

SADDLE CREEK COMMUNITY SERVICES DISTRICT PUBLIC WORKS CONTRACT

This contract ("Contract") is effective as of May 31, 2018, and is between the SADDLE CREEK COMMUNITY SERVICES DISTRICT, a California community services district ("District"), and T&S Intermodal, Inc., a corporation partnership/limited liability company ("Contractor"), collectively referred to as the Parties.

Section 1. Recitals. This Contract is entered into with respect to the following facts:

District noticed and received sealed bids for the work involved in Project No. 17/18-01 ("Project"), which is more fully described in the Contract Documents.

The Board of Directors of District determined that Contractor was the lowest responsive bidder and awarded to Contractor the bid.

Contractor has represented it is qualified to perform all of the work required to complete the Project.

Contractor has agreed to perform all such work in the time and manner set forth in the Contract Documents.

The Board of Directors of District has determined that the public interest, convenience and necessity require the execution of this Contract and its implementation.

Section 2. Contract Documents. This Contract consists of the following documents ("Contract Documents"), all of which are made a part of this Contract:

- 2.1 Notice Inviting Bids
- 2.2 Instructions to Bidders
- 2.3 Bid Proposal, as accepted, including the Certificate of Bidders' Experience and Qualifications and the List of Subcontractors
- 2.4 Notice of Award
- 2.5 Notice to Proceed
- 2.6 This Contract
- 2.7 Verification of California Contractor's License
- 2.8 Contractor's Certificate Regarding Workers' Compensation
- 2.9 Security for payment (labor and materials)
- 2.10 Security for performance

- 2.11 Certificate(s) of Insurance
- 2.12 General Conditions/Specifications
- 2.13 Special Provisions
- 2.14 Plans and Standard Drawings
- 2.15 Prevailing Wage Scales
- 2.16 Caltrans Standard Specifications
- 2.17 Addenda Nos. 1, 2 and 3
- 2.18 Other documents (list here)

Exhibit A – Compensation

Exhibit B – Insurance

Section 3. The Work.

- 3.1 The work (“Work”) to be performed by Contractor is described in the Contract Documents.
- 3.2 In completing the Work, Contractor must employ, at a minimum, the applicable generally accepted professional standards of its industry in existence at the time of performance as utilized by persons engaging in similar work.
- 3.3 Except as specifically provided in the Contract Documents, Contractor must furnish, at its sole expense, all of the labor, materials, tools, equipment, services and transportation necessary to perform all of the Work.
- 3.4 Contractor must perform all of the Work in strict accordance with the Contract Documents.

Section 4. Time to Perform the Work.

- 4.1 Time is of the essence with respect to Contractor’s Work. Contractor agrees to diligently pursue performance of the Work within the time specified by the Contract Documents.
- 4.2 Contractor will be excused from any delay in performance or failure to perform due to causes beyond the control of Contractor. Such causes include, but are not limited to, acts of God, acts of terrorism, acts of federal, state or local governments, acts of District, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather or weather that demonstrably interferes with or impedes Contractor’s performance of critical path operations.

- 4.3 If Contractor is delayed by any cause beyond Contractor's control, District will grant a reasonable time extension for the completion of the Work corresponding to the type and length of the delay. If delay occurs, Contractor must notify District in writing within 48 hours of the cause and the extent of the delay and how such delay interferes with Contractor's performance of the Work.

Section 5. Compensation and Payment.

- 5.1 Subject to any limitations provided in the Contract Documents, District agrees to pay Contractor as full consideration for the faithful performance of all of the Work the compensation set forth in Exhibit A ("Compensation"), which is made a part of this Contract.
- 5.2 Contractor must furnish District with a Pay Estimate for the Work performed in accordance with the Contract Documents. Contractor may not submit a Pay Estimate more often than once every 30 days.
- 5.3 District will review each Pay Estimate and determine whether the Work performed is in accordance with the Contract Documents. The District General Manager may require Contractor to provide a release of all undisputed Contract amounts contained in the Pay Estimate.
- 5.4 If District disputes any item on a Pay Estimate, District will give Contractor notice stating the reasons for the dispute. The Parties will meet and confer in good faith to attempt to resolve the dispute.
- 5.5 Except as to any charges for the Work performed that District disputes and the District's standard five-percent retention of the approved progress payment, District will cause Contractor to be paid within 30 days of the date of the invoice or the date that Contractor furnishes District with a release of all undisputed Contract amounts, whichever occurs later. Federally funded projects will not have a five-percent retention.
- 5.6 In the event there is any claim specifically excluded by Contractor from the operation of any release, District may retain an amount not to exceed the amount of the excluded claim.

