

COUNTY OF YOLO, CALIFORNIA

**CONSTRUCTION AGREEMENT FOR
WOOD DUCK PUMP STATION
Wild Wings County Service Area**

CONTRACT NO. _____

This Agreement for Construction (“Agreement” or “Contract”) is between TNT Industrial Contractors, Inc., a California corporation (“Contractor”), and the County of Yolo (“County”), a political subdivision of the State of California.

1. SCOPE OF WORK. Contractor shall furnish all labor, services, transportation, materials, equipment, parts, and supplies necessary for the **Wood Duck Pump Station (“the Project”)** in strict accordance with the Project plans and specifications and Contract Documents. Contractor shall complete the Project per the Bid Schedule, not to exceed \$1,611,249.00 (“Contract Price”).

2. CONTRACT DOCUMENTS. The following documents defined as the “Contract Documents” in Section 1.12 of the General Conditions, are incorporated as if fully set forth herein by this reference and comprise the entire Agreement between the County and Contractor concerning the Project.

- Bid/Proposal Response, including all required forms
- Subcontractor List
- Project Manual, Vol. I, Bidding and Contracting Requirements
- Project Manual, Vol. II & III, Technical Specifications and Drawings
- Supplemental Documents identified in Section 00 01 015 (State of California DWR Grant Agreement#4600014563; State of California DWR Grant Agreement#4600014563-Amendments 1 and 2)
- Performance Bond and Payment Bond
- General Conditions
- Notice to Bidders
- Notice to Proceed
- Project Plans and Specifications
- Addendas
- Change Orders Issued by the County

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of a conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions (Sections 4.02 and 20.08). In the event of any remaining conflict, the provision that requires the highest level of performance from Contractor for the County’s benefit shall prevail.

[Contract continues on following page.]

3. CONDUCT OF WORK, CONTRACT ADMINISTRATOR. Contractor shall perform the services described in the Contract Documents in a in a good, workmanlike and substantial manner and to the satisfaction of the County and in a manner that causes the least possible inconvenience to County and the public and safeguards persons and property from any dangerous activities or conditions conducted or created by Contractor. County's Chief Deputy County Administration Officer shall administer this Agreement for County. County's Board of Supervisors may designate a different person to serve as Contract Administrator by giving advance written notice to Contractor.

(a) Work Schedule. Unless otherwise agreed pursuant to Section 3.01 of the General Conditions, Contractor shall begin work within ten (10) calendar days after receiving the Contract Administrator's Notice to Proceed and shall complete the work within **360 calendar days** after receiving that notice, followed by a 90-day maintenance period. This work must be complete, operational, and be accepted by the County for its intended use for this milestone to be deemed complete.

(b) Liquidated Damages. Contractor shall pay County \$400.00 a day liquidated damages for each day's delay (excluding Saturdays, Sundays, and County observed holidays) in completing the work beyond the time specified for completion of work. All other aspects of the payment of such damages shall be governed by Section 3.12 of the General Conditions and other relevant provisions thereof. The assessment of liquidated damages is not a penalty but considered to be a reasonable estimate of the amount of damages County will suffer by delay in completion of the Project. The County is entitled to set off the amount of liquidated damages assessed against any payments otherwise due to Contractor, including, but not limited to, setoff against release of retention. If the total amount of liquidated damages assessed exceeds the amount of unreleased retention, County is entitled to recover the balance from Contractor or its sureties. Use of the Project in whole or in part prior to substantial completion, shall not operate as a waiver of County's right to assess liquidated damages.

4. INDEMNIFICATION. With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall provide indemnification and defense of the County as set forth in the General Conditions (see sections 2.05 and 2.06 of the General Conditions) and Section 00 62 10 of the Project Manual.

Responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement. In providing any defense under the Contract Documents, Contractor shall use counsel reasonably acceptable to the County.

