTOR's performance hereunder, regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided pursuant to the terms and conditions of this Agreement.

10. BONDS:

Pursuant to Section 9550 of the Civil Code of the State of California, for projects with an agreement value of greater than \$25,000:

- A. The Contractor, simultaneously with the execution of the Agreement, will be required to furnish a Payment Bond in an amount equal to one hundred (100%) percent of the Contract Price, The Contractor must submit a certificate with the bond indicating that the Surety is admitted to transact business in the State of California, and certify that the Surety's certificate of authority, issued by the Insurance Commissioner, has not been suspended, revoked, canceled, or annulled.

- B. The bond shall comply with Section 9554 of the Civil Code of the State of California. The Payment Bond shall be in a form that is satisfactory to the County Counsel, or Risk Management of the County of Humboldt. A copy of an acceptable format is attached to the Agreement as Exhibit B.

11. **INSURANCE REQUIREMENTS:**

This Agreement shall not be executed by COUNTY, and CONTRACTOR is not entitled to any rights hereunder, unless certificates of insurance, or other 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 CONTRACTOR's indemnification obligations set forth herein, CONTRACTOR, and its subcontractors hereunder, shall take out and maintain, throughout the entire term of this Agreement, and any extensions 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 CONTRACTOR or its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence for any one (1) incident, including, without limitation, 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 (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles, and 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 (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY and its agents, officers, officials, employees and volunteers.
4. Design Professionals hired by CONTRACTOR under this Agreement shall provide: Professional Liability Insurance – Error and Omission Coverage including coverage in an amount no less than Two Million Dollars (\$2,000,000.00) for each occurrence (Four Million Dollars (\$4,000,000.00) general aggregate). Said insurance shall be maintained for the statutory period during which the CONTRACTOR's subcontracted Design Professional may be exposed to liability regarding the services provided pursuant to the terms and conditions of this Agreement. CONTRACTOR 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, and its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY or 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 property damage caused by explosion or collapse of structures or underground damage, 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 requirements set forth herein. It is further understood that CONTRACTOR 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 (1) insured shall not operate to impair the rights of one (1) 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 (1) insured shall not operate to increase the limits of the insurer's liability.
4. For claims related to this Agreement, CONTRACTOR's insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained thereby are excess to CONTRACTOR's insurance and will not be used to contribute therewith.
5. Any failure to comply with the terms and conditions of this Agreement shall not affect the coverage provided to COUNTY or its agents, officers, officials, employees and volunteers.
6. CONTRACTOR 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. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If CONTRACTOR does not keep all required policies in full force and effect, COUNTY may, in addition to any other available remedies, take out the necessary insurance and deduct the cost of said insurance from the monies owed to CONTRACTOR 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 CONTRACTOR shall be required to purchase additional coverage to meet the above-referenced aggregate limits.

C. **Insurance Notices.** Any and all notices regarding the insurance required pursuant to the terms

and conditions of this Agreement shall be sent to the addresses set forth below in accordance with the notice requirements contained herein.

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

AND

Humboldt County Department of Public Works – Facilities Management
Attention: Jake Johnson, Construction Projects Manager
1106 Second Street
Eureka, California 95501

CONTRACTOR: North Coast Fabricators
Attention: Erica Heenan, Executive Vice President
4801 West End Road
Arcata, California 95521

12. TERMINATION OF AGREEMENT:

- A. **Termination For Cause.** Should CONTRACTOR fail to perform any of the provisions of the Agreement, COUNTY shall have the right, whether or not an alternative right is provided, to declare the Agreement terminated. A written notice by COUNTY to CONTRACTOR that the Agreement is terminated shall be deemed a complete termination of same.
- B. **Effect of Termination.** On the Agreement being so terminated, CONTRACTOR shall, provided CONTRACTOR is ordered to do so by COUNTY, immediately remove from the premises all or any materials and personal property belonging to CONTRACTOR which have not been used in the construction of the work or which is not in place in the work; and CONTRACTOR shall be liable for all damages caused to COUNTY by reason of failure to complete the Agreement.

