



# County of Santa Cruz

---

## GENERAL SERVICES DEPARTMENT

701 OCEAN STREET, SUITE 330, SANTA CRUZ, CA 95060-4073

(631) 464-2716 FAX: (831) **454-2710** TDD: (831) 464-2123

**BOB WATSON, DIRECTOR**

May 29, 2001

AGENDA: June 12, 2001

Board of Supervisors  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, California 95060

### CONTRACT FOR CONSULTING SERVICES: REROOF OF COUNTY HEALTH CLINIC

#### Members of the Board:

As part of the Plant Budget, your Board allocated funds to reroof the County Health Clinic located at 9 Crestview Lane, Watsonville. This project has gone to bid; in a separate item on today's agenda, a recommendation for award is presented to your Board for approval. Due to the scale and complexity of the project, as well as the poor condition of the current roof, staff recommends utilizing Technical Roof Services, Inc. (TRS) for the construction and inspection phases of the project, including quality control, close out and applicable engineering services for any unforeseen problems. This firm provided the Preliminary Project Description (PPD) and they are eminently qualified to continue with this phase of the project.

Attached for your Board's review is an independent contractor agreement with TRS that will provide for the anticipated roofing consulting services during the project.

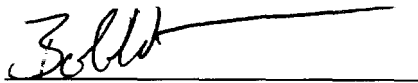
Sufficient funds are available in the Plant Budget, Index 191076/Sub Object 6610 (Project Q63001).

It is therefore **RECOMMENDED** that your Board:

1. Approve the attached agreement with Technical Roof Services, Inc. for roof consulting services for the construction phase of the Watsonville Health Clinic re-roof project in the amount of \$15,600; and


2. Authorize the General Services Director to execute the agreement.

Sincerely,



Rob Watson  
General Services Director

RECOMMENDED:



Susan Mauriello  
County Administrative Officer

BW/PC

Attachment: ADM29 with agreement

cc: General Services Department  
Health Services Agency  
Auditor Controller  
TRS, Inc.

file: 9 crestview.wpd

INDEPENDENT CONTRACTOR AGREEMENT

THIS CONTRACT is entered into this 12<sup>th</sup> day of June, 2001, by and between the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and Technical Roof Services Inc.,-, hereinafter called CONTRACTOR. The parties agree as follows:

1. DUTIES. CONTRACTOR agrees to exercise special skill to accomplish the following results: Roofing consulting services at 9 Crestview, Watsonville CA., for County of Santa Cruz General Services Department.

2. COMPENSATION. In consideration for CONTRACTOR accomplishing said result, COUNTY agrees to pay CONTRACTOR as follows: Payment not to exceed \$15,600, and incorporates fee schedule in attachment #1, processed for payment in full after project completion, receipt of invoice, and approval of project manager.

3. TERM. Term of this contract shall be: July 1, 2001 through June 30, 2002.

4. EARLY TERMINATION. Either party hereto may terminate this contract at any time by giving thirty (30) days written notice to the other party.

5. INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS. CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of paragraphs 5 and 6 shall include, without limitation, its officers, agents, employees and volunteers) from and against:

A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the CONTRACTOR'S performance under the terms of this Agreement, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons.

B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

6. INSURANCE. CONTRACTOR, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain at minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be excess of CONTRACTOR'S insurance coverage and shall not contribute to it.

If CONTRACTOR utilizes one or more subcontractors in the performance of this Agreement, CONTRACTOR shall obtain and maintain Independent Contractor's Insurance as to each subcontractor or otherwise provide evidence of insurance coverage from each subcontractor equivalent to that required of CONTRACTOR in this Agreement, unless CONTRACTOR and COUNTY both initial here \_\_\_\_/\_\_\_\_.

A. Types of Insurance and Minimum Limits

(1) Worker's Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall not be required if the CONTRACTOR has no employees and certifies to this fact by initialing here \_\_\_\_\_

(2) Automobile Liability Insurance for each of CONTRACTOR'S vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by CONTRACTOR'S employees), leased or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage shall not be required if vehicle use by the CONTRACTOR is not a material part of performance of this Agreement and CONTRACTOR and COUNTY both certify to this fact by initialing here \_\_\_\_/\_\_\_\_.

