

ATTACHMENT A

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Construction Contract



**COUNTY OF SANTA BARBARA
AGREEMENT FOR:**

General Services Project No. 22039

County of Santa Barbara
White Hills Tower Complex
5000 San Julian Road, Lompoc, CA 93427
BC: _____

THIS AGREEMENT ("Agreement") is made by and between the County of Santa Barbara, a political subdivision of the State of California ("COUNTY"), and Normile Construction, Incorporated ("CONTRACTOR" and together with COUNTY, collectively, the "Parties" and each individually a "Party"), for the completion of the Work (defined below), on the following terms, conditions, and provisions. All references in the General Terms to the "Agreement" shall have the meaning ascribed to the term "Agreement" in the immediately preceding sentence.

1. **CONTRACT**: This Agreement incorporates by reference all of the General Conditions and Special Conditions, Specifications and Drawings provided by the COUNTY for the White Hills Tower Complex, Project No. 22039, the Notice to Bidders as amended by Addenda Number 1-6, the Bid Bond, the Performance Bond, the Payment Bond, and the bid documents executed and submitted by the CONTRACTOR for the Project ("Bid"), to the extent the Bid is consistent with the provisions of this Agreement other than the Bid (all of the foregoing documents, together with this Agreement, collectively, the "Contract" or "Contract Documents"). A copy of each of the General and Special Conditions, Specifications and Drawings provided by the COUNTY for the White Hills Tower Complex, Project 22039, the Notice to Contractors, the Bid Bond, the Performance Bond, and the Payment Bond are attached hereto as EXHIBIT A, and a copy of the Bid is attached hereto as EXHIBIT B. All capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Notice to Bidders. Copies of all Contract Documents are on file in the Department of General Services Office of the COUNTY and have been and will be made available to the CONTRACTOR during the Term of this Agreement. CONTRACTOR acknowledges receipt of all Contract Documents.

2. **WORK**: CONTRACTOR, at CONTRACTOR's own cost and expense, shall perform all the work described in the Contract Documents ("Work"), and shall furnish all equipment and materials necessary to perform and complete the Work, in a good and workmanlike manner and to the satisfaction of the Director of the COUNTY's General Services Department ("Director"), or the Director's Assistant Director designee, all in strict accordance with the Plans and the Contract Documents.

3. **EXCAVATIONS**: Before any pavement resurfacing, displacement, or excavation of the ground that may be required in connection with the Work under this Contract, the CONTRACTOR shall obtain an inquiry identification number by calling Underground Service Alert (USA) 1 (800) 422-4133 or by such other means as may be required; shall conform to all requirements of Sections 4215 through 4217 of the Government Code regarding any such pavement resurfacing, displacement or excavation, including the payment of any fees required; and shall facilitate performance by the COUNTY of any obligation required of the COUNTY under the Government Code. There shall be no performance under this Contract by either party hereto unless and until CONTRACTOR complies with all of the foregoing provisions of this Sections 3 and notifies the County Representative (defined below) in writing regarding such compliance.

4. **COUNTY REPRESENTATIVE**: The "County Representative" referred to in the Contract Documents is Clay Preston.

5. **PAYMENT**: As full compensation for furnishing all labor, supervision, overhead, materials, and equipment and for completing all of the Work contemplated by this Contract, and subject to adjustments and liquidated damages, if any, as provided in the Contract Documents, the base amount to be paid to the CONTRACTOR for satisfactory completion of all requirements of the CONTRACTOR under this Contract is and shall be Eight Hundred Fifteen Thousand, Four Hundred and Fifty Dollars (\$815,450.00) ("Base Contract Amount"), to be paid as provided in the Contract Documents. The CONTRACTOR assumes and will provide against any loss or damage arising out of the nature of the Work undertaken, or the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the performance of the Work until its acceptance by the COUNTY, and assumes any

and all expenses incurred by or in consequence of suspension or discontinuance of the Work, for well and faithfully completing the Work and the whole thereof, in the manner and to the requirements of the Contract and directions of the County Representative to the extent not inconsistent with any provisions of the Contract Documents.