13. NOTICES:

Any and all notices required to be given pursuant to the terms and conditions of this Agreement shall be in writing and either 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: Humboldt County Department of Public Works – Facilities Management
Attention: Thomas K. Mattson, Director
1106 Second Street
Eureka, California 95501

CONTRACTOR: North Coast Fabricators
Attention: Erica Heenan, Executive Vice President
4801 West End Road
Arcata, California 95521

14. WARRANTY:

CONTRACTOR shall be held responsible to promptly and at its own expense cost make good any defects due to faulty, improper or inferior workmanship or materials arising or discovered in any part of the work within one (1) year after the completion and final acceptance of the same by COUNTY unless a longer period is otherwise called for.

15. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:

CONTRACTOR hereby agrees to comply with any and all local, state and federal laws, regulations, policies, procedures and standards applicable to the work performed pursuant to the terms and conditions of this Agreement, including, without limitation, any and all applicable local, state and federal licensure, certification and accreditation standards. All work and materials provided pursuant to the terms and conditions of this Agreement shall be in full compliance with the latest rules and regulations of the Americans with Disabilities Act, State Fire Marshal, the Safety Orders of the Division of Industrial Safety, the National Electric Code, the Uniform Plumbing Code published by the Western Plumbing Officials Association, and other applicable state laws or regulations including all of Title 24, California Code of Regulations. Nothing in this Agreement and the plans or specifications is to be construed to permit work not conforming to these codes.

16. NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this Agreement, CONTRACTOR certifies that it is not a Nuclear Weapons Contractor, in that CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR subsequently becomes a Nuclear Weapons Contractor.

17. ASSIGNMENT AND SUBCONTRACTING:

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that neither party shall have the right to transfer, delegate, subcontract or assign all or part of its interest in or duties under this Agreement without the prior written authorization of the other party. Notwithstanding the foregoing, CONTRACTOR may assign its rights, delegate its duties or otherwise transfer all or part of its performance hereunder to any subsidiary of CONTRACTOR. No assignment or subcontract shall be effective and/or binding upon COUNTY unless COUNTY has received advance actual notice thereof and grants its approval. Said approval shall not be unreasonably withheld. Should CONTRACTOR subcontract any portion of the work to be performed under this Agreement, said subcontractors shall be required by CONTRACTOR to: enter into a written contract with CONTRACTOR acknowledging that no employee/employer relationship exists between CONTRACTOR and subcontractor and that no Workers' Compensation, unemployment benefits, or other personnel benefits are required by or available to subcontractor through CONTRACTOR or COUNTY; and hold harmless, defend and indemnify CONTRACTOR, COUNTY and the Humboldt County Fair Association from and against any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material suppliers, laborers, and any other person, firm or corporation who may be injured or damaged by subcontractor in the performance of this Agreement. CONTRACTOR shall remain fully responsible for compliance with all of the terms and conditions of this Agreement, regardless of the terms of any agreement between CONTRACTOR and its subcontractors.

18. NON-DISCRIMINATION COMPLIANCE:

- A. Professional Services and Employment.** In connection with the execution of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully 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, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any and all applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. Nothing herein shall be construed to require the employment of unqualified persons.
- B. Compliance with Anti-Discrimination Laws.** CONTRACTOR further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, *et seq.*; California Government Code Sections 4450, *et seq.*; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Sections 8101, *et seq.* of Title 2 of the California Code of Regulations are incorporated herein by reference as if set forth in full.

