

**PUBLIC WORKS CONTRACT—SHORT FORM [\$4,000-\$49,999]  
County of Nevada, California**

This Public Works Contract is made between the **COUNTY OF NEVADA** (herein "County") and

**Deschaine Enterprises, Inc.**

(herein "Contractor"), for the following Project:

(§1) **Eric Rood Administrative Center West Entry ADA Ramp and Parking Upgrade**

and incorporates herein by reference Contractor's bid to perform said Project dated May 21, 2018.

**SUMMARY OF SELECTED TERMS**

(§2) Contract Price: \$ 33,694.00  
(§3) Time of Completion 45 days after mailing or delivery of Notice to Proceed  
(§4) Liquidated Damages \$ per day of delay (see Section 4 of contract)

**BONDS AND INSURANCE**

	Required	Not required
(§5) <b>Bonds:</b>		
(a) Faithful Performance Bond	<u>✓</u>	<u>      </u>
(b) Labor and Materials Bond	<u>✓</u>	<u>      </u>
(c) Retention Bond	<u>      </u>	<u>✓</u>
(§6) <b>Insurance Policies:</b>		
(a) Commercial General Liability (\$1 million)	<u>✓</u>	<u>      </u>
(b) Personal Auto Liability (\$ 300,000)	<u>      </u>	<u>✓</u>
Business Rated Auto Liability (\$1 million)	<u>      </u>	<u>✓</u>
Commercial Auto Liability (\$1 million)	<u>✓</u>	<u>      </u>
(c) Workers' Compensation	<u>✓</u>	<u>      </u>
(d) Errors and Omissions (\$1 million)	<u>      </u>	<u>✓</u>

(§24) **Contractor:**  
**Deschaine Enterprises, Inc.**  
111 Bank Street #206  
Grass Valley, California 95945  
Contact Person: John Deschaine  
(530) 274-9975  
e-mail: d.ent@icloud.com  
Fed Tax ID:

**County of Nevada:**  
**Facilities Management**  
10014 N. Bloomfield Road  
Nevada City, California 95959  
Contact Person: Tim Horner  
(530) 362-2292  
e-mail: tim.horner@co.nevada.ca.us  
Org Code/PCN: 0101-10702-415-2000/521000

**Contractor Status** (check all that apply):

Corporation:	<u>✓</u> Calif.	<u>      </u> Other	<u>      </u> LLC	<u>      </u> Nonprofit
Partnership:	<u>      </u> Calif.	<u>      </u> Other	<u>      </u> LLP	<u>      </u> Limited
Person:	<u>      </u> Individual	<u>      </u> Dba	<u>      </u> Ass'n	<u>      </u> Other

**ATTACHMENTS**

Designate all required attachments:

	Req'd	Not Req'd
<b>Exhibit A: PCC Secs. 20104.2 &amp; 20104.4</b>	<u>✓</u>	<u>      </u>
<b>Exhibit B: Scope of Work</b>	<u>✓</u>	<u>      </u>
<b>Exhibit C: Schedule of Changes to this Contract Form</b>	<u>      </u>	<u>✓</u>

### Terms

Each term of this Contract below specifically incorporates the information set forth in the Summary at page one (1) above as to each respective section (§) therein, as the case may be.

1. **SCOPE OF WORK; CONTRACT DOCUMENTS; SUCCESSORS:** The Contractor shall do the work for the Project and provide materials as shown in Exhibit B attached hereto. The contract documents include this contract, any general and special conditions, plans and specifications, bidding documents, addenda, and proposals submitted by Contractor. Any inconsistencies between the documents shall be resolved by according the highest priority to this Contract, any special provisions or conditions, and the standard specifications. The contract documents may only be amended by written mutual consent or by written change order. The parties bind their successors in interest to every covenant and obligation in the contract documents.

2. **CONTRACT PRICE AND PAYMENTS:** The contract price is specified at \$2 on page one (1).

Contractor may apply for progress payments on a monthly basis. Contractor shall submit a signed invoice covering the work completed to that date, and accompanied by supporting documentation to the County's satisfaction. Progress payments will be in an amount equal to 95 percent (95%) of the work completed. Contractor may substitute securities for any retention as set forth in PCC Sec. 22300.

