

**ON-CALL EMERGENCY CONSTRUCTION CONTRACT AGREEMENT
IN THE CITY OF CALABASAS, CALIFORNIA**

THIS ON-CALL EMERGENCY CONSTRUCTION CONTRACT AGREEMENT (“AGREEMENT”) is made and entered into for the above-stated project this 11th day of January, 2006, BY AND BETWEEN the City of Calabasas, hereafter designated as “AGENCY”, and SME Construction Inc., hereafter designated as “CONTRACTOR.”

WITNESSETH that AGENCY and CONTRACTOR have mutually agreed as follows:

ARTICLE I

The contract documents for the On-Call Emergency Construction project shall consist of the CONTRACTOR’S Equipment and Labor Rates as accepted by AGENCY submitted in CONTRACTOR’S proposal dated October 1, 2005, and all City, Los Angeles County and Standard Specifications for Public Works Construction “SSPWC” specifications, details, standard drawings, and appendices; together with two (2) signed copies of the AGREEMENT, two (2) signed copies of required bonds; one (1) copy of the insurance certificates, permits, notices, and affidavits; and also including any and all addenda or supplemental agreements clarifying, amending, or extending the work contemplated as may be required to insure its completion in an acceptable manner. All of the provisions of the contract documents are made a part hereof as though fully set forth herein.

ARTICLE II

For and in consideration of the payments and agreements to be made and performed by AGENCY, CONTRACTOR agrees to furnish all materials and equipment and perform all work required for the above-stated project, and to fulfill all other obligations as set forth in the aforesaid contract documents.

ARTICLE III

CONTRACTOR agrees to perform all work based on time, as agreed upon with the AGENCY on the CONTRACTOR’S Equipment and Labor Rates, and materials as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Such compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance including those for well and faithfully completing the work and the whole thereof in the manner and time specified in the aforesaid contract documents; and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work.

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to this AGREEMENT, CONTRACTOR offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (Section 16700, et seq.) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

CONTRACTOR shall perform work at the direction of the AGENCY on incremental purchase orders not to exceed two-hundred fifty thousand dollars (\$250,000) each.

ARTICLE IV

AGENCY hereby promises and agrees to employ, and does hereby employ, CONTRACTOR to provide the materials, do the work, and fulfill the obligations according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner, and upon the conditions set forth in this AGREEMENT.

This AGREEMENT is further subject to the provisions of Article 1.7 (commencing at Section 20104.50) of Division 2, Part 3 of the Public Contract Code regarding prompt payment of contractors by local governments. Article 1.7 mandates certain procedures for the payment of undisputed and properly submitted payment requests within 30 days after receipt, for the review of payment requests, for notice to the contractor of improper payment requests, and provides for the payment of interest on progress payment requests which are not timely made in accordance with this Article. This AGREEMENT hereby incorporates the provisions of Article 1.7 as though fully set forth herein.

The term of this AGREEMENT shall commence at 12:00 a.m. on the Execution Date and shall expire at 11:59 p.m. exactly three years after the Execution Date unless extended by a maximum of two one-year extensions in a written agreement of the parties or terminated earlier in accordance with the SSPWC.

ARTICLE V

AGENCY and CONTRACTOR acknowledge that this AGREEMENT is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works and public agencies and agree to be bound by all the provisions thereof as though set forth fully herein. Full compensation for conforming to the requirements of the Labor Code and with other Federal, State and local laws related to labor, and rules, regulations and ordinances which apply to any work performed pursuant to this AGREEMENT shall be considered as included in the price for all contract items of work involved.

This AGREEMENT is further subject to prevailing wage law, including, but not limited to, the following:

1. The CONTRACTOR shall pay the prevailing wage rates for all work performed under the AGREEMENT. When any craft or classification is omitted from the general prevailing wage determinations, the CONTRACTOR shall pay the wage rate of the craft or classification most closely related to the omitted classification. The CONTRACTOR shall forfeit as a penalty to City \$50.00 or any greater penalty provided in the Labor Code for each Calendar Day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done under the AGREEMENT employed in the execution of the work by CONTRACTOR or by any Subcontract under CONTRACTOR in violation of the provisions of the Labor Code. In addition, the difference between such prevailing wage rates and the amount paid to each worker for each Calendar Day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONTRACTOR.

2. CONTRACTOR shall comply with the provisions of Labor Code Section 1777.5 concerning the employment of apprentices on public works projects, and further agrees that CONTRACTOR is responsible for compliance with Section 1777.5 by all of its subcontractors.

3. Pursuant to Labor Code § 1776, CONTRACTOR and any subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with this AGREEMENT. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of

perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Labor Code §§ 1811, and 1815 for any work performed by his or her employees on the public works project. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours as required by Labor Code § 1776.