19. DRUG-FREE WORKPLACE CERTIFICATION:

By executing this Agreement, CONTRACTOR certifies that neither CONTRACTOR, nor its agents, officials, employees, volunteers, licensees, invitees, assignees or subcontractors, shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in Section 812 of Title 21 of the United States Code, including, without limitation, cannabis, heroin, cocaine and amphetamines, at any COUNTY facility or work site. If CONTRACTOR, or any of its agents, officials, employees, volunteers, licensees, invitees, assignees or subcontractors is convicted or pleads nolo contendere to a criminal drug violation occurring at a COUNTY facility or work site, CONTRACTOR shall notify COUNTY of such conviction within five (5) days thereafter. Violation of this provision shall constitute a material breach of this Agreement.

20. PROVISIONS REQUIRED BY LAW:

This Agreement is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions 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 incorrectly stated, the parties agree to amend the pertinent section to make such insertion or correction.

21. REFERENCE TO LAWS, REGULATIONS AND STANDARDS:

In the event any law, regulation or standard referred to herein is amended during the term of this Agreement, the parties agree to comply with the amended provision as of the effective date thereof.

22. 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.

23. ATTORNEY FEES:

If either party shall commence any legal action, including, without limitation, an action for declaratory relief, against the other by reason of the alleged failure of the other to perform any of its obligations hereunder, the party prevailing in said action shall be entitled to recover court costs and reasonable attorneys' fees, including, but not limited to, 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 attorneys' fees on appeal, if applicable. As used herein, the term "prevailing party" means the party who dismisses an action 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.

24. WAIVER OF DEFAULT:

The waiver by either party of any breach 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. In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement which may then exist on the part of CONTRACTOR. 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 CONTRACTOR shall promptly refund, any funds which COUNTY determines were not expended in accordance with the terms and conditions of this Agreement.

25. RELATIONSHIP OF PARTIES:

It is understood that this Agreement is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agents, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that CONTRACTOR shall not be entitled to any benefits to which COUNTY employees are entitled, including, without limitation, overtime, retirement, leave or workers' compensation benefits. CONTRACTOR shall be solely responsible for the acts and omissions of its agents, officers, employees, assignees and subcontractors.

26. INTERPRETATION:

This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the parties, and no rule of construction or interpretation shall apply against any particular party based on a contention that the Agreement was drafted by one of the parties including, without limitation, California Civil Code Section 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

27. AMENDMENT:

This Agreement may be amended at any time during the term hereof upon the mutual consent of both parties. No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

28. 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.

29. INDEPENDENT CONSTRUCTION:

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

30. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, 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.

31. 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 their entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this Agreement are hereby ratified.

32. COUNTERPART EXECUTION:

This Agreement, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. This Agreement, and any amendments hereto, may be signed by manual or electronic signatures in accordance with any and all applicable local, state and federal laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this Agreement, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement and any amendments hereto.

33. 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 of on Following Page]

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

AQUATIC DESIGNING, INC.: DRAFT AGREEMENT

By: _____
Paula E. Crowley, Chief Executive Officer / Owner

Date: _____

By: _____
Timothy J. Crowley, Chief Operating Officer

Date: _____

COUNTY OF HUMBOLDT:

By: _____
Thomas K. Mattson, Public Works Director
Public Works Department

Date: _____

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: _____
Risk Management

Date: _____

LIST OF EXHIBITS:

- Exhibit A – Scope of Work
- Exhibit B – Payment Bond Template

EXHIBIT A SCOPE OF WORK

The work generally consists of constructing temporary lateral bracing shoring consisting of concrete foundations at the east and west sides of the Grandstands structure, installing steel brace frames attached to the foundations and the east and west walls of the structure, and providing additional lateral reinforcement, connections and foundation ties along the north wall in the existing structure. The temporary lateral bracing and shoring shall be designed and installed to comply with ASCE 37.

The work to be performed by CONTRACTOR shall be as follows.