(3) Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000 combined single limit, including coverage for: (a) bodily injury, (b) personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

(4) Professional Liability Insurance in the minimum amount of \$\_\_\_\_\_ combined single limit, if, and only if, this Subparagraph is initialed by CONTRACTOR and COUNTY \_\_\_\_/\_\_\_\_.

B. Other Insurance Provisions

(1) If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, CONTRACTOR agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post agreement coverage") and any extensions thereof. CONTRACTOR may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable.

(2) All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contain the following clause:

"The County of Santa Cruz, its officials, employees, agents and volunteers are added as an additional insured as respects the operations and activities of, or on behalf of, the named insured performed under Agreement with the County of Santa Cruz."

(3) All required insurance policies shall be endorsed to contain the following clause:

"This insurance shall not be canceled until after thirty (30) days prior written notice has been given to:

Santa Cruz County  
 \_\_\_\_\_ Department  
 Attn: \_\_\_\_\_  
 701 Ocean Street, Room \_\_\_\_\_  
 Santa Cruz, CA 95060

(4) CONTRACTOR agrees to provide its insurance broker(s) with a full

copy of these insurance provisions and provide COUNTY on or before the effective date of this Agreement with Certificates of Insurance for all required coverages. All Certificates of Insurance shall be delivered or sent to:

Santa Cruz County  
 \_\_\_\_\_ Department  
 Attn: \_\_\_\_\_  
 701 Ocean Street, Room  
 Santa Cruz, CA 95060

7. EQUAL EMPLOYMENT OPPORTUNITY. During and in relation to the performance of this Agreement, CONTRACTOR agrees as follows:

A. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Agreement provides compensation in excess of \$50,000 to CONTRACTOR and if CONTRACTOR employs fifteen (15) or more employees, the following requirements shall apply:

(1) The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination; rates of pay or other forms of compensation; **and** selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. In addition, the CONTRACTOR shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in CONTRACTOR's solicitation of goods and services, Definitions for Minority/Women/Disabled Business Enterprises are available from the COUNTY General Services Purchasing Division.

(2) The CONTRACTOR shall furnish COUNTY Affirmative Action Office information and reports in the prescribed reporting format (PER 4012) identifying the sex, race, physical or mental disability, and **job** classification of its employees and the names, dates and methods of advertisement and direct solicitation efforts made to subcontract with Minority/Women/Disabled Business Enterprises.

(3) In the event of the CONTRACTOR's non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further agreements with the COUNTY.

(4) The CONTRACTOR shall cause the foregoing provisions of this Subparagraph 7B. To be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

8. INDEPENDENT CONTRACTOR STATUS. CONTRACTOR and COUNTY

have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of COUNTY. CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. CONTRACTOR is not entitled to any employee benefits. COUNTY agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

0058

PRINCIPAL TEST: The CONTRACTOR rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COUNTY may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) CONTRACTOR and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors which indicate that CONTRACTOR is an independent contractor.

By their signatures to this Agreement, each of the undersigned certifies that it is his or her considered judgment that the CONTRACTOR engaged under this Agreement is in fact an independent contractor.

9. NONASSIGNMENT. CONTRACTOR shall not assign the Agreement without the prior written consent of the COUNTY.

10. ACKNOWLEDGMENT. CONTRACTOR shall acknowledge in all reports and literature that the Santa Cruz County Board of Supervisors has provided funding to the CONTRACTOR.

11. RETENTION AND AUDIT OF RECORDS. CONTRACTOR shall retain records pertinent to this Agreement for a period of not less than five (5) years after final payment under this Agreement or until a final audit report is accepted by COUNTY, whichever occurs first. CONTRACTOR hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller, the Auditor General of the State of California, or the designee of either for a period of five (5) years after final payment under this Agreement.

