

## **MAINTENANCE AND REPAIR CONTRACT**

1. **Parties.** The County of Contra Costa (Public Agency), for its Public Works Department, and the following named Contractor, mutually agree and promise as follows:

Contractor: To Be Det, Inc.

Address: Street Address  
City, CA Zip

Federal Taxpayers I.D. or Social Security No.: 000-11-000

2. **Term.** The effective date of this Contract is \_\_\_\_\_. It terminates on \_\_\_\_\_ unless sooner terminated as provided herein.

3. **The Work.** Maintenance and repair services, as more particularly described in the Scope of Services section of the attached RFP Section IV, incorporated herein by reference.

4. **Payment Limit.** Public Agency's total payments to Contractor under this Contract shall not exceed \$ 0,000,000.00. .

5. **Signatures and Acknowledgment.**

Public Agency: Contra Costa County Public Works

By \_\_\_\_\_  
Director of Public Works Department, or designee

Approved: County Administrator

By \_\_\_\_\_  
Designee

Form Approved: County Counsel

By \_\_\_\_\_  
Deputy

**Contractor, hereby also certifying awareness of and compliance with Labor Code Sections 1861 and 3700 concerning Workers' Compensation Law, and other applicable laws and regulations including those specified in Sections 14 through 17 of this Contract:**

By \_\_\_\_\_  
(Signature of individual or officer)

\_\_\_\_\_  
(Designate official capacity in the business)

By \_\_\_\_\_  
(Signature of individual or officer)

\_\_\_\_\_  
(Designate official capacity in the business)

Note to Contractor: For corporations and limited liability companies, the contract must be signed by two officers. The first signature must be that of the chairman of the board, president or vice-president; the second signature must be that of the secretary, assistant secretary, chief financial officer or assistant treasurer. (Civ. Code, Sec. 1190 and Corps. Code, Sec. 313.) The acknowledgment below must be signed by a Notary Public.

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**CERTIFICATE OF ACKNOWLEDGMENT**

State of California

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,

personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

6. **Work Contract, Changes.**

(a) Contractor shall, at its own cost and expense, and in a workmanlike manner, fully and faithfully perform and complete the work; and will furnish all materials, labor, services and transportation necessary, convenient and proper in order fairly to perform the requirements of this contract, all strictly in accordance with the Public Agency's plans, drawings and specifications.

(b) The work can be changed only with Public Agency's prior written order specifying such change and its cost agreed to by the parties; and the Public Agency shall never have to pay more than specified in Section 4 without such an order.

7. **Liquidated Damages.** If the Contractor fails to complete this contract and this work within the time fixed therefor, allowance being made for contingencies as provided herein, he becomes liable to the Public Agency for all its loss and damage therefrom; and because, from the nature of the case, it is and will be impracticable and extremely difficult to ascertain and fix the Public Agency's actual damage from any delay in performance hereof, it is agreed that Contractor will pay as liquidated damages to the Public Agency \$500 per calendar day, the result of the parties' reasonable endeavor to estimate fair average compensation therefor, for each calendar day's delay in finishing said work; and if the same be not paid, Public Agency may, in addition to its other remedies, deduct the same from any money due or to become due Contractor under this contract. If the Public Agency for any cause authorizes or contributes to a delay, suspension of work or extension of time, its duration shall be added to the time allowed for completion, but it shall not be deemed a waiver nor be used to defeat any right of the Public Agency to damages for non-completion or delay hereunder. Pursuant to Government Code Section 4215, the Contractor shall not be assessed liquidated damages for delay in completion of the work, when such delay was caused by the failure of the Public Agency or the owner of a utility to provide for removal or relocation of existing utility facilities.

8. **Integrated Documents.** The plans, drawings and specifications or special provisions, if any, of the Public Agency's call for bids, and Contractor's accepted bid for this work are hereby incorporated into this contract; and they are intended to cooperate, so that anything exhibited in the plans or drawings and not mentioned in the specifications or special provisions, or vice versa, is to be executed as if exhibited, mentioned and set forth in both, to the true intent and meaning thereof when taken all together; and differences of opinion concerning these shall be finally determined by Public Agency's Agent specified in Appendix A.