Section 6. Labor Code and Prevailing Wage Requirements.

- 6.1 Contractor agrees to comply with the requirements of California Labor Code sections 1810 through 1815. Eight hours of labor constitutes a legal day's work per Labor Code section 1810. Contractor will forfeit the statutory penalty to District for each worker employed in the execution of this Contract by Contractor or any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Labor Code sections 1810 through 1815.
- 6.2 Copies of the determination of the Director of the Department of Industrial Relations of the prevailing rate of per diem wages for each craft, classification or

type of worker needed to execute this Contract are available for download from the State website: <http://www.dir.ca.gov/OPRL/dprevwagedetermination.htm>.

- 6.3 Contractor must post at the work site, or if there is no regular work site then at its principal office, for the duration of the Contract, a copy of the determination by the Director of the Department of Industrial Relations of the specified prevailing rate of per diem wages. (Labor Code § 1773.2.) When applicable, copies of the prevailing rate of per diem wages will be on file at District's Office and available to Contractor and any other interested party upon request.
- 6.4 Contractor, and any subcontractor engaged by Contractor, may pay not less than the specified prevailing rate of per diem wages to all workers employed in the execution of the contract. (Labor Code § 1774.) Contractor is responsible for compliance with Labor Code section 1776 relative to the retention and inspection of payroll records.
- 6.5 Contractor must comply with all provisions of Labor Code section 1775. Under Section 1775, Contractor will forfeit the statutory penalty to District for each worker employed in the execution of the Contract by Contractor or any subcontractor for each calendar day, or portion thereof, in which the worker is paid less than the prevailing rates. Contractor may also be liable to pay the difference between the 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.
- 6.6 Nothing in this Contract prevents Contractor or any subcontractor from employing properly registered apprentices in the execution of the Contract. Contractor is responsible for compliance with Labor Code section 1777.5 for all apprenticeable occupations. This statute requires that contractors and subcontractors must submit contract award information to the applicable joint apprenticeship committee, must employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for every five hours of labor performed by a journeyman (unless an exception is granted under § 1777.5), must contribute to the fund or funds in each craft or trade or a like amount to the California Apprenticeship Council, and that contractors and subcontractors must not discriminate among otherwise qualified employees as apprentices solely on the ground of sex, race, religion, creed, national origin, ancestry or color. Only apprentices defined in Labor Code section 3077, who are in training under apprenticeship standards and who have written apprentice contracts, may be employed on public works in apprenticeable occupations.
- 6.7 Contractor has reviewed and agrees to comply with any applicable provisions for any public work subject to Department of Industrial Relations (DIR) Monitoring and Enforcement of prevailing wages, including the registration requirements of Labor Code Section 1771.1(a). District hereby notifies Contractor that Contractor is responsible for submitting certified payroll records directly to the State Compliance Monitoring Unit (CMU). For further information concerning compliance monitoring please visit the website location at: <http://www.dir.ca.gov/dlse/cmu/cmu.html>.

- 6.8 Contractor must comply with Labor Code section 1771.1(a), which provides that Contractor may award any contracts and subcontracts for work that qualifies as a “public work” only to subcontractors which are at that time registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor must obtain proof of such registration from all such subcontractors.”

Section 7. Non-Discrimination. Contractor, its officers, agents, employees, and subcontractors may not discriminate in the employment of persons to perform the Work in violation of any federal or state law prohibiting discrimination in employment, including based on the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, of any person, except as provided under California Government Code section 12940. Contractor is responsible for compliance with this section.

Section 8. General Legal Compliance.

- 8.1 In performing the Work, Contractor must comply with all applicable statutes, laws and regulations, including, but not limited to, OSHA requirements and the Municipal Code.
- 8.2 Contractor must, at Contractor’s sole expense, obtain all necessary permits and licenses required for the Work, and give all necessary notices and pay all fees and taxes required by law, including, without limitation, any business license tax imposed by District.
- 8.3 Contractor must maintain a valid California Contractor’s License throughout the term of this Contract.

Section 9. Clayton and Cartwright Act Assignments. In entering into this Contract or a contract with a subcontractor to supply goods, services, or materials pursuant to this Contract for the Project, Contractor and any subcontractor will be deemed to have offered and agreed to assign to District 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, commencing with Section 16700 of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services, or materials for the Project. This assignment will be deemed made and will become effective at the time District tenders final payment to Contractor, without further acknowledgement by the Parties.