12. PRESENTATION OF CLAIMS. Presentation and processing of any or all claims arising out of or related to this Agreement shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

13. ATTACHMENTS. This Agreement includes the following attachments:  
Attachment A - Letter dated 2/21/01 and fee schedule. \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

1. \_\_\_\_\_

4. COUNTY OF SANTA CRUZ

By: \_\_\_\_\_

By: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

2. APPROVED AS TO INSURANCE:

\_\_\_\_\_  
Risk Management

3. APPROVED AS TO FORM:

\_\_\_\_\_  
County Counsel

DISTRIBUTION:    County Administrative Office  
                         Auditor-Controller  
                         County Counsel  
                         Risk Management  
                         General Services Department  
                         Contractor

**TRS**  
**TECHNICAL ROOF SERVICES, INC.**  

---

*Roof and Waterproofing Consultants*  
*www.trsroof.com*

0060

February 21, 2001

Mr. Dale Bisby  
COUNTY OF SANTA CRUZ, GENERAL SERVICES DEPARTMENT  
Facilities Management  
1110 Emeline Street  
Santa Cruz, CA 95060-1967

RE: Reroofing Low-Sloped Roofs of Crestview Health Clinic  
Proposal for Consulting Services  
Part 2 – Pre-Bid. Construction and Final

Dear Mr. Bisby:

Technical Roof Services, Inc. (TRS) is pleased to submit this proposal regarding Part 2 (Pre-Bid, Construction and Final) consulting services associated with the planned reroofing of the low-sloped roof areas of the Santa Cruz County Crestview Health Services building in Watsonville, California.

On July 24, 2000, we forwarded to you a report concerning the existing condition of the low-sloped roof coverings and, in accordance with our discussions, a Preliminary Project Description (PPD) itemizing the scope of your desired reroof work. We understand you elected to forego requesting us to prepare conventional specifications and drawings in favor of using the PPD we provided to obtain bids from contractors for design/build type construction services. And most recently, you asked us for a proposal to provide The County with technical consulting assistance during such a design/build type project.

This proposal describes TRS services to be provided on a time and expense basis during the bidding, construction, and final phases of the planned reroof project. Considering the information obtained to date and the direction provided from your office during the Survey and Schematic Phase, our proposal is based on the understandings and assumptions presented in previous correspondence and the following:

- Manufacturer's product information will be relied upon as complete and accurate representations.
- The County will perform all "Owner Representative" type services and functions.
- The 1998 California Building Code will be used as the reference "Code."
- Any services needed related to environmental issues during construction, such as, asbestos, lead, and other potentially hazardous materials (including consulting and monitoring during removal) will be provided by other parties through separate agreements with the County. Environmental services are not provided or included.
- As-built drawings are not part of our scope of work.
- The actual construction portion of the project will take place over three (3) working weeks.
- The County will provide inspections for quality control and assurance during construction.

Mr. Dale Bisby  
RE: 9 Crestview Reroof Project  
February 21, 2001

0061

Page 2 of 3

- County bidding documents will define Contractor design/build responsibilities and will include requirements for contractor coordination/cooperation with TRS personnel.
- TRS services will be performed concurrently with TRS services on the 100 Rountree Reroof Project (e.g., travel time associated with weekly visits is presumed to be split between the two projects).

Reroof projects typically involve four or five phases. This proposal is for the following phases:

Phase III	Bid Phase
Phase IV	Pre-Construction and Construction Phase
Phase V	Final and Close-out Phase

### **PHASE III -- BID PHASE**

We will attend one pre-bid site meeting and will allocate up to eight (8) hours for clarifications and preparation of any required addenda related to technical items during the bid period.

### **PHASE IV – CONSTRUCTION PHASE (CONSULTING RELATED SERVICES)**

We propose to provide technical assistance during the construction portion of the project.