9. **Payment.** For its strict and literal fulfillment of these promises and conditions, and as full compensation for all this work, Public Agency will pay Contractor for the work specified in the Scope of Services 35 days after Public Agency accepts the work as complete by recording a notice of completion of the work and providing Contractor with a certificate, provided Contractor shows that all claims for labor and materials have been paid, no claims have been presented to Public Agency based on acts or omissions of the Contractor, and no liens or withhold notices have been filed against the work or site, and provided there are not reasonable

indications of defective or missing work or of late-recorded notices of liens or claims against Contractor.

10. **Payments Withheld.**

(a) The Public Agency or its Agent may withhold any payment, or because of later discovered evidence nullify all or any certificate for payment, to such extent and period of time only as may be necessary to protect the Public Agency from loss because of:

- (1) Defective work not remedied, or uncompleted work, or
- (2) Claims filed or reasonable evidence indicating probable filing, or
- (3) Failure to properly pay subcontractors or for material or labor, or
- (4) Reasonable doubt that the work can be completed for the balance then unpaid, or
- (5) Damage to another contractor, or
- (6) Damage to the Public Agency, other than damage due to delays.

(b) The Public Agency shall use reasonable diligence to discover and report to the Contractor, as the work progresses, the materials and labor which are not satisfactory to it, so as to avoid unnecessary trouble or cost to the Contractor in making good any defective work or parts.

11. **Workers Compensation Insurance.** (Labor Code Sections 1860-61) On signing this contract, Contractor must give Public Agency (1) a certificate of consent to self-insure issued by the Director of Industrial Relations, or (2) a certificate of Workers' Compensation insurance issued by an admitted insurer, or (3) an exact copy or duplicate thereof certified by the Director or the insurer. Contractor is aware of and complies with Labor Code Section 3700 and the Workers' Compensation Law.

12. **Bonds.** On signing this contract Contractor shall deliver to Public Agency for approval good and sufficient bonds with sureties, in amount(s) satisfactory to Public Agency, guaranteeing its faithful performance of this contract and its payment for all labor and materials hereunder.

13. **Failure to Perform.** If the Contractor at any time refuses or neglects, without fault of the Public Agency or its agent(s), to supply sufficient materials or workers to complete this Contract and work as provided herein, for a period of 3 days or more after written notice thereof by the Public Agency, the Public Agency may furnish same and deduct the reasonable expenses thereof from the contract price.

14. **Laws Apply.**

(a) Both parties recognize the applicability of various federal, state, and local laws and regulations, especially Chapter 1 of Part 7 of Division 2 of the Labor Code (beginning with Section 1720, and including Sections 1735, 1777.5, and 1777.6 forbidding discrimination). The parties specifically stipulate that the relevant penalties and forfeitures provided in the Labor Code, especially in Sections 1775 and 1813 concerning prevailing wages and hours, as well as Section 1776 concerning certified payroll records, shall apply to this Contract.

(b) Contractor shall observe and comply with all laws, ordinances, and regulations which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work. Contractor's work shall meet the requirements of Contra Costa County Ordinance Code, Title 7, and all other applicable codes, regulations and laws. Contractor shall, at no cost to Public Agency, apply for and obtain all relevant permits and licenses necessary to perform the demolition work required under this Contract and will comply with all such permit requirements, including any applicable environmental requirements issued by the EPA.

15. **Wage Rates.**

(a) Pursuant to Labor Code Section 1773, the Director of the Department of Industrial Relations has ascertained the general prevailing rates of wages per diem, and for holiday and overtime work, in the locality in which this work is to be performed, for each craft, classification, or type of worker needed to execute this contract, and said rates are as specified in the call for bids for this work or are on file with the Public Agency, and are hereby incorporated herein.

(b) This schedule of wages is based on a working day of 8 hours unless otherwise specified; and the daily rate is the hourly rate multiplied by the number of hours constituting the working day. When less than that number of hours are worked, the daily wage rate is proportionately reduced, but the hourly rate remains as stated.