1. CONTRACTOR shall coordinate work with Mobley Construction (MCI, under separate agreement with COUNTY).
2. CONTRACTOR shall provide through a subcontract, engineering services for design of the temporary lateral bracing shoring. Engineering services shall generally include the following:
 - a. Based on conceptual loads and structural steel member sizes by COUNTY's structural engineering consultant (under separate contract)- Provide California PE stamped calculations and sketches for:
 - i. Steel frame foundation
 - ii. Connection of steel top beam to Grandstand truss top chord
 - iii. Connection of steel mid beam to Grandstand seating platform stringer
 - iv. Steel frame connection details
 - v. North wall to roof connects
 - vi. North wall to seating platform connection
 - vii. North wall to foundation connection
 - b. Onsite meetings to address construction questions and ensure project is moving forward.
 - c. Perform construction inspections to confirm construction complies with CA PE stamped sketches.
 - d. Provide final CA PE stamped letter stated work was performed per CA PE stamped sketches.
3. CONTRACTOR shall furnish labor, materials, equipment, transportation, and any necessary appurtenances to complete construction of temporary lateral bracing.
4. Work includes but is not limited to:
 - a. Provide and install wood blocking and shoring of structure as directed by engineer.
 - b. Provide, fabricate and install temporary shoring to include metal frame fabrication, primer paint, delivery, field fitting and installation of two steel brace frames as directed by engineer.
 - c. Provide job trailer, service trucks, forklift, manlift, crane with NCCCO Certified Operators as needed to complete the work.
5. CONTRACTOR shall comply with all local, state and federal laws.
6. The existing building shall be protected from damage to the maximum extent feasible, and all precautions necessary shall be taken to protect the remaining structure of the building and occupants of adjacent buildings during demolition, removal of materials and construction. Repair inadvertent structural damage caused by CONTRACTOR's work activities, if any.
7. Schedule: CONTRACTOR shall complete all work prior to August 14th, 2023.
 - a. CONTRACTOR shall provide COUNTY and the Humboldt County Fair Association (HCFA) reasonable notice prior to beginning work and prior to any activities that will require access to areas not adjacent to the area of work on an as-needed basis
8. Use of the Site: Limit use of the premises to areas of work.
 - a. Keep main driveways and entrances serving the premises clear and available for use by others at all times.
 - b. CONTRACTOR and MCI (under separate agreement) shall coordinate to provide fencing/barriers as needed to control areas of work from public access and adjacent areas used

for storage, parking and equipment as needed.

9. Workers:

- a. CONTRACTOR shall, at all times, enforce strict discipline and good order among workers.
- b. There shall be no smoking in or near the existing building.

10. Noise and Vibration Abatement and Notices: Limit noise and vibration to a reasonable level.

11. Building Access and Security:

- a. Access: Normal/Regular hours for Contractor work are Monday through Friday, 7:00 am to 6:00pm. Work may occur after hours on an as needed basis to complete this emergency project.

12. Security: CONTRACTOR shall be responsible for the security of the jobsite.

13. Utilities: HCFA to supply power and water.

14. Exclusions:

- a. Permit fees
- b. Delays caused by Weather, Earthquakes, Floods or other Acts of God.

**EXHIBIT B
PAYMENT BOND TEMPLATE**

KNOW ALL MEN BY THESE PRESENTS, THAT WHEREAS, the County of Humboldt, by its order made _____, 20___, has awarded to _____, hereinafter designated as the "Principal," a contract for the work described as follows:

NOW, THEREFORE, we the Principal and _____, Surety, are held and firmly bound unto the County of Humboldt in the penal sum of Dollars (\$ _____), lawful money of the United States of America for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his/her or its heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, any prevailing wages due and penalties incurred pursuant to the California Labor Code or for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Contractor and their subcontractors pursuant to Section 18806 of the Revenue and Taxation Code with respect to such work and labor as required by Sections 9550 et seq. of the Civil Code of California, then said Surety will pay for the same, in or to an amount not exceeding the amount set forth herein, and also will pay in case suit is brought upon this bond, such reasonable attorney's fees, as shall be fixed by the court, awarded and taxed as in the above-mentioned statutes provided.

AND, the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work, or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____, 20___.

PRINCIPAL

SURETY

BY: _____

BY _____
ATTORNEY-IN-FACT