1. Attend one pre-construction start-up meeting and provide a summary report.
2. Review one contractor technical submittal and one resubmittal, and provide summary commentary reports.
3. Visit the site to observe the progress and quality of the work a total of three times. These three visits are intended to correspond with attending weekly site meetings held immediately before or after our site observations. Summary reports will be issued for each meeting attended. Additional site visits can be performed within our schedule availability and at the request of the County. Please note that TRS consulting clarifications and/or recommendations are offered for your consideration and to assist you, as owner, in making final project-related decisions. Our clarifications and/or recommendations will not be rendered as directives to the contractor.

Quality Control and Quality Assurance (QC and QA) is a broad and multi-faceted concept, often misunderstood or interpreted to mean inspection services. QC and QA involve many diverse items, such as: contractor and worker expertise and experience; contractor management, supervision and quality control techniques and training; mock-ups; and on-site testing and meetings.

Quality Assurance, referenced in Technical Specification Sections, is the assurance required of the contractor and manufacturers. The contractor is solely responsible for contract compliance, which includes quality control, quality assurance, management, and supervision. The technical assistance proposed for the Work does not include construction management, contract administration, Owner Representative work and/or contractor quality control and assurance.

Mr. Dale Bisby  
RE: 9 Crestview Reroof Project  
February 21, 2001

0062

Page 3 of 3

Construction observation by firms like TRS can assist clients by checking for general compliance of materials, the installation, quality control and assurance techniques, and processes utilized by the installers. However, observation is only one part of many in the process of construction projects.

#### **PHASE V – FINAL PHASE**

We will attend one final observation visit as a check that the work is completed in general compliance with the original TRS prepared PPD, amended by County approved changes, and provide a final report documenting incomplete or non-conforming work items.


#### **FEES AND CONDITIONS**

Fees for our services will be determined on a time and expense basis in accordance with the unit rates and conditions on the attached TRS Fee Schedule with Additional Provisions, "Attachment 1 ." Attachment documents are incorporated into this proposal by reference. Based upon our experience, we suggest a budget amount of \$15,600 be established for the services described above. We will not extend services beyond the authorized amount without prior notification and at least verbal authorization.

Thank you for the opportunity to submit this proposal. We look forward to the possibility of assisting you on this project.

Respectfully submitted,

TECHNICAL ROOF SERVICES, INC.

  
Philip D. Dregger, PE, RRC, Principal  
Professional Engineer (No. C045646)  
Registered Roof Consultant (No. 0027)

PDD/brm

attachment: TRS Fee Schedule with Additional Provisions, "Attachment 1"

f:\shared\general\santa cruz\99114 crestview health clinic\500 pro part S-bidding construction final.doc

# TRS

TECHNICAL ROOF SERVICES, INC.

0063

Roof and Waterproofing Consultants  
www.trsroof.com

"Attachment 1"

## FEE SCHEDULE

Principal Sr. Consultant	\$ 125/hour
Sr. Consultant	\$ 110/hour
Consultant	\$ 95/hour
Expert Assistance *	\$ 175/hour
Technical Representative	\$ 50/hour
Sr. CAD Operator	\$ 65/hour
CAD Operator	\$ 50/hour
Non-Technical Support	\$35 - \$50/hour
Moisture Surveys	Special Quote
Reimbursable Expenses **	cost + 10%
Mileage	\$ .32/mile
Subcontractors	Cost + 25%

*Labor invoicing includes all project related time (e.g. telecoms, preparation, travel time, site time, office time, etc.).*

*\* Expert Assistance: Arbitration, mediation, deposition, and trial. All expert witness deposition fees are due either at the beginning or the end of the deposition - no exceptions. Depositions will not proceed without this agreement.*

*\*\*Reimbursable Expenses include but are not limited to the following: long distance transportation and living expenses in connection with out-of-town travel; long distance communications; photographs and development; mileage; color copies; client request for additional copies; overnight mailings and courier; reproductions, postage, and handling of drawings, specifications and other documents; laboratory tests; renderings, models and mock-ups requested by the Client; change in or additional insurance coverage, limits or provisions, required by the Client in excess of that normally carried by TRS.*