Section 10. Independent Contractor. Contractor is and will at all times remain as to District a wholly independent contractor. Neither District nor any of its officers, employees, or agents will have control over the conduct of Contractor or any of Contractor’s officers, employees, agents or subcontractors, except as expressly set forth in the Contract Documents. Contractor may not at any time or in any manner represent that it or any of its officers, employees, agents, or subcontractors are in any manner officers, employees, agents or subcontractors of District.

Section 11. Indemnification.

- 11.1 Contractor agrees to the fullest extent permitted by law to (1) immediately defend and (2) indemnify District from and against, any and all claims and liabilities, regardless of the nature or type, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, or its officers, employees, agents, or subcontractors committed in performing any Work under this Contract or the failure to comply with any of the obligations of this Contract (collectively, "Claims"). The Claims subject to Contractor's duties to defend and indemnify include, without limitation, all claims, actions, causes of action, proceedings, suits, losses, damages, penalties, fines, judgments, liens, levies, and associated investigation and administrative expenses. Such Claims also include defense costs, including reasonable attorneys' fees and disbursements, expert fees, court costs, and costs of alternative dispute resolution.
- 11.2 Contractor's duty to defend is a separate and distinct obligation from Contractor's duty to indemnify. Contractor is obligated to defend District in all legal, equitable, administrative, or special proceedings, with counsel approved by District, immediately upon tender to Contractor of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Contractor are responsible for the Claim does not relieve Contractor from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Contractor asserts that liability is caused in whole or in part by the negligence or willful misconduct of any District indemnified party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of any District indemnified party, then Contractor may submit a claim to District for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the District indemnified party.
- 11.3 Contractor agrees that its defense and indemnification obligation under this section, includes the reasonable costs of attorneys' fees incurred by the District's legal counsel to monitor and consult with Contractor regarding the defense of any Claims, including providing direction with regard to strategy, preparation of pleadings, settlement discussions, and attendance at court hearings, mediations, or other litigation related appearances. District will use its best efforts to avoid duplicative attorney work or appearances in order to keep defense costs to a reasonable minimum.
- 11.4 Contractor agrees that settlement of any Claim will require the consent of District. District agrees that its consent will not be unreasonably withheld provided that Contractor is financially able (based on demonstrated assets) to fulfill its obligation to indemnify District for the costs of any such settlement as required under this Contract.
- 11.5 Contractor's obligation to indemnify District applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of a District indemnified party. If a Claim is finally adjudicated and a determination made that liability was caused by the sole active negligence or sole willful misconduct of a District indemnified party, then Contractor's

indemnification obligation will be reduced in proportion to the established comparative liability.

- 11.6 For the purposes of this section, "District" includes District's officers, officials, employees and agents.
- 11.7 The provisions of this section will survive the expiration or earlier termination of this Agreement.

Section 12. Insurance. Contractor agrees to have and maintain in full force and effect during the term of this Contract the insurance coverages listed in Exhibit B ("Insurance"), which is made a part of this Contract.

Section 13. Notice.

- 13.1 All written notices required or permitted to be given under this Contract will be deemed made when received by the other Party at its respective address as follows:

To District: Saddle Creek Community Services District
 1000 Saddle Creek Drive
 Copperopolis, CA 95228
 Attention: Peter Kampa

(Tel.) 209-785-0100
(Fax) 209-785-6260

To Contractor: _____

 Attention: _____
 (Tel.) _____
 (Fax) _____

- 13.2 Notice will be deemed effective on the date personally delivered or transmitted by facsimile or email. If the notice is mailed, notice will be deemed given three days after deposit of the same in the custody of the United States Postal Service, postage prepaid, for first class delivery, or upon delivery if using a major courier service with tracking capabilities.
- 13.3 Any Party may change its notice information by giving notice to the other Party in compliance with this section.

Section 14. District Rights of Termination and to Complete the Work.