(c) The Contractor, and all its subcontractors, must pay at least these rates to all persons on this work, including all travel, subsistence, and fringe benefit payments provided for by applicable collective bargaining agreements. All skilled labor not listed above must be paid at least the wage scale established by collective bargaining agreement for such labor in the locality where such work is being performed. If it becomes necessary for the Contractor or any subcontractor to employ any person in a craft, classification or type of work (except executive, supervisory, administrative, clerical or other non-manual workers as such) for which no minimum wage rate is specified, the Contractor shall immediately notify the Public Agency which shall promptly determine the prevailing wage rate therefor and furnish the Contractor with the minimum rate based thereon, which shall apply from the time of the initial employment of the person affected and during the continuance of such employment.

16. **Hours of Labor.** Eight hours of labor in one calendar day constitutes a legal day's work, and no worker employed at any time on this work by the Contractor or by any subcontractor shall be required or permitted to work longer thereon except as provided in Labor Code Sections 1810-1815.

17. **Apprentices.** Properly indentured apprentices may be employed on this work in accordance with Labor Code Sections 1777.5 and 1777.6, forbidding discrimination.

18. **Preference for Materials.** The Public Agency desires to promote the industries and economy of Contra Costa County, and the Contractor therefore promises to use the products, workers, laborers and mechanics of this County in every case where the price, fitness and quality are equal.

19. **Assignment.** The agreement binds the heirs, successors, assigns, and representatives of the Contractor; but he cannot assign it in whole or in part, nor any monies due or to become due under it, without the prior written consent of the Public Agency and the Contractor's surety or sureties, unless they have waived notice of assignment.

20. **No Waiver by Public Agency.** Inspection of the work and/or materials, or approval of work and/or materials inspected, or statement by any officer, agent or employee of the Public Agency indicating the work or any part thereof complies with the requirements of this contract, or acceptance of the whole or any part of said work and/or materials, or payments therefor, or any combination of these acts, shall not relieve the Contractor of its obligation to fulfill this contract as prescribed; nor shall the Public Agency be thereby estopped from bringing any action for damages or enforcement arising from the failure to comply with any of the terms and conditions hereof.

21. **Hold Harmless and Indemnification.**

(a) Contractor promises to and shall defend, indemnify, save, and hold harmless the indemnitees from the liabilities as defined in this section.

(b) The indemnitees benefitted and protected by this promise are the Public Agency and its elective and appointive boards, commissions, officers, agents, and employees, together with any additional persons and entities, if any, listed in the Supplementary General Conditions.

(c) The liabilities protected against are any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses, or liabilities arising out of or in connection with the actions defined below for personal injury, sickness, disease, emotional injury, death, property damage (including loss of use), trespass, nuisance, inverse condemnation, patent infringement, or any combination of these, regardless of whether or not such liability, claim, or damage was foreseeable at any time before the Public Agency approved the improvement plans or accepted the improvements as completed, and including the defense of any suit(s) or action(s) at law or equity concerning these.

(d) The actions causing liability are any act or omission (negligent or non-negligent) in connection with the matters covered by this contract and attributable to the Contractor, subcontractor(s), supplier(s), trucker(s), anyone for whose acts the Contractor may be liable, or any officer(s), agent(s) or employee(s) of one or more of them.

(e) The promise and agreement in this section is not conditioned or dependent on whether or not any indemnitee has prepared, supplied, or approved any plan(s), drawing(s), specification(s), or special provision(s) in connection with this work or has insurance or other indemnification covering any of these matters.

(f) Except as prohibited by Civil Code Section 2782, the Contractor's obligations under this section shall exist regardless of the existence or degree of fault of the Public Agency or any indemnitee.

(g) The Contractor's obligations under this section shall extend to claims arising after the work is completed and accepted if the claims are related to alleged acts or omissions that occurred during the course of the work. Public Agency's inspection is not a waiver of full compliance with these requirements.

(h) The Contractor and the Contractor's insurance carrier(s) shall respond within 15 days to the tender of any claim for defense and indemnity by the Public Agency, unless this time has been extended by the Public Agency.

(i) With respect to third-party claims against the Contractor, the Contractor waives all rights of any kind to express or implied indemnity against the indemnitees.

(j) Nothing in this section is intended to establish a standard of care owed to any third party or to extend to any third party the status of a third-party beneficiary.