6. **RIGHT TO AUDIT**: CONTRACTOR shall maintain and make available all books, papers, records, detail costs, estimates, claims, and accounts, including payment, property, payroll, personnel, subcontractors, and financial records related to, or which arise in connection with the Contract (collectively, the "Records"). The form of record keeping with respect to the Records shall be subject to approval by COUNTY. The Records shall be made available during normal business hours for examination by COUNTY or the County Representative and shall be retained at CONTRACTOR'S principal place of business in California for audit during normal business hours at such place for four (4) years after the recording of the Notice of Completion for the Project. CONTRACTOR shall provide an office in which COUNTY and the County Representative may conduct such audit(s).

The COUNTY will have the right to audit CONTRACTOR'S Project records. Records must be made available in a form satisfactory to the Santa Barbara County Auditor-Controller.

7. **EXTRA WORK**: Extra work and materials may be authorized via written Change Order(s) duly executed by the Director or his Assistant Director designee, including agreement(s) providing for compensation in addition to the Base Contract Amount at the same rates per unit provided for in the Contract Documents; *provided, however*, that the aggregate amount of such compensation in addition to the Base Contract Amount that may be authorized by the Director or his Assistant Director designee shall not exceed \$53,272.50 ("Contingency Amount"). Compensation in such other equitable amount as is appropriate for the requirements of the COUNTY may be authorized by resolution or minute order of the Santa Barbara County Board of Supervisors.

8. **COMPLIANCE WITH LAW**: CONTRACTOR shall keep fully informed of, and shall at all times during the Term ensure the performance of the Work is in compliance with, all laws, statutes, ordinances, decrees, orders, and regulations which do or may affect the Project, performance of the Work, the materials used therein, or persons engaged in connection therewith, and all such orders of bodies and tribunals having any jurisdiction over same (collectively, "Applicable Laws"). If CONTRACTOR has reason to believe that any provision of the Contract Documents conflict with any Applicable Law(s), the CONTRACTOR shall immediately report same to the County Representative in writing. CONTRACTOR shall at all times observe and comply with, and shall cause all agents, employees, and subcontractors to observe and comply with, all Applicable Laws. CONTRACTOR acknowledges and shall comply with the provisions of Sections 9364 and Sections 9550 and 9566, inclusive, of the Civil Code of California.

9. **PAYMENTS NOT ACCEPTANCE**: No certificate given or payments made under this Contract, except the final payment hereunder, shall be evidence of the performance of this Contract, either wholly or in part, against any claim upon CONTRACTOR. Final payment for the Work performed under this Contract shall not be made until the lapse of thirty (30) days after the Notice of Completion of the Work has been filed for record and no payment shall be construed to be acceptance of any defective Work or improper materials. CONTRACTOR agrees that the payment for final quantities due under this Contract and the payment of amounts due for any Work in accordance with this Contract shall release the COUNTY from any claims or liabilities on account of Work performed under this Contract, as the same may be amended from time to time during the Term. In addition to guarantees required elsewhere, CONTRACTOR shall and does hereby guarantee all workmanship and material to be free of defects and fit for the purposes intended for a period of one year from and after both the date of acceptance of the work and the recordation of the Notice of Completion by the COUNTY and CONTRACTOR shall repair or replace all Work and materials, together with any other portions of the Work which may be displaced in so doing, that, in the opinion of the County Representative, is or becomes defective during the period of said guarantee, without expense whatsoever to the COUNTY.

10. **PREVAILING WAGE RATES**: Rates of wages, including overtime, holiday, and Sunday rates provided for the Work shall comply with and are subject to the California Labor Code, Sections 1770 et. seq., Executive Orders of the President of the United States No. 9240, dated September 9, 1942, and No. 9250, dated October 3, 1942, and to any modifications thereof, and to and any orders of the President or any authorized Federal Officer or agency, insofar as the same may apply to this Contract.

No contractor or subcontractor may be listed on a bid for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid

purposes only under Labor Code section 1771.1(a)]. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

11. CONTRACT DOCUMENTS ACKNOWLEDGED: CONTRACTOR hereby declares that CONTRACTOR has read the Contract Documents, has carefully examined the plans and detailed drawings of the Work to be performed, and fully understands the intent and meaning of the same.