*Terms: All invoices are due and payable within 30 days of receipt. A late charge of 18% per annum will be computed on all amounts past due*

**1.0 SCOPE & RESPONSIBILITIES OF TECHNICAL ROOF SERVICES, INC. (TRS)**

- 1.1 The scope of TRS' services to be provided will be those specifically proposed and agreed upon for a particular project. "Project" is defined as TRS' commissioned service by a client. The scope of TRS' services may also consist of services indicated under Additional Services, or as noted in attachments or follow-up discussions and proposals to these terms.
- 1.2 TRS' services will be performed at the direction of the Client with reasonable promptness within our scheduling commitments as is consistent with reasonable skill and care in the orderly progress of the work.
- 1.3 TRS will rely on representations made by the Client and product manufacturers in carrying out its duties and shall be entitled to rely upon such information, lawful or not, as fact.

**2.0 CLIENT'S RESPONSIBILITIES**

- 2.1 The Client shall provide full information setting forth the Client's and, where applicable, the Owner's objectives, schedule, constraints, budget with reasonable contingencies, and criteria.
- 2.2 Information and Approval: Client shall furnish information and shall render decisions and approvals as expeditiously as necessary for the orderly progress of TRS' Services under this Agreement, and within any time limits set forth in any Schedule provided.
- 2.3 Unless otherwise agreed, Client agrees to provide suitable and safe access to the roof or wall areas for personnel (e.g., scaffolding, man-lift, and safety lines/belts). This would also include providing barricades and a responsible person at ground level to prevent people from entering the area below investigation activities.

**3.0 CONSTRUCTION BUDGET PROJECTIONS**

- 3.1 It is recognized that TRS is not a contractor and budget projections are not cost estimates; and that neither TRS or the Client has control over the cost of labor, materials or equipment, over the contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, TRS does not warrant or represent that bids or negotiated prices will not vary from any budget or construction budget projection provided by TRS.
- 3.2 No fixed limit of construction cost shall be established as a condition of this Agreement by the establishment or providing of a Project budget projection.

**4.0 TRS' DOCUMENTS**

- 4.1 Reports, photographs, drawings and specifications prepared by TRS as instruments of service are and shall remain the property of TRS whether the Project for which they are made is executed or not. TRS shall be deemed the author of these documents and shall retain copies, including reproducible copies for information and reference in connection with the Client's use on any phase of a project. All drawings, specifications, and reports prepared by TRS, and copies thereof, shall not be used except with respect to the Project and are not to be used on any other project except by Agreement in writing providing for compensation to TRS. Submission or distribution to meet official regulatory requirements or in connection with the Project is not to be construed as publication in derogation of TRS' reserved rights.
- 4.2 Intellectual Property: The following provisions shall apply with respect to copyrightable works, ideas, conceptualizations, discoveries, inventions, applications for patents, and patents (collectively, "Intellectual Property"): a) TRS' Intellectual Property. TRS collectively holds an interest in the Intellectual Property previously created and used for any particular project; b) Development of Intellectual Property. Any improvements to Intellectual Property items, further inventions or improvements, and any new items of Intellectual Property discovered or developed by TRS (or TRS' employees) during the term of this Agreement shall be the property of TRS, subject to the irrevocable right and license of the Client to make, use, and/or sell products and services derived from any such Intellectual Property without payment of royalties. Such rights and license will be exclusive for the term of this Agreement, and any extensions or renewals of this Agreement. After termination of this Agreement, such rights and license shall be nonexclusive, but shall remain royalty-free. Each party shall execute such documents as may be necessary to perfect and preserve the rights of either party with respect to any such Intellectual Property.

