

Contract Log # _____

**COUNTY OF MARIN
STANDARD SHORT FORM CONTRACT**

THIS AGREEMENT is made and entered into this ____ day of _____, 2005, by and between the COUNTY OF MARIN, hereinafter referred to as "County" and **Swinerton Management & Consulting**, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, County desires to retain a person or firm to provide the following services: **construction management services for the Throckmorton Ridge Fire Station**; and

WHEREAS, Contractor warrants that it is qualified and competent to render the aforesaid services;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by County, the parties agree to the following:

1. SCOPE OF SERVICES:

Contractor agrees to provide all of the services described in **Exhibit "A"** attached hereto and by this reference made a part hereof.

2. FURNISHED SERVICES:

The County agrees to:

- A. Guarantee access to and make provisions for the Contractor to enter upon public and private lands as required to perform their work.
- B. Make available all pertinent data and records for review.
- C. Provide general bid and contract forms and special provisions format when needed.

3. FEES AND PAYMENT SCHEDULE:

The fees and payment schedule for furnishing services under this Contract shall be based on the rate schedule which is attached hereto as **Exhibit "B"** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Contract.

Contractor shall provide County with his/her/its Federal Tax I.D. number prior to submitting the first invoice.

4. MAXIMUM COST TO COUNTY:

In no event will the cost to County for the services to be provided herein exceed the maximum sum of **\$185,540** including direct non-salary expenses.

5. TIME OF AGREEMENT:

This Agreement shall commence on the date signed, and shall terminate on **December 31, 2007**. Certificate(s) of Insurance must be current on day Contract commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor. The final invoice must be submitted within 30 days of completion of the stated scope of services.

6. INSURANCE:

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to County. The general liability policy shall be endorsed naming the County of Marin as an additional insured. The certificate(s) of insurance and required endorsement shall be furnished to the County prior to commencement of work. Each certificate shall provide for thirty (30) days advance notice to County of any cancellation in coverage. Said policies shall remain in force through the life of this Contract and shall be payable on a per occurrence basis only, except those required by paragraph 6.4. a. and b. which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation of Contractor's liability, and Contractor shall indemnify and hold the County, its employees, officers, and agents, harmless and defend the County against any and all claims, damages, losses and expense that may arise by reason of the Contractor's negligent actions or omissions. County agrees to timely notify Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Contract will constitute a material breach of the agreement. In addition to any other available remedies, County may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

A request for a waiver of any of the following insurance requirements must be set forth on **Exhibit "C"** attached hereto. A waiver must address reduced amounts of coverage or the type of coverage waived entirely.

6.1 GENERAL LIABILITY

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000.00). The County shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")

6.2 AUTO LIABILITY

Where the services to be provided under this Contract involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars (\$1,000,000.00).

Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")

6.3 WORKERS' COMPENSATION

The Contractor acknowledges that it is aware of the provisions of the Labor Code of the State of California which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and it certifies that it will comply with such provisions before commencing the performance of the work under this Contract. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to County prior to commencement of work.

Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")

6.4 OTHER INSURANCES

Contractor may be required to carry additional insurance based upon the nature of the work to be performed (scope of services). For each additional required insurance, a corresponding certificate of insurance must be provided. Claims-made policies must have a retroactive date either prior to the effective date of the Contract or the beginning of the Contract work. Claims-made coverage must extend a minimum of twelve (12) months beyond completion of Contract work or end of current Contract, whichever is later. If coverage is cancelled or non-renewed, and not replaced with another claims made policy with a retroactive date prior to the Contract effective date, the Contractor must purchase extended reporting coverage for a minimum of twelve (12) months beyond completion of Contract work. Contractor shall maintain a policy limit of not less than one million dollars (\$1,000,000) per incident, with a deductible or self-insured retention not to exceed *\$2,500 unless approved by the County.