Pursuant to PCC Sec. 20104.50, each payment request shall be reviewed by County as soon as practicable after receipt. Any request not suitable for payment shall be returned promptly, and in no event later than seven calendar days from its date of receipt. A request that is returned unpaid shall be accompanied by a written explanation by the County. The number of days available by the County to make a payment without incurring interest pursuant to PCC Sec. 20104.50 shall be reduced by the number of days by which the County exceeds the seven day return requirement.

Payment of any retention for the completed project will not be due until at least 35 days after the recording of the Notice of Completion, or no later than 60 days after completion of the Project as defined in PCC Sec. 7107, whichever occurs first. Payment may be made earlier if the County receives from each and every subcontractor and supplier an 'Unconditional Waiver and Release Upon Final Payment' in the form prescribed by Civil Code Section 3262(d). Acceptance of final payment will be deemed a waiver of all claims except those which were timely made pursuant to claims and civil action procedures described in Exhibit A.

Invoices, or other applications for County payment, shall contain detailed full documentation of all work performed and all reimbursable expenses incurred. Where the Scope of Work is divided into tasks, invoices shall detail the related expenditures accordingly. No expense will be reimbursed without documentation.

3. **CONTRACT TIME:** Contractor shall commence work within ten (10) days after mailing or personal delivery by County of a written Notice to Proceed. All work shall be completed for acceptance on or before the number of days following the mailing or delivery of the Notice to Proceed indicated on page one (1). After issuance of the Notice to Proceed, the County may, at any time and without cause, suspend the Project work, or any portion of it, for a reasonable period of time by giving at least 72 hours advance written notice to the Contractor.

Time is of the essence. If the work is not timely completed, subject to such extensions as the County may grant for unavoidable delay, the Contractor may be assessed damages for delay in accordance with the liquidated damages clause below. The County reserves sole discretion to determine issues of delay. Any liquidated damages may be deducted as an off-set against any amounts due to the Contractor.

4. **LIQUIDATED DAMAGES:** County and Contractor acknowledge that the County will suffer financial loss if the Project is not completed within the time specified. They also acknowledge the difficulty of ascertaining with specificity the exact amount of such loss. Instead of requiring proof with specificity, the parties agree that the amount of liquidated damages shall be the amount shown on page one,

payable to County for each day that expires after the time specified for completion on page one. Liquidated damages shall be payable by Contractor only if the delay results from the failure of Contractor to perform timely, and not because of delays occasioned by the County, State, or any federal agency.

5. **BONDS:** All bonds required under this Contract shall be issued by a corporation duly licensed to transact surety business in California. The bond must be executed by proper corporate signatories, and adequate proof of their authority to act and bind the surety must be provided to the County.

**REQUIRED BONDS (CONFORMS TO §5 ON PAGE 1)**

- (a) A Faithful Performance Bond is required if this Contract's price exceeds \$25,000 in order to ensure completion of the Project, per this Contract, in the amount of 100% of the Contract price; it shall remain in effect during the warranty period on any work or equipment.
- (b) A Labor and Materials Bond is required if this Contract's price exceeds \$25,000 in order to ensure proper payment to all persons so entitled because of supplying materials and labor; it shall remain in effect until the expiration of 35 days after recording of the Notice of Completion.
- (c) A Retention Bond may be required in order to ensure that funds remain available after completion of the Project in lieu of a cash retention; the County's election in this regard is shown on page one.

6. **LIABILITY INSURANCE; WORKERS' COMPENSATION INSURANCE:**

**GENERAL REQUIREMENTS FOR INSURANCE**

All policies of insurance required by this Contract shall remain in full force and effect throughout the life of this Contract. The insurance shall have a provision that 30 days advance written notice will be given to the County before any termination or change in coverage protection, or reduction in coverage limits (except 10 days notice for non-payment of premium).

Failure to provide and maintain the insurance policies, endorsements, or certificates of insurance required by this Section shall constitute a material breach of this Contract and serve as a basis for the County to suspend payments or terminate this Contract. The contractor also shall cause and require each subcontractor, or any assignee, to comply with the requirements of this Section.

**ADDITIONAL REQUIREMENTS FOR LIABILITY INSURANCE**

Liability insurance shall be payable on a "per occurrence" basis unless the County specifically consents to "claims made" coverage. If the County does consent to "claims made" coverage, and if Contractor changes insurance carriers during the term of the Contract, or during any extensions, then Contractor shall carry "prior acts" coverage.