4. This AGREEMENT is subject to Public Contract Code Section 6109: CONTRACTOR shall be prohibited from performing work on this project with a subcontractor who is ineligible to perform work on the project pursuant to Sections 1777.1 or 1777.7 of the Labor Code.

This AGREEMENT is further subject to 8-hour work day and wage and hour penalty law, including, but not limited to, Labor Code Sections 1810 and 1813, as well as California nondiscrimination laws, as follows:

CONTRACTOR shall strictly adhere to the provisions of the Labor Code regarding the 8-hour day and the 40-hour week, overtime, Saturday, Sunday and holiday work and nondiscrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or sexual orientation, except as provided in Section 12940 of the Government Code. Pursuant to the provisions of the Labor Code, eight hours' labor shall constitute a legal day's work. Work performed by CONTRACTOR's employees in excess of eight hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. CONTRACTOR shall forfeit as a penalty to City \$25.00 or any greater penalty set forth in the Labor Code for each worker employed in the execution of the work by CONTRACTOR or by any Subcontractor of CONTRACTOR, for each Calendar Day during which such worker is required or permitted to the work more than eight hours in one Calendar Day or more than 40 hours in any one calendar week in violation of the provisions of the Labor Code.

ARTICLE VI

In compliance with and pursuant to Government Code Section 4215, AGENCY shall assume the responsibility, as between the parties to this AGREEMENT, for the timely removal, relocation, or protection of existing main- or trunk-line utility facilities located on the site of any construction project that is a subject of this AGREEMENT, if such utilities are not identified by AGENCY in the plans and specifications made a part of the invitation for bids. The AGREEMENT documents shall include provisions to compensate CONTRACTOR for the costs of locating, repairing damage not due to the failure of CONTRACTOR to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work. CONTRACTOR shall not be assessed liquidated damages for delay in completion of the project, when such delay was caused by the failure of AGENCY or the owner of the utility to provide for removal or relocation of such utility facilities.

To the extent that the work requires trenches in excess of five feet (5'), prior to any excavation, CONTRACTOR must provide and AGENCY, or a registered civil or structural engineer employed by the AGENCY to whom authority to accept has been delegated, must accept 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 the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. Nothing in this section shall be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders.

This AGREEMENT is further subject to Public Contract Code Section 7104 with regard to any trenches deeper than four feet (4') involved in the proposed work as follows:

CONTRACTOR shall promptly, and before the following conditions are disturbed, notify AGENCY, in writing, of any:

- (1) Material that CONTRACTOR believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- (2) Subsurface or latent physical conditions at the site differing from those indicated.
- (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

AGENCY shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or involve hazardous waste, and cause a decrease or increase in CONTRACTOR's cost of, or the time required for, performance of any part of the work, AGENCY shall issue a change order under the procedures described in this AGREEMENT.

In the event that a dispute arises between AGENCY and CONTRACTOR whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in CONTRACTOR's cost of, or time required for, performance of any part of the work, CONTRACTOR shall not be excused from any scheduled completion date provided in the AGREEMENT, but shall proceed with all work to be performed under the contract. CONTRACTOR shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

ARTICLE VII

With respect to performance of work under this AGREEMENT, CONTRACTOR shall maintain, and shall require all of its subcontractors to maintain, insurance as required in the SSPWC.

This AGREEMENT is further subject to Workers' Compensation obligations, including, but not limited to, California Labor Code Sections 1860 and 1861 as follows:

CONTRACTOR shall take out and maintain, during the life of this contract, Worker's Compensation Insurance for all of CONTRACTOR's employees employed at the site of improvement; and, if any work is sublet, CONTRACTOR shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by CONTRACTOR. CONTRACTOR and any of CONTRACTOR's subcontractors shall be required to provide City with a written statement acknowledging its obligation to secure payment of Worker's Compensation Insurance as required by Labor Code § 1861; to wit: 'I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.' If any class of employees engaged in work under this AGREEMENT at the site of the Project is not protected under any Worker's Compensation law, CONTRACTOR shall provide and shall cause each subcontractor to provide adequate insurance for the protection of employees not otherwise protected. CONTRACTOR shall indemnify and hold harmless City for any damage resulting from failure of either CONTRACTOR or any subcontractor to take out or maintain such insurance.