6.4.a Professional Liability Insurance..... (check box if required)

*Deductibles greater than \$2,500 require Insurance Reduction/Waiver form (Exhibit "C") to be completed.

6.4.b Maritime Insurance..... (check box if required)

7. NONDISCRIMINATORY EMPLOYMENT:

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all Federal, State and local statutes, regulations and ordinances.

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Contract without prior written approval of the County except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to the County evidence of same.

9. ASSIGNMENT:

The rights, responsibilities and duties under this Contract are personal to the Contractor and may not be transferred or assigned without the express prior written consent of the County.

10. LICENSING AND PERMITS:

The Contractor shall maintain the appropriate licenses throughout the life of this Contract. Contractor shall also obtain any and all permits which might be required by the work to be performed herein.

11. BOOKS OF RECORD AND AUDIT PROVISION:

Contractor shall maintain on a current basis complete books and records relating to this Contract. Such records shall include, but not be limited to, documents supporting all bids, all income and all expenditures. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work on this Contract. In addition, Contractor shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. These documents and records shall be retained for at least five years from the completion of this Contract. Contractor will permit County to audit all books, accounts or records relating to this Contract or all books, accounts or records of any business entities controlled by Contractor who participated in this Contract in any way. Any audit may be conducted on Contractor's premises or, at County's option, Contractor shall provide all books and records within a maximum of fifteen (15) days upon receipt of written notice from County. Contractor shall refund any monies erroneously charged.

12. TITLE:

Any and all documents, information and reports concerning this project prepared by the Contractor, shall be the property of the County. The Contractor may retain reproducible copies of drawings and copies of other documents. In the event of the termination of this Contract, for any reason whatsoever, Contractor shall promptly turn over all information, writing and documents to County without exception or reservation.

13. TERMINATION:

- A. If the Contractor fails to provide in any manner the services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance herein, the County may terminate this Contract by giving five (5) calendar days written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Contract for any reason by giving thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract so long as proof of required insurance is provided for the periods covered in the Contract or Amendment(s).

14. RELATIONSHIP BETWEEN THE PARTIES:

It is expressly understood that in the performances of the services herein, the Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of the County. Contractor shall be solely responsible to pay all required taxes, including but not limited to, all withholding social security, and worker's compensation.

15. AMENDMENT:

This Contract may be amended or modified only by written agreement of all parties.

16. ASSIGNMENT OF PERSONNEL:

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to County, as is evidenced in writing.

17. JURISDICTION AND VENUE:

This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in MARIN County, California.

18. INDEMNIFICATION:

Contractor agrees to indemnify, defend, and hold County, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's willful misconduct or negligent performance of this Contract. Nothing herein shall be construed as a limitation of Contractor's liabilities.

19. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws (including, but not limited to the County of Marin Nuclear Free Zone and Living Wage Ordinance) affecting the services covered by this Contract.

20. NOTICES:

This Contract shall be managed and administered on County's behalf by the Department Contract Manager named below. All invoices shall be submitted and approved by this Department and all notices shall be given to County at the following location:

Contract Manager: Siamak Motahari _____

Dept./Location: Dept. of Public Works _____
P. O. Box 4186 _____
San Rafael, CA 94913-4186 _____

Telephone No.: 415 499-7877 _____

Notices shall be given to Contractor at the following address:

Contractor: John Baker _____
260 Townsend Street _____
Address: San Francisco, CA 94107 _____

Telephone No.: (415) 984-1292 _____

21. ACKNOWLEDGEMENT OF EXHIBITS

CONTRACTOR'S INITIALS

- EXHIBIT A.** **Scope of Services** _____
- EXHIBIT B.** **Fees and Payment** _____
- EXHIBIT C.** **Insurance Reduction/Waiver** _____

IN WITNESS WHEREOF, the parties have executed this Contract on the date first above written.