5. COMPENSATION; PREVAILING WAGE. The County shall pay to the Contractor as full compensation for the performance of this Agreement the Contract Price, subject to any additions or deductions as provided in the Contract Documents. All matters of compensation and payment shall be governed by the General Conditions, including but not limited to Article 25 thereof, provided, however that the total compensation to be paid by County to Contractor shall not

exceed the Contract Price. The statement of prevailing wages appearing in the General Prevailing Wage Rate Determinations of the Director of the State of California Department of Industrial Relations are incorporated herein by reference. When two rates differ for similar kinds of labor, Contractor shall pay not less than the higher rate. Contractor shall bear all risks of payment or non-payment of prevailing wages under California law, and Contractor hereby agrees to defend, indemnify, and hold the County, its officials, officers, employees, agents and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the prevailing wage laws.

6. INSURANCE. Contractor shall maintain the insurance required by the General Conditions and the following insurance while performing the work covered by this Agreement. The comprehensive general liability insurance shall include broad form property damage insurance.

(a) Minimum Coverages (as applicable) - Insurance coverage shall be with limits not less than the following:

1. **Commercial General Liability** Occurrence form Insurance policy (ISO CG 00 01 or equivalent) covering all operations by or on behalf of Contractor, including coverage for:
 - a) Premises and Operations
 - b) Products and completed Operations
 - c) Contractual Liability insuring the obligations assumed by Contractor in this agreement or Blanket Contractual Liability Coverage
 - d) Broad Form Property Damage (including Completed Operations)
 - e) Explosion, Collapse, and Underground Hazards
 - f) Personal Injury Liability

Limits of liability shall be not less than:

\$5,000,000 each occurrence (combined single limit for bodily injury and property damage)

\$5,000,000 for Personal Injury Liability

\$5,000,000 for Products Completed Operations

\$10,000,000 General Aggregate

If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be \$15,000,000.

2. **Automobile Liability** – Insurance policy (ISO CA 00 01) covering Bodily Injury, Property Damage and contractual Liability coverage for “Any Auto” which includes coverage for any owned, hired, borrowed and non-owned automobile, trailer, and equipment coverage, with limits no less than \$1,000,000 occurrence (per accident for bodily injury and property damage) and \$2,000,000 policy aggregate.

3. **Workers' Compensation** – Statutory Limits/**Employers' Liability** – No less than \$1,000,000 per accident for bodily injury or disease.
4. **Builder's Risk** – (Course of Construction) insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
5. **Contractor's Pollution Legal Liability Insurance** – Limits of no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

(b) The County, its officers, agents, employees and volunteers, as well as the State of California, its officers, agents, and employees, shall be named as additional insured on all but the workers' compensation and professional liability coverages. [NOTE: Evidence of additional insured may be needed as a separate endorsement due to wording on the certificate negating any additional writing in the description box.] It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

1. The Additional Insured coverage under the Contractor's policy shall be “primary and non-contributory” and will not seek contribution from the County's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.
2. The limits of Insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the County of Yolo (if agreed to in a written contract or agreement) before the County's own Insurance or self-insurance shall be called upon to protect it as a named insured.
3. Said policies shall remain in force through the life of this Agreement and, with the exception of professional liability coverage, shall be payable on a “per occurrence” basis unless the County Risk Manager specifically consents in writing to a “claims made” basis. For all “claims made” coverage, in the event that the Contractor changes insurance carriers Contractor shall purchase “tail” coverage covering the term of this Agreement and not less than three years thereafter. Proof of such “tail” coverage shall be required at any time that the Contractor changes to a new carrier prior to receipt of any payments due.