12. TIME FOR COMMENCEMENT, COMPLETION; TERM: The term of this Contract shall commence effective as of the first date that this Agreement is duly executed by all of the parties hereto ("Effective Date") and shall terminate on the date that is 365 calendar days after the Effective Date, unless earlier terminated in accordance with the provisions of this Agreement ("Term"). As soon as practicable after the Contract has been executed by both the CONTRACTOR and the COUNTY, a Notice to Proceed will be issued by the County Representative directing the CONTRACTOR to begin Work on July 28, 2025 ("Work Start Date"). CONTRACTOR shall complete all Work specified in the Contract Documents within 250 calendar days after the Work Start Date ("Performance Period" or "Contract Time" as that term is used in the General Conditions). The provisions of this Agreement pertaining to Liquidated Damages shall apply in the event of the CONTRACTOR's failure to complete the Work during the Performance Period. In the event that CONTRACTOR does not complete the Work during the Term, CONTRACTOR shall only be paid for the Work actually performed during the Term and accepted by COUNTY in accordance with the provisions of this Agreement.

13. WORKERS' COMPENSATION INSURANCE: CONTRACTOR certifies that CONTRACTOR has knowledge of, is in compliance with, and warrants that CONTRACTOR at all times during the Term shall remain in compliance with, the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance by the provisions of that Code. CONTRACTOR shall comply with such provisions before commencing the performance of the Work.

14. PROGRESS PAYMENT; NO WAIVER FOR DELAY: Any progress payment made after the scheduled completion date for the Work shall not constitute a waiver of any liquidated damages under this Contract.

15. GUARANTEE BONDS: Before any performance under this Contract, the CONTRACTOR shall provide the security required by statute for the payment of all workers and suppliers, and security for the faithful performance of all terms and conditions of this Contract, in an amount and form approved by the COUNTY. Both securities shall contain provisions that automatically increase amounts thereof and/or time of completion or both for all change orders, extensions, and additions to the Work provided under this Contract.

16. DISPUTES: Should any dispute(s) arise respecting the construction or meaning of any of the plans or specifications affecting the Work or respecting the true value of any extra work or work omitted, such dispute(s) shall be resolved by the Director, or his Assistant Director designee, whose decision shall be final and binding upon the parties hereto. If, after the decision of the **Director as** provided herein, claims (as defined in Public Contracts Code Section 20104) under this Contract are filed by CONTRACTOR against COUNTY, and those claims are in the aggregate amount of \$375,000 or less, such claims shall be resolved under Public Contracts Code Sections 20104 through 20104.8, inclusive.

17. SUBSTITUTION OF MATERIALS, SUBSTITUTION OF CONTRACTORS: The County Representative is authorized to act on behalf of the COUNTY in any matters requiring consent to substitutions of materials or equipment or subcontractors; provided, however, that the County Representative is not authorized to exercise any authority reserved to the Director hereunder.

18. SURVIVAL: All provisions of this Contract which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

19. INDEMNIFICATION AND INSURANCE: CONTRACTOR shall, at all times during the Term, comply with the indemnification and insurance provisions set forth in EXHIBIT C, attached hereto and incorporated herein by reference.

20. TAXES: CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any Work under this Contract and shall make any and all payroll deductions required by law.

CONTRACTOR is responsible for all CONTRACTOR personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments, and disability benefits. In no event shall COUNTY pay or be responsible for any taxes imposed on, or with respect to, CONTRACTOR's income, revenues, gross receipts, personnel, real or personal property, or other assets. COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

21. CONFLICT OF INTEREST: CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of Work required to be performed under this Contract. CONTRACTOR further covenants that in the performance of this Contract, no person having any such interest shall be employed by CONTRACTOR. CONTRACTOR must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

22. NONDISCRIMINATION: COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Contract and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

23. NON-ASSIGNMENT: CONTRACTOR shall not assign, subcontract, delegate, or otherwise transfer, directly or indirectly, whether by operation of law or otherwise ("Transfer") this Contract, in whole or in part, or any of CONTRACTOR's rights or obligations under this Contract, without the prior written consent of COUNTY in each instance. Any attempted or purported Transfer in violation of this Section 24, or in violation of Section 2.08 of the General Conditions, attached hereto as part of Exhibit A, shall be null and void and without legal effect and shall constitute grounds for termination by COUNTY. No Transfer shall relieve CONTRACTOR of any of its obligations hereunder.