**APPROVED BY
COUNTY OF MARIN:**

By: _____
PRESIDENT, Board of Supervisors

Swinerton Management & Consulting

By: _____
Name: _____
Telephone No.: _____

APPROVED AS TO FORM (if standard short form content has been modified):

County Counsel: _____

Date: _____

EXHIBIT "A"

SCOPE OF SERVICES

Scope of Work

1. CONSTRUCTION MANAGEMENT SERVICES

1.1 Pre-construction Conference:

In consultation with the County and Architect, conduct a Pre-Construction Conference with General Contractor and major trade subcontractors during which Project reporting procedures and other rules will be reviewed. Contractor shall prepare and distribute meeting minutes to all attendees.

1.2 Communication Management:

In collaboration with the County, establish and implement coordination and communication procedures for and between Agencies, County, Architect and General Contractor. Develop procedures, forms, reporting requirements to facilitate communication and decision-making at appropriate levels of authority.

In collaboration with the County, establish and implement procedures for:

- Reviewing and processing requests for clarifications and interpretations of the Contract Documents;
- Contract schedule adjustments;
- Change order proposals;
- Written proposals for substitutions;
- Payment applications;
- Expediting the processing and approval of shop drawings, product data, samples, and other submittals.
- Implementing procedures for General Contractor's RFI, submittal and shop drawing logs.
- Issue identification and resolution, and documentation requirements to protect County against claims.

A draft procedure manual shall be provided prior to pre-construction conference. Incorporate County review comments and produce final manual prior to Notice-to-Proceed to General Contractor.

1.3 Documents at Construction Site:

Maintain at the project site a current copy of all documents, drawings, specifications, addenda, change orders and other modifications. Monitor and review drawings marked by the General Contractor to record all changes made during construction. These shall include shop drawings; product data; samples; submittals; applicable handbooks; maintenance and operating manuals and instructions; other related documents and revisions which are relevant to the contract work. Maintain records of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations as provided by the General Contractor. At the completion of the project, deliver all such records to the County.

1.4 Field Observation Reports:

Prepare weekly field observation reports containing a record of daily observations for: weather, number of workers, work accomplished, problems encountered, and other relevant data. Submit reports weekly to County and include in monthly reports.

Record construction progress weekly via digital photographs and maintain them in electronic file that shall be provided to County at project completion or as requested by County.

1.5 Weekly Construction Meetings:

Conduct weekly construction meetings attended by the County, Architect and others to discuss and resolve such matters as progress, quality, and scheduling. Monitor action item responsibility, and prepare and promptly distribute minutes of these meetings to the County, Architect and others as necessary.

1.4 Project Budgeting

Update construction budget monthly and include in monthly report a detailed estimate of total construction costs that incorporates approved and anticipated change orders. Include appropriate contingency figures based on construction progress, site conditions, and schedule. Work with County to monitor expenses.

1.5 Review of General Contractor's Schedules:

Review General Contractor's detailed construction schedules (short-term look-ahead and updated master schedule), including activity sequences and durations, schedule of submittal, and schedule of delivery for products that require long lead-time. Verify that the schedules are prepared in accordance with the requirements of the Contract Documents, and that General Contractor establishes completion dates that comply with the requirements of the Contract Documents. Schedule issues shall be promptly identified in writing to County along with recommended actions.

1.6 RFI and Submittal Process:

Coordinate, review and actively manage General Contractor's requests for information (RFI's) and submittals, including the distribution process, and monitor Consultant review and responses. Lead the timely resolution of any issues or questions that develop. Contractor's comments shall not relate to design considerations, but rather to matters of cost, scheduling and time of construction, and clarity, consistency, and coordination in documentation. Ensure that standard procedures are consistently followed. Establish procedures for logs of RFIs, submittals, and responses. Expedite responses and notify County of any delinquent submittals or responses.

Monitor shop drawings, samples, and other submittals to determine the anticipated effect on compliance with the Project requirements, the Project and Construction Budget, and the Project Schedule.