4. The Contractor shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the County's Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.
 5. Any deductibles or self-insured retentions must be declared to and are subject to the approval of the County Risk Manager. All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied either by the named Insured or Yolo County.
 6. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Director (ten (10) days for delinquent insurance premium payments).
 7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by the County Risk Manager.
 8. The policies shall cover all activities of Contractor, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.
 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be primary, including as respects the County, its officers, agents, employees and volunteers. Any insurance maintained by the County shall apply in excess of, and not contribute with, insurance provided by Contractor's liability insurance policy.
 10. The insurer shall waive all rights of subrogation against the County, its officers, employees, agents and volunteers.
- (c) Prior to commencing services pursuant to this Agreement, Contractor shall furnish the County with original endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the County Risk Manager before work commences. Upon County's request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.
- (d) During the term of this Agreement, Contractor shall furnish the County with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon County's request, Contractor

shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications. Yolo County reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

- (e) Contractor agrees to include with all Subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontracts in excess of one million dollars shall comply with the same insurance requirements as the general contractor. Adjustments will be considered by the County based upon the subcontractors scope of work for amounts under one million dollars. Subcontractors hired by Contractor agree to be bound to Contractor and the County of Yolo in the same manner and to the same extent as Contractor is bound to the County of Yolo under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. Contractor shall require all Subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and Contractor will provide proof of compliance to the County of Yolo.
- (f) Contractor shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this agreement, the County at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

7. COMPLIANCE WITH LAWS.

- (a) Contractor shall comply with all relevant federal, state, and local statutes, regulations, ordinances, rules, orders, and other laws in effect when performing the services required by this Agreement, all as set forth in the General Conditions (including but not limited to Article 20 thereof), and including, but not limited to, the provisions of the California Labor Code and California Public Contract Code that are applicable to this Project, the Drug Free Workplace Act 1990 (Gov. Code, § 8350 et seq.), and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.)
- (b) By its signature hereunder, Contractor further certifies that it is aware of the provisions of Section 3700 of the Labor Code et seq. which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and Contractor will comply with such provisions before commencing the performance of the work of this contract.
- (c) Contractor further represents and warrants that it is eligible to work on the Project pursuant to Labor Code Sections 1777.1 and 1777.7 and other applicable

provisions of law. Further, Contractor acknowledges that it is prohibited from performing work on the Project with a subcontractor who is ineligible to perform work on public works project pursuant to Labor Code Sections 1777.1 and 1777.7.

8. INDEPENDENT CONTRACTOR. While performing the services required by this Agreement for Construction, Contractor shall act as an independent contractor, not as an employee of County, and thus shall be subject to the direction and control of County only for the final result. Contractor shall be solely responsible for paying all required employment taxes and for meeting all employment obligations related to its performance of the services, including but not limited to payment of worker's compensation, liability insurance, social security taxes (i.e., FICA), and tax withholding. Moreover, Contractor shall indemnify, defend (upon County's written request), and protect County from any liability County may incur to federal or state governments for such taxes and obligations. This Agreement does not entitle Contractor or its officers, employees, subcontractors, or agents to vacation pay, sick leave, retirement benefits, disability or unemployment insurance, or employee benefits of any kind from County.

9. INSPECTIONS. All inspections and any remedial action required in response thereto shall be governed by the General Conditions, including but not limited to Article 18 thereof.

10. PERFORMANCE AND PAYMENT BONDS. Within the time set forth in the Proposal and before performing any services pursuant to this Agreement, Contractor shall provide to County the bonds required by the General Conditions, including but not limited to Article 2 thereof. All other matters relating to bonds shall be governed by the General Conditions.

11. TERM OF AGREEMENT; EARLY TERMINATION. The term and termination of this Agreement shall be governed by the General Conditions, including but not limited to Article 27 thereof.

12. GUARANTY. Guarantees and warranties shall be governed by the General Conditions, including but not limited to Article 26 thereof.

13. AUDIT PROVISIONS. Contractor's records which shall include but not limited to accounting records, subcontract files, correspondence, change order files, and any other supporting evidence necessary to substantiate charges relating to this contract (all the foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by County's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments, or claims submitted by the contractor or any of his payees pursuant to the execution of this Agreement. For the purpose of such audits, inspections, examination, and evaluations, the County or the State's agent or authorized representative shall have access to said records from the effective date of this Agreement, for the duration of the work, and until six years after the date of final payment by County to Contractor pursuant to this Agreement.