24. SEVERABILITY: If any one or more of the provisions contained in the Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

25. TIME IS OF THE ESSENCE: Time is of the essence in this Contract, and each covenant and term is a condition herein.

26. ENTIRE AGREEMENT AND AMENDMENT: The Contract Documents, as may be modified from time to time during the Term by duly authorized and executed Change Orders in accordance with the provisions of this Agreement and the General Conditions, contain the entire understanding and agreement of the Parties with respect to the subject matter hereof and thereof, and there have been no promises, representations, agreements, warranties or undertakings by any of the Parties, either oral or written, of any character or nature hereafter binding except as set forth herein and therein. This Contract may be altered, amended or modified only by an instrument in writing, duly executed by each of the Parties, and by no other means, except as otherwise set forth in Section 29, below, to the extent such delegated authority is expressly authorized by the COUNTY Board of Supervisors in approving this Contract. Each Party waives its future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

27. EXECUTION OF COUNTERPARTS: This Contract may be executed electronically and in any number of counterparts, and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Parties shall preserve undestroyed, shall together constitute one and the same instrument.

28. SUBCONTRACTORS: CONTRACTOR is authorized to subcontract with only the subcontractor(s) identified in the Bid as attached hereto and as set forth in Exhibit B ("Subcontractors"). Contractor shall be fully responsible for all services and Work performed by its Subcontractors. Contractor shall secure from each of its

Subcontractors legally binding written agreements to comply with the provisions of this Agreement pertaining to CONTRACTOR's obligations as if such obligations pertained to such Subcontractor, including, but not limited to, audit obligations.

29. CHANGE ORDERS: No Change Order shall be valid or enforceable against the COUNTY unless duly executed in advance by both CONTRACTOR and the Director in accordance with this Section 29 and Article 13 of the General Conditions ("Change Order").

30. FLEET REQUIREMENTS: Vehicles with a Gross vehicle weight rating ("GVWR") greater than 8,500 lbs. and light-duty package delivery vehicles operated in California may be subject to the California Air Resources Board ("CARB") Advanced Clean Fleets regulations. Such vehicles may therefore be subject to requirements to reduce emissions of air pollutants. For more information, please visit the CARB Advanced Clean Fleets webpage at <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-fleets>. Contractor shall at all times have a valid Certificate of Reported Compliance, as described in section 2449(n) of Title 13 of the California Code of Regulations ("CARB Certificate of Compliance"), and shall confirm that each subcontractor listed in Contractor's Bid has a valid CARB Certificate of Compliance, for each fleet of vehicles subject to 13 CCR section 2449 that may be used in performance of this Contract. No such vehicle is permitted on the project site unless and until Contractor provides County with a valid Certificate of Reported Compliance applicable to such vehicle.

31. ORDER OF PRECEDENCE: In the event of conflict between the provisions contained in the numbered sections 1 through 34 of this Agreement ("Numbered Section") and the provisions contained in the Exhibits, the provisions contained in the Numbered Sections of this Agreement shall prevail over those in the Exhibits other than Exhibit C, which Exhibit C shall control and prevail over all other provisions of this Contract. CONTRACTOR agrees that in the event of any discrepancy, inconsistency, gap, ambiguity, or conflicting language between the Bid attached hereto as Exhibit B, on the one hand, and any other provision(s) of this Contract on the other, the provisions of this Contract (including the Numbered Sections of this Agreement, Exhibit A, and Exhibit C) other than Exhibit B shall take precedence and control and prevail over the provisions of the Bid attached hereto as Exhibit B. In the event of any conflict or inconsistency between the General Conditions, on the one hand, and the Numbered Sections or Exhibit C, on the other hand, the provisions of the Numbered Sections and Exhibit C shall control and prevail over the General Conditions.