1.7 Change Order Review and Negotiation:

Establish and implement a change order control system in accordance with attached procedure (attachment 1). Ensure that all changes to the Contract between the County and General Contractor are by written change orders executed by the County. Monitor General Contractor's change order log and expedite processing of change orders. Advise County of any proposed changes.

Review the contents of all General Contractor requested changes to the contract time or price, determine the cause of the request, and assemble and evaluate information concerning the request. Consider the Architects' comments regarding the proposed changes. Provide a written detailed, independent review of the General Contractor's proposed change including a recommendation to County as to how to proceed and why. Assist in negotiating General Contractor's proposals and submit recommendation to County. At the County's direction, prepare and issue in a timely manner appropriate change order documents.

1.8 Subcontractor Close-out:

For subcontractor work completed prior to Substantial Completion, prepare, with County and General Contractor input, a list of incomplete or unsatisfactory items and a schedule for their completion. Coordinate the completion of this work with General Contractor.

1.9 Progress Payments:

Develop and implement procedures, with assistance and confirmation by the County, for the review and processing of General Contractor's applications for progress and final payments. Review payment applications submitted by the General Contractor and document on the application confirmation that the amount requested reflects the progress of the General Contractor's work

1.9 Monthly Project Status Reports:

Prepare and distribute monthly project status reports including updates on project activities, progress of work, outstanding issues, potential problems, budget, schedule, cash flow, requests for information, change orders, and submittals as requested by the County. Record construction progress monthly via digital photographs and maintain an electronic file of photo documentation.

1.10 Manage County's Consultants:

Coordinate Testing and Special Inspection provided by third-party consultants. Review all inspection and testing reports and provide a copy of such reports to the Architect. Review of progress billings against progress and contract provisions. Review of additional services requests and fees.

As appropriate, make recommendations to County regarding special inspection or testing of work that is not in accordance with the provisions of the contract documents. Make recommendations to the County regarding rejection of work that does not conform to the requirements of the contract documents.

2. CLOSE-OUT PHASE

2.1 Punch List / Final Sign-offs:

In consultation with the Architect (prior to Architect issuing a Certificate of Substantial Completion), prepare a list of incomplete work or work which does not conform to the requirements of the Contract Documents. County and Agency representatives will be included as appropriate. This list shall be attached to the Certificate of Substantial Completion. Observe, with the County's maintenance personnel, the General Contractor's checkouts of utilities, operational systems and equipment, and start-up and testing. Conduct, with the Consultants and County, final inspections. Consult with Architect to determine when the Project and the General Contractor's work is finally completed and coordinate the issuance of a Certificate of Final Completion.

2.3 Warranties, Operation and Maintenance Materials:

Obtain from the General Contractor operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project. Deliver this information to the County and provide a copy of the information to the Architect. Secure and transmit to the County required guarantees, affidavits, releases, bonds, and waivers. Coordinate delivery of all keys, manuals, record drawings, and maintenance stock to the County.

2.4 Final Payment Application Review:

Review the final payment application submitted by the General Contractor and determine whether the amount requested reflects the completion of the General Contractor's work. Make appropriate adjustments, and prepare and forward to the County a final payment report. The report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the final period. Included in this report shall be a Certificate of Payment that shall be signed and delivered to the County.

2.5 Final Project Report:

Produce a final progress status report, including project budget and schedule summaries, final payment review, construction progress photographs, and analysis of key project issues.

3. GENERAL SCOPE REQUIREMENTS

3.1 Communications: Maintaining excellent communications is a requirement on this project. Contractor shall maintain office space at the site, which will be provided by the General Contractor, who shall ensure that reliable telephone, e-mail, and faxing facilities at the site are functioning. It is expected that the Contractor will be in daily contact with the County and will respond (same day) to both e-mail and telephonic requests. The Contractor will be responsible for leading communications at construction meetings. This work will involve arranging for meeting logistics, invitations to meetings, meeting minutes, and follow up on action items. Project meetings may be held as frequently as one per week.

