

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS AGREEMENT is entered this _____ day of _____, 2005 by and among the County of Marin (hereinafter "the County"), Swinerton Builders, Inc. (hereinafter the "Construction Manager") and Ghilotti Bros., Inc. (hereinafter "the Trade Contractor").

WHEREAS, the County and Construction Manager have previously entered into a written contract, the Agreement Between County and Construction Manager, which contract was entered into on or about the 26th day of October, 2004 (the "Construction Management Agreement") for construction of the public work of improvement commonly known as the Throckmorton Ridge Fire Station Replacement (the "Project"); and

WHEREAS, the County and Trade Contractor have previously entered into a certain contract for the Project, which contract was entered into on or about the _____ day of _____ 2005; and is incorporated herein by reference (hereinafter "the Trade Contract") and

WHEREAS, the County, the Trade Contractor and the Construction Manager now desire to assign the Trade Contract from the County to the Construction Manager and have the Construction Manager assume County's obligations to Trade Contractor, so as to substitute the Construction Manager for the County and release the County from its obligations under the Trade Contract; and

WHEREAS, the parties hereto desire to make this assignment, assumption and release because, under the terms of the Construction Management Agreement, the Construction Manager is obligated to the County to provide the work which is the subject of the Trade Contract and the parties intend that the Trade Contractor become a Subcontractor of the Construction Manager and that County have no further responsibility, obligation or liability with respect to the Trade Contract in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Assignment of Trade Contract and Liabilities:

For good and valuable consideration, the receipt of which is hereby acknowledged, the County hereby grants and assigns to the Construction Manager all of County's right, title and interest in and to the Trade Contract including all liabilities, duties and obligations of the County arising out of or relating to the Trade Contract from the date of this agreement forward. County retains all of its contractual and other rights concerning the Trade Contractor's performance under the Trade Contract including, but not limited to, the County's rights of review, approval, acceptance, and/or rejection of the Trade Contractor's performance, whether said performance occurs before or after the date of this Assignment and Assumption Agreement.

Date: _____

County of Marin

By: _____
President, Board of Supervisors

2. Assumption of Assignment, Liabilities:

Construction Manager hereby accepts the foregoing assignment, agrees to assume and perform all duties and obligations to be performed by the County under the Trade Contract to the same extent as if the Construction Manager had been an original party to the Trade Contract, agrees to assume all liabilities, duties and obligations of the County arising out or relating to the Trade Contract from the date of this agreement forward, and agrees to indemnify, defend and hold the County harmless from any and all claims, demands, actions, causes of action, suits, proceedings, damages, liabilities and costs and expenses of every nature whatsoever relating to said Trade Contract arising out of or with respect to the performance or nonperformance of such duties and obligations based on events occurring on or before the execution of this Agreement.

DATE: _____

Swinerton Builders, Inc.

By: _____

Title: _____

The payment and performance Surety of the Construction Manager hereby consents to the Assignment and Assumption Agreement.

Date: _____

Swinerton's Builders, Inc.,
Surety: Liberty Mutual Insurance Co.:

By: _____

Title: _____

3. Consent to Assignment, Assumption and Novation:

The undersigned authorized representative of Trade Contractor hereby consents to the foregoing assignment by the County to the Construction Manager of the Trade Contract and the County's liabilities, duties and obligations thereunder and the Construction Manager's assumption of the same, agrees to look solely to the Construction Manager for the proper performance of the Trade Contract, agrees to release the County from any and all claims, demands, actions, causes of action, suit, proceedings, damages, liabilities and costs and expenses of every kind and nature whatsoever arising out of or relating to the Trade Contract after the date of this agreement, and agrees that this assignment and assumption shall be effective as a substitution of parties..

The Trade Contractor shall and hereby does agree to perform the Work described in the Trade Contract directly for the benefit of the Construction Manager and shall provide all labor, materials, equipment, supplies, management, supervision and all other things necessary to perform the Work in the same manner and to the same extent as if it had originally executed a contract for the Work with the Construction Manager. Trade Contractor's obligations hereunder shall extend to every aspect, phase, requirement, term and condition applicable to all Work required by the Trade Contract between the

Trade Contractor and the County. The Trade Contract and all documents incorporated into it form a part of this Agreement and are incorporated herein by reference as though fully set forth.

As full and final compensation for completion of the Work and performance of all other duties and obligations imposed upon Trade Contractor by this Agreement and the Trade Contract, the Construction Manager shall pay to Trade Contractor, in accordance with the terms of the Trade Contract, and Trade Contractor shall accept the sum of _____, subject to modifications, additions, and deletions made in accordance with the Contract for work performed after the execution of this Agreement.

Date: _____

Ghilotti Bros., Inc.

By: _____

Title: _____

The payment bond surety and performance bond surety of Trade Contractor, hereby consents to the foregoing assignment and grants Construction Manager and County all rights, benefits and privileges under its bonds issued with Trade Contractor, including any dual obligee rider.

Date: _____

Ghilotti Bros., Inc. Surety

By: _____

Title: _____

APPROVED BY:
COUNTY COUNSEL

Note: Signature of persons executing on behalf of sureties must be notarized and evidence of corporate authority attached.

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