- 14.1 The occurrence of any of the following is a default by Contractor under this Contract:
 - 14.1.1 Contractor refuses or fails to prosecute the Work or any part thereof with such diligence as will insure its completion within the time specified or any permitted extension.
 - 14.1.2 Contractor fails to complete the Work on time.
 - 14.1.3 Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Contractor's insolvency.
 - 14.1.4 Contractor fails to supply enough properly skilled workers or proper materials to complete the Work in the time specified.
 - 14.1.5 Contractor fails to make prompt payment to any subcontractor or for material or labor.
 - 14.1.6 Contractor fails to abide by any applicable laws, ordinances or instructions of District in performing the Work.
 - 14.1.7 Contractor breaches or fails to perform any obligation or duty under the Contract.
- 14.2 Upon the occurrence of a default by Contractor, District will serve a written notice of default on Contractor specifying the nature of the default and the steps needed to correct the default. Unless Contractor cures the default within 10 days after the service of such notice, or satisfactory arrangements acceptable to District for the correction or elimination of such default are made, as determined by District, District may thereafter terminate this Contract by serving written notice on Contractor. In such case, Contractor will not be entitled to receive any further payment, except for Work actually completed prior to such termination in accordance with the provisions of the Contract Documents.
- 14.3 In event of any such termination, District will also immediately serve written notice of the termination upon Contractor's surety. The surety will have the right to take over and perform pursuant to this Contract; provided, however, that if the surety does not give District written notice of its intention to take over and perform this Contract within five days after service of the notice of termination or does not commence performance within 10 days from the date of such notice, District may take over the Work and prosecute the same to completion by contract or by any other method it may deem advisable for the account and at the expense of Contractor. Contractor and the surety will be liable to District for any and all excess costs or other damages incurred by District in completing the Work.
- 14.4 If District takes over the Work as provided in this Section, District may, without liability for so doing, take possession of, and utilize in completing the Work, such

materials, appliances, plant, and other property belonging to Contractor as may be on the site of the Work and necessary for the completion of the Work.

- 14.5 If District takes over the Work, District may also take possession of outstanding materials on order for the completion of the project, upon payment to the vendor. All excess costs incurred by District in obtaining such materials, will be the responsibility of the Contractor.

Section 15. Project Documents. All data, drawings, maps, models, notes, photographs, reports, studies and other documents (collectively, "Project Documents") prepared, developed or discovered by Contractor in the course of performing any of the Work under this Contract will become the sole property of District. Upon the expiration or termination of this Contract, Contractor must turn over all original Project Documents to District in its possession, but may retain copies of any of the Project Documents it may desire.

Section 16. General Provisions.

- 16.1 Authority to Execute. Each Party represents and warrants that all necessary action has been taken by such Party to authorize the undersigned to execute this Contract and to bind it to the performance of its obligations.
- 16.2 Assignment. Contractor may not assign this Contract without the prior written consent of District, which consent may be withheld in District's sole discretion since the experience and qualifications of Contractor were material considerations for this Contract.
- 16.3 Binding Effect. This Agreement is binding upon the heirs, executors, administrators, successors and permitted assigns of the Parties.
- 16.4 Integrated Contract. This Contract, including the Contract Documents, is the entire, complete, final and exclusive expression of the Parties with respect to the Work to be performed under this Contract and supersedes all other agreements or understandings, whether oral or written, between Contractor and District prior to the execution of this Contract.
- 16.5 Modification of Contract. No amendment to or modification of this Contract will be valid unless made in writing and approved by Contractor and by the Board of Directors of District or District Manager, as applicable. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver will be void.
- 16.6 Counterparts, Facsimile or other Electronic Signatures. This Contract may be executed in several counterparts, each of which will be deemed an original, and all of which, when taken together, constitute one and the same instrument. Amendments to this Contract will be considered executed when the signature of a party is delivered by facsimile or other electronic transmission. Such facsimile or other electronic signature will have the same effect as an original signature.

- 16.7 Waiver. Waiver by any Party of any term, condition, or covenant of this Contract will not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Contract will not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Contract. Acceptance by District of any Work performed by Contractor will not constitute a waiver of any of the provisions of this Contract.
- 16.8 Interpretation. This Contract will be interpreted, construed and governed according to the laws of the State of California. Each party has had the opportunity to review this Contract with legal counsel. The Contract will be construed simply, as a whole, and in accordance with its fair meaning. It will not be interpreted strictly for or against either party.
- 16.9 Severability. If any term, condition or covenant of this Contract is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Contract will not be affected and the Contract will be read and construed without the invalid, void or unenforceable provision.
- 16.10 Venue. In the event of litigation between the parties, venue in state trial courts will be in the County of Calaveras. In the event of litigation in a U.S. District Court, venue will be in the Central District of California, in Los Angeles.

[Signatures on the following page.]

The Parties have caused this Contract to be executed by their undersigned authorized agents as follows:

SADDLE CREEK COMMUNITY SERVICES DISTRICT

Mr. Peter Kampa, General Manager

ATTEST:

Nicole McCutchen, Board Clerk

APPROVED AS TO FORM:

LEGAL COUNSEL

CONTRACTOR
(If not an individual, two signatures are required)

Name and Title

Name and Title