Liability insurance, including both commercial general liability insurance and automobile liability insurance, shall have an endorsement naming the County of Nevada and its officers, agents, employees and volunteers as additionally insured, and in the event of insured loss the Contractor's liability insurance shall apply as primary insurance, and other insurance maintained by the County shall be excess only and not contributing with Contractor's insurance. The additional insured endorsement shall be evidenced by form CG 20 10 11 85 or equivalent, subject to approval by the County's Risk Manager.

At all times, the Contractor shall maintain policies issued by companies with an Best's Rating of B+ or higher, or a Best's Financial Performance Rating of 6 or higher, according to the current A.M. Best's Key Rating Guide, or shall be issued by companies approved by the County's Risk Manager. In the event the Best's Rating or Best's FPR falls below the rating required by this Section, then the Contractor shall promptly secure policies which do comply with this Section.

REQUIRED INSURANCE (CONFORMS TO §6 ON PAGE 1)

- (a) As indicated on page one, the Contractor shall promptly provide proof of broad form coverage for Commercial General Liability Insurance with a combined single limit of not less than one million dollars (\$1,000,000).
- (b) At County's option, as indicated on page one, the Contractor shall promptly provide proof of coverage for Personal, Business Rated, or Commercial Auto Liability Insurance for each vehicle used, including non-owned and hired automobiles. The coverage shall be combined single limit and shall include death, bodily injury, property damage, and uninsured and underinsured coverage, in the amount shown on page one.
- (c) As indicated on page one, the Contractor shall provide proof of adequate Worker's Compensation Insurance, as required by law. Contractor hereby certifies that it is aware of the California Labor Code (Section 3700 *et seq.*) requirement that every employer be insured before commencing work, and that every contractor require this insurance as to all of its subcontractors before they commence work.
- (d) At County's option, as indicated on page one, the Contractor shall promptly provide proof of coverage for Professional Liability Insurance, or "an errors and omissions" policy, in the amount shown on page one (1).

7. **RISK OF LOSS; INDEMNIFICATION:** Loss or damage to equipment, materials, or services, occurring on or off the work site, shall be the responsibility of the Contractor. The County shall not assume liability for completed work until the County has accepted the work as complete.

The contractor shall indemnify, hold harmless, and defend the County and its consultants, agents, officers, employees, and volunteers from and against all claims, damages, losses, and attorneys fees, and related expenses, whether direct or indirect, arising out of the negligent actions or willful misconduct of the Contractor, or its agents, except to the extent caused by the negligence or misconduct of the County or its agents or employees.

8. **ASSIGNMENT:** No assignment or transfer of obligation relating to this Contract shall be valid unless it is approved in advance in writing by both parties.

9. **CHANGES IN THE WORK:** The County may order additions, deletions, or revisions in the Project which shall be authorized by written change order. Prior to doing any additional work that the Contractor finds necessary, such change shall be reduced to writing as a written change order request to be approved by the County before the additional work is undertaken. Changes in contract price due to change orders shall be established by any of the following: (1) unit prices, where bidding was done by unit price; (2) the actual cost of work plus 15% for overhead and profit together; or (3) by mutual acceptance of a lump sum.

10. **MATERIALS AND EQUIPMENT FOR INSTALLATION:** All material and equipment installed shall be of good quality, and new, unless this Contract provides otherwise. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or a particular supplier, it is intended to establish the type, function, and quality required. Any substitutions require the County's express consent prior to use or installation. All of the manufacturer's operating and maintenance instructions shall be delivered to the County prior to Contractor's receipt of final payment.

11. **WARRANTY AND CORRECTION PERIOD:** If any work or installation is defective within one year after the date of completion of the Project, or such longer period of time as may apply by reason of special guarantees or legal regulations, the Contractor shall either correct such work or replace it with non-defective work, at no cost to the County. If the Contractor does not correct or replace the work in a prompt manner, then the County may elect to have the work corrected or replaced at the sole expense of the Contractor. "Defective" means a sub-standard or inferior product, whether from the quality or quantity of the materials used, the quality of workmanship, or the performance of the Contract.

12. **PERMITS AND TAXES:** Unless otherwise provided in the Contract Documents, the Contractor shall obtain, and pay for, all construction permits, licenses or other permits necessary to complete the Project, and shall be responsible for all governmental charges, inspection fees, utility connection charges, and sales and use taxes.

13. **PAYROLL RECORDS:** The Contractor shall be responsible for keeping accurate payroll records as required by California Labor Code Section 1776. Pursuant to Section 1776 (g) and (h), notice is given that the Contractor may be assessed a penalty of \$25 per worker if a certified copy of such records is not made available within 10 days of request.