ARTICLE VIII

To the fullest extent permitted by law, CONTRACTOR shall, at its sole cost and expense, fully defend, indemnify and hold harmless AGENCY, its authorized representatives and their respective subsidiaries, affiliates, members, directors, officers, employees and agents (collectively, the "Indemnitees") from and against any and all claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses, and expenses, including but not limited to any fees of accountants, attorneys or other professionals (collectively "Liabilities"), arising out of, in connection with, resulting from or related to, any act, omission, fault or negligence of CONTRACTOR, CONTRACTOR's Representative, or any of its officers, agents, employees, Subcontractors or Suppliers, or any person or organization directly or indirectly employed by any of them (Collectively, the "Indemnitors"), in connection with or relating to or claimed to be in connection with or relating to the work performed under this AGREEMENT.

If CONTRACTOR is a joint venture or partnership, each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of CONTRACTOR that are assumed under or arise out of this AGREEMENT. Each of such venturers or partners waives notice of the breach or non-performance of any undertaking or obligation of CONTRACTOR contained in, resulting from or assumed under this AGREEMENT, and the failure to give any such notice shall not affect or impair such venturer's or partner's joint and several liability hereunder.

ARTICLE IX

AGENCY and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents. This AGREEMENT is not assignable nor the performance of either party's duties delegable without the prior written consent of the other party. Any attempted or purported assignment or delegation of any of the rights of obligations of either party without the prior written consent of the other shall be void and of no force and effect.

ARTICLE X

In the event of a dispute arising out of the terms of this AGREEMENT, including any action brought to declare the rights granted herein or to enforce any of the terms of this AGREEMENT, the party prevailing in such dispute shall be entitled to all reasonable costs and litigation expenses actually incurred, including fees of attorneys and expert witnesses. Any court action arising out of this AGREEMENT shall be filed in the Los Angeles County Superior Court. Any alternative dispute resolution proceeding arising out of this AGREEMENT shall be heard in the City of Los Angeles or the City of Calabasas, California.

AGENCY shall have full authority to compromise or otherwise settle any claim relating to this AGREEMENT or any part hereof at any time. AGENCY shall provide timely notification to CONTRACTOR of the receipt of any third-party claim relating to this AGREEMENT. AGENCY shall be entitled to recover its reasonable costs incurred in providing the notification required by this section.

This AGREEMENT is further subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by the contractor, for the response to such claims by the contracting public agency, for a mandatory meet and confer conference upon the request of the contractor, for mandatory nonbinding mediation in the event litigation is commenced, and for mandatory judicial arbitration upon the failure to resolve the

dispute through mediation. This AGREEMENT hereby incorporates the provisions of Article 1.5 as though fully set forth herein.

ARTICLE XI

CONTRACTOR is and shall at all times remain as to AGENCY, a wholly independent contractor. Neither AGENCY nor any of its agents shall have control of the conduct of CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth. CONTRACTOR shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of AGENCY.

ARTICLE XII

CONTRACTOR is responsible for paying all retail, sales and use, transportation, export, import, special or other taxes and duties applicable to, and assessable against any work, materials, equipment, services, processes and operations incidental to or involved in this AGREEMENT. The CONTRACTOR is responsible for ascertaining and arranging to pay them. The prices established in this AGREEMENT shall include compensation for any taxes the CONTRACTOR is required to pay by laws and regulations in effect as of the execution of this AGREEMENT.

At the request and expense of CONTRACTOR, securities equivalent to the amount withheld shall be deposited with AGENCY, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to CONTRACTOR. Upon satisfactory completion of this AGREEMENT, the securities shall be returned to CONTRACTOR.

At any time during the term of this AGREEMENT CONTRACTOR may, at its own expense, substitute securities for funds otherwise withheld as retention (or the retained percentage) in accordance with Public Contract Code § 22300.

ARTICLE XIII

All notices and communications shall be sent in writing to the parties at the following addresses:

CITY: Director of Public Works
CITY OF CALABASAS
26135 Mureau Road
Calabasas, CA 91302-3172

CONTRACTOR: Aaron Ramirez, President
SME Construction Inc
195 Dawson Drive
Camarillo, CA 93012

ARTICLE XIV

This AGREEMENT supersedes any and all other agreements, either oral or written, between the parties and contains all of the covenants and agreements between the parties pertaining to the work of improvements described herein. Each party to this AGREEMENT acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement, statements or promise not contained in this AGREEMENT shall not be valid or binding. Any modification of this AGREEMENT will be effective only if signed by the party to be charged.

The benefits and obligations of this AGREEMENT shall inure to and be binding upon the representatives, agents, partners, heirs, successors and assigns of the parties hereto. This AGREEMENT shall be construed pursuant to the laws of the State of California.