22. **Excavation.** Contractor shall comply with the provisions of Labor Code Section 6705, if applicable, by submitting to Public Agency a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during trench excavation.

23. **Record Retention and Auditing.** Except for materials and records delivered to Public Agency, Contractor shall maintain and retain, for a period of at least five years after Contractor's receipt of the final payment under this contract, all records relating to this contract or to the work, including without limitation estimates, bids, shop drawings, submittals, subcontracts, personnel and payroll records, job reports and diaries, receipts, invoices, cancelled checks and financial records. Upon request by Public Agency, at no additional charge, Contractor shall promptly make such records available to Public Agency, or to authorized representatives of the state and federal governments, at a convenient location within Contra Costa County designated by Public Agency, and without restriction or limitation on their use.

24. **Venue.** Any litigation involving this contract or relating to the work shall be brought in Contra Costa County, and Contractor hereby waives the removal provisions of Code of Civil Procedure Section 394.

25. **Endorsements.** Contractor shall not in its capacity as a contractor with Contra Costa County publicly endorse or oppose the use of any particular brand name or commercial product without the prior approval of the Board of Supervisors. In its Public Agency contractor capacity, Contractor shall not publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely-accepted scientific basis for such claims or without the prior approval of the Board of Supervisors. In its Public Agency contractor capacity, Contractor shall not participate or appear in any commercially-produced advertisements designed to promote a particular brand name or commercial product, even if Contractor is not publicly endorsing a product, as long as the Contractor's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of Contra Costa County. Notwithstanding the foregoing, Contractor may express its views on products to other contractors, the Board of Supervisors, County officers, or others who may be authorized by the Board of Supervisors or by law to receive such views.

26. **Diligent Completion.** Once Contractor begins work, said demolition and removal work shall be prosecuted diligently and continuously each working day until completed. Work shall not be suspended for more than three working days, except for conditions beyond the control of Contractor.

27. **Insurance.** Contractor shall, at no cost to Public Agency, obtain and maintain during the term hereof: (a) Workers' Compensation Insurance pursuant to state law; (b) Professional Liability Insurance with minimum coverage of \$1,000,000 and a maximum deductible of \$25,000; and (c) Comprehensive General Liability Insurance, including blanket contractual (or contractual liability) coverage, broad form property damage coverage, and coverage for owned and non-owned vehicles, with a minimum combined single limit coverage of \$500,000 for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of use thereof, arising out of each accident or occurrence, and naming Public Agency, its governing bodies, officers and employees as additional insureds. Contractor shall promptly furnish to Public Agency certificates of insurance evidencing such coverage and requiring 30 days' written notice to Public Agency of policy lapse, cancellation or material change in coverage.

28. **Status.** Contractor is an independent contractor, and shall not be considered an employee of Public Agency.

29. **Breach.** In the event that Contractor fails to perform any of the services described in this contract or otherwise breaches this contract, Public Agency shall have the right to pursue all remedies provided by law or equity. Any disputes relating to the performance of this contract shall not be subject to non-judicial arbitration. Any litigation involving this contract or relating to the work shall be brought in Contra Costa County, and Contractor hereby waives the removal provisions of Code of Civil Procedure Section 394.

30. **Assumption of Risk.** Contractor assumes all risk and responsibility in the demolition/removal operations, including any damages or loss by vandalism. Contractor acknowledges that the demolition and removal work involves certain risks and expressly releases Public Agency, its officers and employees, from any and all liability for death, personal injury, sickness or property damage to Contractor, Contractor's employees or any other person resulting from or in any way connected with, the services covered by this contract.

31. **Ownership of Demolition Material.** All buildings, material and structures to be demolished and removed will become the property of Contractor, to be disposed of off the site as Contractor sees fit. Public Agency will incur no liability for any building, materials or structures that are removed from the property. This provision shall not apply to treasure trove or other intrinsically valuable material.

32. **Amendments.** This contract may be modified or amended only by a written document executed by both parties.

33. **Notices.** All notices (including requests, demands, approvals or other communications) under this contract shall be in writing.