14. **PREVAILING WAGE RATES:** Performance of this Contract shall be in conformity with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, commencing with Section 1720 relating to prevailing wages which must be paid to workers employed on a public work as defined in Labor Code §§1720, et seq.; and shall be in conformity with Title 8 of the California Code of Regulations §§200 et seq., relating to apprenticeship. Contractor shall comply with the provisions thereof at the commencement of Services to be provided herein, and thereafter during the term of this Contract. A breach of the requirements of this section shall be deemed a material breach of this contract.

Applicable prevailing wage determinations are available on the California Department of Industrial Relations website at <http://www.dir.ca.gov/OPRL/PWD>. The Contractor shall post a copy of the wage rates on the job site. Any employee whose type of work is not covered by any of the classified wage rates shall be paid not less than the rate of wage listed for the classification which most nearly corresponds to the type of work to be performed.

Contractor and all subcontractors must comply with the requirements of Labor Code Section 1771.1(a) pertaining to registration of contractors pursuant to Section 1725.5. Registration and all related requirements of those Sections must be maintained throughout the performance of the Contract.

Contracts to which these prevailing wage requirements apply are subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each contractor and subcontractor must furnish certified payroll records to the Labor Commissioner at least monthly.

The County is required to provide notice to the Department of Industrial Relations of any public work contract subject to prevailing wages within five (5) days of award.

Pursuant to California Labor Code Section 1775, the Contractor shall forfeit no more than \$50 per calendar day, or portion of a day, for each worker paid less than the prevailing rates for such work or craft, and the penalty shall be imposed and distributed pursuant to Section 1775.

15. **NON-DISCRIMINATION:** While this Contract is in effect, the Contractor shall comply with all provisions of California Labor Code Section 1735, as amended, regarding non-discrimination practices and equal employment opportunity.

16. **BOOKS OF RECORD AND AUDIT:** The Contractor shall maintain on a current basis complete books and records relating to this Contract, including but not limited to: (a) all income and all expenditures; (b) an itemization of all debits and credits for the work on this Project; (c) canceled checks, receipts and invoices; and (d) travel and field expenses. These records shall be maintained for five years following completion of the Project.

The Contractor will permit the County to audit all these books and records at the Contractor's premises. Alternatively, at the County's option, the Contractor will bring all books and records within 15 days to a location designated by the County in a written notice to that effect.

The Contractor shall refund any moneys erroneously charged. If the County ascertains an erroneous billing equal to 5% or more of the original bid, the Contractor shall be liable for the costs of the audit in addition to any other legal consequences.

17. **PRIOR NEVADA COUNTY EMPLOYMENT:** Pursuant to County Resolution No. 03-353, notice is given of the prohibition against certain former officials receiving direct remuneration from any legal entity that entered a contract or grant agreement with the County during the official's last twelve (12) months in office. The officials include former members of the Board of Supervisors, a former CEO, or a former Purchasing Agent.

18. **TERMINATION:** The County reserves the right to terminate this Contract based on the following:

- (a) The Contractor becomes a party in U.S. Bankruptcy Court because of a voluntary petition or a petition filed by creditors.
- (b) The Contractor makes a general assignment for the benefit of creditors.
- (c) If a trustee, receiver, or custodian of assets is appointed to take charge of the property of the Contractor for the purpose of enforcing a lien or administration of such property for the benefit of creditors.
- (d) If the Contractor declares or admits that it is unable to pay its debts generally as they become due.
- (e) If the Contractor persistently fails to perform the work of the Project in accordance with the Contract Documents, or substantially disregards the Documents.
- (f) If the Contractor disregards any relevant laws or regulations, whether they are federal, state, or local.
- (g) If the Contractor disregards the reasonable directions of the County's supervisory staff, including the Contract Administrator.

The County may terminate this Contract after giving seven days advance written notice to the Contractor. After termination is effective, the County may take sole possession of the work site and have the work finished with materials and equipment stored on or off the site. As time is of the essence, the County is not obligated to obtain the lowest price for the work performed. If the unpaid balance owing to the Contractor is less than the County's cost of finishing, then the County will demand payment of the difference from the Contractor. The Contractor shall not be entitled to any payment until the work is finished. The County's implementation of this Section shall not waive or be deemed to prejudice any other rights or remedies to which the County is entitled.