ARTICLE XV

The signatories hereto represent that they are authorized to sign on behalf of the respective parties they represent and are competent to do so, and each of the parties hereto hereby irrevocably waives any and all rights to challenge signatures on these bases.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this AGREEMENT to be executed in duplicate by setting hereunto their names, titles, hands, and seals this 11th day of January 2006.

CONTRACTOR: SME Construction Inc.

Aaron Ramirez, President

Contractor's License No. 704917

Subscribed and sworn to this _____ day of _____, 200_.

NOTARY PUBLIC _____

(SEAL)

AGENCY: _____
Mayor of the _____ Date
City of Calabasas

ATTESTED: _____
City Clerk of the _____ Date
City of Calabasas

APPROVED AS
TO FORM: _____
City Attorney of the _____ Date
City of Calabasas

(EXECUTE IN DUPLICATE)

**PAYMENT BOND
ON-CALL EMERGENCY CONSTRUCTION
IN THE CITY OF CALABASAS, CALIFORNIA**

WHEREAS, the City of Calabasas, as AGENCY has awarded to SME Construction Inc., as CONTRACTOR, a contract for the above-stated project;

AND WHEREAS, CONTRACTOR is required to furnish a bond in connection with the contract, to secure the payment of claims of laborers, mechanics, material persons, and other persons as provided by law;

NOW THEREFORE, we, the undersigned CONTRACTOR and SURETY, are held and firmly bound unto AGENCY in the sum of two-hundred-fifty-thousand Dollars (\$250,000) which is one hundred percent (100%) of the total contract amount for the above-stated project, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION IS SUCH that if CONTRACTOR, its heirs, executors, administrators, successors, assigns or subcontractors, shall fail to pay any of the persons named in Civil Code Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor withheld, and paid over to the Employment Development Department from the wages of employees of the CONTRACTOR and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor, that the surety or sureties herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, SURETY will pay a reasonable attorneys' fees to the plaintiffs and AGENCY in an amount to be fixed by the court.

This bond shall inure to the benefit to any of the persons named in Civil Code Section 3181 as to give a right of action to such persons or their assigns in any suit brought upon this bond.

The SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or the specifications accompanying it shall in any manner affect SURETY's obligations on this bond. The SURETY hereby waives notice of any such change, extension, alteration or addition and hereby waives the requirements of Section 2845 of the Civil Code as a condition precedent to any remedies AGENCY may have.

IN WITNESS WHEREOF the parties hereto have set their names, titles, hands, and seals this day of _____, 200_.

Contractor*

Aaron Ramirez, President
SME Construction Inc.
195 Dawson Drive
Camarillo, CA 93012
805-482-4322

Surety*

*Provide CONTRACTOR and SURETY name, address and telephone number and the name, title, address and telephone number for the respective authorized representatives. Power of Attorney must be attached.

Subscribed and sworn to this ___ day of _____, 200_.

NOTARY PUBLIC.....

(SEAL)

(EXECUTE IN DUPLICATE)

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NON-COLLUSION AFFIDAVIT

State of California)
) ss.
County of Los Angeles)

_____, being first duly sworn, deposes and says that he or she is _____ of _____, the party making the foregoing bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.”

Aaron Ramirez, President

Business Address SME Construction Inc.
 195 Dawson Drive
 Camarillo, CA 93012

 805-482-4322

Place of Residence

Subscribed and sworn to before me this __ day of _____, 200_.
Notary Public in and for the County
of
State of California.
My Commission Expires _____, 200_.

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WORKERS' COMPENSATION INSURANCE CERTIFICATE

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

DATE: _____

(Contractor)

By:

(Signature)

(Title)

Attest:

By:

(Signature)

(Title)

Note: See Section 7-3 of the Standard Specifications for insurance carrier rating requirements.

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ENDORSEMENTS TO INSURANCE POLICY

Name of Insurance Company:

Policy Number:

Effective Date:

The following endorsements are hereby incorporated by reference onto the attached Certificate of Insurance as though fully set forth thereon:

1. The naming of an additional insured as herein provided shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured, and
2. The additional insured named herein shall not be held liable for any premium or expense of any nature on this policy or any extensions thereof, and
3. The additional insured named herein shall not by reason of being so named be considered a member of any mutual insurance company for any purpose whatsoever, and
4. The provisions of the policy will not be changed, suspended, canceled or otherwise terminated as to the interest of the additional insured named herein without first giving such additional insured twenty (20) days written notice.
5. Any other insurance held by the additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance, which is referred to by this certificate.
6. **The company provided insurance for this certificate is a company licensed to do business in the State of California with a Best's rating of A+ VIII or greater.**

It is agreed that the City of Calabasas, its officers and employees, are included as Additional Insured.

Authorized Insurance Agent

Date: _____