3.2 Project Team/Staff: The following team members or individuals have been accepted for assignment to this project. As each is considered key to the success of this project changes are not to be made unless approved in advance.

Project Executive – John Baker
Senior Project Manager – Richard Hannigan

EXHIBIT "B"

FEES AND PAYMENT SCHEDULE

1. The contractor will be paid up to a maximum of \$ 185,540 under this agreement. Payment shall be made based on a monthly invoice, based on actual hours worked at the following Hourly Rates:

Project Executive (PX):	\$185
Senior Project Manager (SPM):	\$160
Estimator/Scheduler (EST):	\$125

2. The above hourly rates include all routine charges for expenditures such as clerical, reproduction, mail, telephone calls, and travel to Marin County for meetings. Unusual charges approved in advance by the County in writing such as express mail, courier service, report printing, sub consultants, etc. shall be reimbursable at Contractor's cost upon submission of a paid invoice.
3. The total contract amount includes the following phased budget amounts. Before commencing a phase written authorization from the County shall be provided.

Construction Phase: \$165,600
Closeout Phase: \$19,940.

EXHIBIT "C"

INSURANCE REDUCTION/WAIVER (if applicable)

This statement shall accompany all requests for a reduction/waiver of insurance requirements. Contractor's insurance may be provided, in part, by self-insurance as long as contractor provides: (1) evidence to the County that contractor has segregated amounts in a special insurance reserve fund meeting the contract's insurance requirements and restricted specifically to this project or (2) contractor's insurance reserves are adequate to provide the necessary coverage and the County of Marin may conclusively rely thereon. Please check the box if a waiver is requested or fill in the reduced coverage(s) where indicated below:

	<i>Check Where Applicable</i>	<i>Requested Limit Amount</i>	<i>CAO Use Only</i>
General Liability Insurance	<input type="checkbox"/>		
Automobile Liability Insurance	<input type="checkbox"/>		
Workers' Compensation Insurance	<input type="checkbox"/>		
Professional Liability Insurance	<input checked="" type="checkbox"/>	See below	

Please set forth the reasons for the requested reductions or waiver.

Professional Liability Deductible is \$250,000. See attached letter – attachment 2.

Contract Manager Signature: _____

Date: _____

Extension: _____

Approved by Risk Manager: _____

Date: _____



Attachment 1

CHANGE ORDER PROCEDURE

All changes will be implemented through written Change Orders prepared and issued by the Contractor after receiving written authorization from County.

The General Contractor and Contractor will immediately log upon discovery all potential change orders and will sequentially number and date each. Field Orders cannot be used to initiate actions that change time or price. The Contractor will immediately upon submission review all potential change orders to determine the potential impact and provide a detailed, written recommendation as to how to proceed for each. The log of potential change orders will be reviewed with County weekly. A copy of the Contractor's written determination for each potential change order and any subsequent correspondence shall be sent to County. County shall be immediately notified of any potential change order having significant cost or schedule impact.

Within five working days of discovery or initiation by County of any potential change order having significant cost or schedule impact, the Contractor shall ensure that a detailed itemized cost proposal for labor, material, and equipment is provided to the County by the General Contractor. The Contractor shall provide a detailed review of the General Contractor's proposed change within two working days of its submittal to the County.

Change Orders will be initiated via a Proposed Change Order (PCO) form. The PCO format shall be mutually agreed upon and included in the procedures manual. The PCO shall fully describe the work and explain any schedule impact. The Contractor shall ensure that a copy of all PCOs are transmitted to the appropriate reviewers, including three (3) copies to County.

The County will review PCOs immediately (within 2 days after receipt of Contractor's review) and provide a written response to Contractor.

When a PCO is accepted, the Contractor shall create a Change Order in a format acceptable to the County and coordinate its execution by all parties.