- (a) Notice shall be sufficiently given for all purposes as follows:
- (1) When delivered by first class mail, postage prepaid, notice shall be deemed delivered three (3) business days after deposit in the United States Mail.
  - (2) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
  - (3) When delivered by overnight delivery by a nationally recognized overnight courier, notice shall be deemed delivered one (1) business day after deposit with that courier.
  - (4) When personally delivered to the recipient, notice shall be deemed delivered on the date personally delivered.
- (b) The place for delivery of all notices given under this contract shall be as specified in the attached Appendix A, incorporated herein by reference.

34. **Termination.** Public Agency may terminate this contract at any time, without cause and for convenience, by delivering to Contractor a written notice of termination. When a notice of termination is sufficiently given, Contractor shall stop work under the contract. If this contract is terminated for the convenience of Public Agency, Contractor is entitled to compensation for any work performed to Public Agency's satisfaction prior to the notice of termination and Contractor's reasonable costs and expenses incurred before the termination date. Contractor is not entitled to compensation for lost profits for the portions of the contract that are terminated.

35. **Inspection.** Contractor's performance, place of business, and records pertaining to this Contract are subject to monitoring, inspection, review and audit by authorized representatives of Public Agency, the State of California, and the United States Government.

36. **Entire Agreement.** This Contract contains all the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Contract will be deemed to exist or to bind any of the parties hereto.

37. **Choice of Law and Personal Jurisdiction.**

- (a) This Contract is made in Contra Costa County and is governed by, and must be construed in accordance with, the laws of the State of California.
- (b) Any action relating to this Contract must be instituted and prosecuted in the courts of Contra Costa County, State of California.

38. **Subcontract and Assignment.** This Contract binds the heirs, successors, assigns and representatives of Contractor. Prior written consent of the County Administrator or his designee, subject to any required state or federal approval, is required before the Contractor may enter into subcontracts for

any work contemplated under this Contract, or before the Contractor may assign this Contract or monies due or to become due, by operation of law or otherwise.

39. **Conflicts of Interest.** Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Contract, no person having any such interests will be employed by Contractor. If requested to do so by Public Agency, Contractor will complete a "Statement of Economic Interest" form and file it with Public Agency and will require any other person doing work under this Contract to complete a "Statement of Economic Interest" form and file it with Public Agency. Contractor covenants that Contractor, its employees and officials, are not now employed by Public Agency and have not been so employed by Public Agency within twelve months immediately preceding this Contract; or, if so employed, did not then and do not now occupy a position that would create a conflict of interest under Government Code section 1090. In addition to any indemnity provided by Contractor in this Contract, Contractor will indemnify, defend, and hold the Public Agency harmless from any and all claims, investigations, liabilities, or damages resulting from or related to any and all alleged conflicts of interest. Contractor warrants that it has not provided, attempted to provide, or offered to provide any money, gift, gratuity, thing of value, or compensation of any kind to obtain this Contract.

40. **Copyrights, Rights in Data, and Works Made for Hire.** Contractor will not publish or transfer any materials produced or resulting from activities supported by this Contract without the express written consent of the County Administrator. All reports, original drawings, graphics, plans, studies and other data and documents, in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, consultants, and other agents in connection with this Contract are "works made for hire" (as defined in the Copyright Act, 17 U.S.C. Section 101 et seq., as amended) for Public Agency, and Contractor unconditionally and irrevocably transfers and assigns to Agency all right, title, and interest, including all copyrights and other intellectual property rights, in or to the works made for hire. Unless required by law, Contractor shall not publish, transfer, discuss, or disclose any of the above-described works made for hire or any information gathered, discovered, or generated in any way through this Agreement, without Public Agency's prior express written consent. If any of the works made for hire is subject to copyright protection, Public Agency reserves the right to copyright such works and Contractor agrees not to copyright such works. If any works made for hire are copyrighted, Public Agency reserves a royalty-free, irrevocable license to reproduce, publish, and use the works made for hire, in whole or in part, without restriction or limitation, and to authorize others to do so.

41. **Authorization.** Contractor, or the representative(s) signing this Contract on behalf of Contractor, represents and warrants that it has full power and authority to enter into this Contract and to perform the obligations set forth herein.