14. NONDISCRIMINATION. During the performance of this Contract, the County and its contractors or subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic

characteristics), age (over 40), marital/domestic partner status, gender identity, and denial of medical and family care leave or pregnancy disability leave. The County and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The County and its contractors or subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code, § 12990.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission are incorporated into this Contract by reference. The County and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Contract.

15. PROCEDURE FOR RESOLVING CLAIMS.

Contractor shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price as a prerequisite to filing any claim governed by this Section. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the time for completion or Contractor’s compensation, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law. This claim resolution procedure shall control over any conflicting claim or dispute resolution procedure in the Contract Documents.

(a) Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with all applicable law, including but not limited to these statutes.

(b) Claims. For purposes of this Section, “Claim” means a separate demand by the Contractor for:

- i. An adjustment to the time for completion including, without limitation, for relief from damages or penalties for delay assessed by the County;
- ii. Payment by the County of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or
- iii. An amount the payment of which is disputed by the County.

A “Claim” does not include any demand for payment for which the CONTRACTOR has failed to provide notice, request a Contract Change Order, or otherwise failed to follow any procedures contained in the Contract Documents.

(c) Filing Claims. Claims governed by this Section may not be filed unless and until the Contractor completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the Contract Price or Contract Time, and Contractor’s request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than fourteen (14) after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in

writing to the County and shall include on its first page the following words in 16-point capital font: "THIS IS A CLAIM." The Claim shall include all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.

- (d) Documentation.** The Contractor shall submit all Claims in the following format:
- i. Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Documents provisions pursuant to which the Claim is made
 - ii. List of documents relating to Claim:
 - i. Specifications
 - ii. Drawings
 - iii. Clarifications (Requests for Information)
 - iv. Schedules
 - v. Other
 - iii. Chronology of events and correspondence
 - iv. Narrative analysis of Claim merit
 - v. Analysis of Claim cost, including calculations and supporting documents
 - vi. Time impact analysis in the form required by the Contract Documents, if the Contract Documents do not require a particular format, CPM format, if an adjustment of the Contract Time is requested.

(e) County's Response. Upon receipt of a Claim pursuant to this Section, the County shall conduct a reasonable review of the Claim and, within a period not to exceed forty-five (45) days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within sixty (60) days after the County issues its written statement.

- i. If the County needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the County's governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the County shall have up to three (3) days following the next duly publicly noticed meeting of the County's governing body after the forty-five (45) day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.
- ii. Within thirty (30) days of receipt of a Claim, the County may request in writing additional documentation supporting the Claim or relating to defenses or Claims the County may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the County and the Contractor. The County's written response to the Claim, as further documented, shall be submitted to the Contractor within thirty (30)

days (if the Claim is less than \$50,000, within fifteen (15) days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

(f) Meet and Confer. If the Contractor disputes the County's written response, or the County fails to respond within the time prescribed, the Contractor may so notify the County, in writing, either within fifteen (15) DAYS of receipt of the County's response or within fifteen (15) days of the County's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the County shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

(g) Mediation. Within ten (10) business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the County shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the County issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the County and the Contractor sharing the associated costs equally. The County and Contractor shall mutually agree to a mediator within ten (10) business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.

- i. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
- ii. For purposes of this Section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Section.
- iii. Unless otherwise agreed to by the County and the Contractor in writing, the mediation conducted pursuant to this Section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
- iv. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.

(h) Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the Contractor must file a Claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a Claim must be filed shall be tolled from the time the Contractor submits his or her written Claim pursuant to subdivision (a) until the time the

Claim is denied, including any period of time utilized by the meet and confer conference.

(i) Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:

- i. Within sixty (60) days, but no earlier than thirty (30) days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
- ii. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

(j) Government Code Claim Procedures.