19. **CONTRACT ADMINISTRATION:** The County may designate staff, or hire professional services, as "Contract Administrator" for Project supervision and administration. The Contract Administrator is delegated authority to determine the amount, quality, acceptability and fitness of the work, materials, and equipment to be paid under this Contract, to decide all questions relative to Contract interpretation, to reject all work or material which does not conform to the terms of this Contract, and to make a final determination on all claims submitted to the County.

If there is an apparent ambiguity in the Contract Documents, the Contractor shall request a written interpretation from the Contract Administrator. If the Contractor believes that an interpretation justifies an increase in the Contract Price, or an extension of the Contract Time, and the parties are unable to agree on the amount or extent, then the Contractor may make a claim.

The Contract Administrator may, only in writing, authorize or require variations in the work from what is shown in the Contract Documents. If the Contractor and the County cannot agree on a change order amount or extension of time, the Contractor may make a claim. If the Contract was based on unit pricing, the Contract Administrator will determine the actual quantities and classifications of unit price work.

The Contract Administrator's written decisions will be final and binding on the Contractor unless the Contractor timely delivers a written notice, in the form of a claim with supporting facts and reasons, that the Contractor disputes the decision.

For every claim that the Contractor makes, it shall provide adequate documentation for consideration of the claim. This documentation shall be supplemented at the request of the County, and may

include bidding calculations, forms, cost estimates, time sheets, trend reports, job cost analysis records, labor records, as-built documents, or any other relevant documents from the bidding and construction. Further, the County may conduct an audit of all relevant books and records, particularly relating to overhead, profit, or general office expenses charged to the Project.

20. **CLAIMS RESOLUTION AND CIVIL ACTION PROCEDURES:** California Public Contract Code (PCC) §§20104 – 20104.6 govern all public works claims of \$375,000 or less which arise between a contractor and a local agency. In PCC §20104(b)(2) it is stated that “Claim” means a separate demand by the contractor for (a) a time extension; (b) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work, and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or (c) an amount the payment of which is disputed by the local agency. Exhibit A of this Contract contains copies of the following: Claims Resolution Procedures are set forth in PCC §20104.2, and Civil Action Procedures are set forth in PCC §20104.4.

Public Contract Code §9204, as enacted by AB 626, establishes a claim resolution process required for public works projects. In the event of any conflict between the provisions this Contract and Public Contract Code §9204, the provisions of Public Contract Code §9204 shall prevail.

21. **NO WAIVER OF RIGHTS BY COUNTY:** No waiver of any right or remedy belonging to the County shall be deemed to have occurred because of any action or inaction by the County in its performance of this Contract.

22. **SEVERABILITY; COUNTERPARTS:** If any provision of this Contract is found by a court to be unenforceable or void, then both parties shall be relieved of all obligations arising from the provision, and the remainder of this Contract shall continue in full force and effect.

This Contract may be executed in counterparts, and each counterpart shall be deemed an original instrument.

23. **JURISDICTION AND VENUE:** This Contract shall be construed in accordance with the laws of the State of California, and the venue for any litigation arising under this Contract shall be Nevada County Superior Court, or if federal issues are involved, in the U.S. District Court - Eastern District of California (Sacramento Division).

24. **NOTICES:** Any notices from one party to the other with respect to important matters related to this Contract shall be mailed, faxed, e-mailed, or delivered as shown on page one (1).

**EXECUTION:** The signatures below indicate acceptance of, and execution of, this Contract, as of the date when execution has been completed by both parties.

**CONTRACTOR:**

Deschaine Enterprises, Inc.

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Contractor's License Number

Dated: \_\_\_\_\_

**COUNTY OF NEVADA:**

\_\_\_\_\_  
Honorable Edward C. Scofield  
Chair, Board of Supervisors

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Julie Patterson Hunter  
Clerk of the Board



**EXHIBIT "A"**  
**COPY OF PUBLIC CONTRACT CODE SECTIONS ON CLAIMS RESOLUTION PROCEDURES  
AND CIVIL ACTION PROCEDURES**  
*(as of December 4, 2007)*

**20104.2 Claims; requirements; tort claims excluded**

20104.2. For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

#### **20104.4 Civil Action Procedures; mediation and arbitration; trial de novo; witnesses**

20104.4. The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 [commencing with Section 2016.010] of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

## **EXHIBIT "B"**

### **SCOPE OF WORK**

Replace the existing concrete entry ramp and the asphalt ADA parking space on the west end of the Eric Rood Administrative Center with new concrete according to the approved plans and specifications for this project.