32. TERMINATION.

a. COUNTY may, by writing notice to CONTRACTOR, terminate this Contract in whole or in part at any time, whether for COUNTY's convenience, for non-appropriation of funds, or because of the failure of CONTRACTOR to fulfill its obligations hereunder.

1. For Convenience. COUNTY may terminate this Contract in whole or in part upon thirty (30) days' written notice. During such thirty (30) day period, CONTRACTOR shall, as directed by COUNTY, wind down and cease Work as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on COUNTY from such winding down and cessation of Work.

2. For Non-appropriation of Funds. Notwithstanding any other provision of this Contract, in the event that no funds or insufficient funds are appropriated or budgeted by federal, State or COUNTY governments, or sufficient funds are not otherwise available for payments hereunder in the fiscal year(s) covered by the Term of this Agreement, then COUNTY will notify CONTRACTOR of such occurrence, and COUNTY may terminate or suspend this Contract in whole or in part, with or without a prior notice period. Subsequent to termination of this Contract under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the Term.

3. For Cause. Should CONTRACTOR default in the performance of this Contract or materially breach any of the provisions hereof, COUNTY may, at COUNTY's sole option, terminate or suspend this Contract in whole or in part upon written notice ("Termination Notice"). Upon receipt of such Termination Notice, CONTRACTOR shall immediately discontinue all Work (unless otherwise directed in such Termination Notice) and notify COUNTY in writing of the status of CONTRACTOR's performance of Work hereunder. The date of termination shall be the date the Termination Notice is received by CONTRACTOR, unless the Termination Notice directs otherwise.

b. Upon termination, CONTRACTOR shall deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Contract, whether completed or in process, except such items as COUNTY may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Contract, COUNTY shall pay CONTRACTOR for satisfactory Work performed as of the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall

CONTRACTOR be paid an amount in excess of the Maximum Contract Amount, or for unperformed portions of Work. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the Work rendered by CONTRACTOR. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

33. **JURISDICTION; VENUE.** This Contract shall be governed by the laws of the State of California. Any litigation arising out of this Contract shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to the County of Santa Barbara, if in federal court.

34. **NO WAIVER.** COUNTY's delay or failure to act with respect to a breach of this Contract by CONTRACTOR shall not constitute or be construed as a waiver of COUNTY's rights with respect to subsequent or similar breaches. Any delay or failure of COUNTY to exercise or enforce any right or provision of this Contract shall not constitute a waiver of such right or provision, and every power and remedy given by this Contract to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY. No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the first date fully executed by all of the parties hereto.

COUNTY

County of Santa Barbara

By: _____
LAURA CAPPS, CHAIR
BOARD OF SUPERVISORS

Dated: _____

ATTEST:

MONA MIYASATO,

CONTRACTOR

Normile Construction, Incorporated, a
California corporation

COUNTY EXECUTIVE OFFICER

CLERK OF THE BOARD

By: _____
Deputy Clerk of the Board

By: _____
AUTHORIZED REPRESENTATIVE
Name: Chad Normile

Title: Chief Executive Officer, Secretary, and
Chief Financial Officer

APPROVED AS TO FORM:
RACHEL VAN MULLEM,
COUNTY COUNSEL

Signed by:
By: _____
Deputy County Counsel
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APPROVED AS TO ACCOUNTING FORM:
BETSY SCHAFFER, CPA, CPFO
AUDITOR-CONTROLLER

Signed by:
By: _____
Deputy Auditor-Controller

APPROVED AS TO FORM:
GREG MILLIGAN, ARM
RISK MANAGER

DocuSigned by:
y: _____
Risk Manager
05F555F00269466...

Dept 067 Fund {1919} Program {8200}

RECOMMENDED FOR APPROVAL
KIRK LAGERQUIST, DIRECTOR
GENERAL SERVICES DEPARTMENT

By: _____
DocuSigned by:
Department Head
Kirk Lagerquist
19AEDA90054E4CE

Account {3100} Project {22039}