- i. This Section does not apply to tort claims and nothing in this Section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.
- ii. In addition to any and all requirements of the C pertaining to Contract Documents notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for extra work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the County.
- iii. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Work for extra work, disputed work, construction claims, and/or changed conditions have been followed by Contractor. If Contractor does not comply with the Government Code claim procedure or the prerequisite contractual requirements, Contractor may not file any action against the County.
- iv. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all**

unresolved claims known to Contractor or that should reasonably be known to Contractor excepting only new unrelated Claims that arise after the Government Code claim is submitted.

(k) Non-Waiver. The County's failure to respond to a Claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the Claim being deemed rejected in its entirety and shall not constitute a waiver of any rights under this Section.

16. DRUG FREE WORKPLACE CERTIFICATION. By signing this Agreement, the County, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code, § 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

(a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by the Government Code section 8355.

(b) Establish a Drug-Free Awareness Program, as required by Government Code section 8355 to inform employees, contractors, or subcontractors about all of the following:

- i. The dangers of drug abuse in the workplace,
- ii. The County's policy of maintaining a drug-free workplace,
- iii. Any available counseling, rehabilitation, and employee assistance programs, and
- iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.

(c) Provide, as required by Government Code section 8355, that every employee, contractor, and/or subcontractor who works under this Agreement will receive a copy of the County's drug-free policy statement and agree to abide by terms of the County's conditions of employment.

17. MISCELLANEOUS.

(a) Notice. Except as provided in Section 6, all correspondence regarding this Agreement, including invoices, payments, and notices, shall be directed to the following persons at the following addresses and phone number:

County:

Michael Webb
County Administrator
625 Court Street, Room 202
Woodland, CA 95695
Telephone: 530-666-8150

Contractor:

TNT Industrial Contractors, Inc.

Attn: _____

3800 Happy Lane

Sacramento, CA 95827

Telephone: _____

If written, correspondence shall be sent by personal delivery (including overnight delivery service); by U.S. Mail, postage prepaid; or by fax during business hours. Notices must be actually received to be effective.

(b) Time of Essence. Time is of the essence of this Agreement. **Interpretation and Jurisdiction.** This Agreement shall be interpreted and applied in accordance with California law. In the event of a dispute between the parties as to the language of this Contract or the construction or meaning of any term hereof, this Contract shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Contract. Any action or proceeding arising out of this Contract shall be filed in a California Superior Court located in Woodland, California.

(c) Waiver. A party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon breach of this Agreement shall not constitute a waiver of such performance, right, or remedy. No waiver is binding unless set forth in a writing signed by the waiving party.

(d) Assignments and Subcontracts. Contractor shall not assign this Agreement. Contractor may subcontract any of the services described in Section 1 (Scope of Work) with County's prior written consent. Contractor shall require each subcontractor to agree in writing to be bound by Section 4 (Indemnification) and Section 6 (Insurance) of this Agreement. County shall consider all subcontractors to be Contractor's employees, and Contractor shall be responsible for their work.

(e) Integration. This Agreement sets forth the parties' entire understanding regarding the matters set forth in herein. It supersedes all prior Agreements and representations, written and oral, and may be modified only by a written amendment approved by County's Chief Deputy County Administration Officer and signed by County and Contractor.

(h) Effective date. This Agreement shall be effective on the last date shown below.

(i) Public Record. Upon its execution, this Agreement (including all exhibits and attachments) shall be subject to disclosure pursuant to the California Public Records Act.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Contract as of the date set forth above.

COUNTY OF YOLO:

CONTRACTOR:

By: _____

Michael Webb
County Administrator

By: _____

(Signature)

(Print Name & Title)

(Date)

APPROVED AS TO FORM
Philip J. Pogledich, Yolo County Counsel

By: Kimberly E. Hood

Kimberly Hood
Chief Asst. County Counsel