**5.0 INSURANCE**

- 5.1 TRS will maintain insurance for protection from claims as set forth which arise out of or result from TRS' performance of services under this Agreement a) Claims under worker's compensation acts; b) Claims for damages because of bodily injury, including personal injury, sickness, disease or claims of death of any of its employees or of any person; c) Claims for damages because of injury to or destruction to tangible property including loss of use resulting therefrom.
- 5.2 Indemnification: The Client agrees to indemnify, hold harmless and defend TRS, its subcontractors, suppliers, employees, and agents from and against any and all claims, damages, losses, and expenses arising out of or resulting from, in whole or in part, the activities, facilities or equipment of the Client or its contractors, other consultants or their subcontractors, suppliers, employees, or agents; unless such claims, damages, losses, and expenses arise out of or result from, in whole or in part, the sole negligent or other wrongful conduct of TRS, its subcontractors, suppliers, employees, and agents.

**6.0 TERMINATION, SUSPENSION OR ABANDONMENT**

- 6.1 Termination by Either Party for Other's Failure to Perform: If either party fails substantially to perform in accordance with any of the terms of this Agreement through no fault of the other party, the other party may give notice of such default to the defaulting party specifying the nature of the default. If the defaulting party fails to cure the default within seven (7) days of such notice, the other party may, without prejudice to any of its rights or remedies, terminate this Agreement immediately upon notice to the defaulting party.
- 6.2 Termination by Client upon Abandonment of Project This Agreement may be terminated by the Client upon at least seven (7) days written notice to TRS in the event that the Project is abandoned.
- 6.3 Termination by TRS: If, in TRS' opinion, the Client has failed to perform in accordance with the understandings, terms and/or conditions of this Agreement, TRS may terminate all or part of the Agreement for cause upon at least seven (7) days written notice to the Client.
- 6.4 Compensation and Payments upon Termination: In the event of termination, the Client will pay TRS in full for all services performed and all Reimbursable Expenses incurred under this Agreement up to and including the effective date of termination, payment will be made on both completed Work and Work in progress, whether delivered to the Client or in the possession of TRS, and to authorized Reimbursable Expenses, and subject to, if TRS has made previous commitments to others on the Client's behalf, prior to the date of termination, including Reimbursable Expenses then due and those Reimbursable Expenses incurred after termination not the fault of TRS, Client shall compensate TRS for expenses directly attributable to termination for which TRS is not otherwise compensated.
- 6.5 Failure of the Client to make payments to TRS in accordance with this Agreement will be considered substantial nonperformance.

**7.0 MISCELLANEOUS PROVISIONS**

- 7.1 Unless otherwise agreed, this Agreement shall be governed by the laws of the State of California.
- 7.2 TRS and TRS' Employees shall have no responsibility for the discovery, testing, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project Site, including but not limited to: asbestos, lead, polychlorinated biphenyl (PCB) or other substances.
- 7.3 Any services needed related to engineering (e.g., seismic analysis, mechanical, electrical, or structural evaluation), will be provided by the Client.
- 7.4 Nothing contained in this Agreement shall create a contractual relationship with or without a cause of action in favor of a third party against either the Client or TRS.
- 7.5 In any dispute between the parties, the prevailing party shall be entitled to recover from the other party all reasonable expenses, including, without limitation, costs and reasonable attorneys' fees. "Prevailing Party" shall include, without limitation, a party who dismisses an action or recovery in exchange for sums allegedly due, performance or covenants allegedly breached or considerations substantially equal to the relief sought in the action, or which receives, in connection with any dispute, performance from the other party substantially equivalent to any of these.
- 7.6 THIS AGREEMENT REPRESENTS THE ENTIRE AND INTEGRATED AGREEMENT BETWEEN THE CLIENT AND TRS AND SUPERSEDES ALL PRIOR NEGOTIATIONS, REPRESENTATIONS, OR AGREEMENTS, EITHER WRITTEN OR ORAL. THIS AGREEMENT MAY BE AMENDED ONLY BY WRITTEN INSTRUMENT SIGNED BY CLIENT AND TRS. SHOULD THIS AGREEMENT CONFLICT WITH OTHER PROVISIONS, THESE ADDITIONAL PROVISIONS SHALL BE INTERPRETED AS PRIMARY AND TAKE PRECEDENCE.
- 7.7 SEVERABILITY: THE PROVISIONS OF THIS AGREEMENT SHALL SURVIVE THE EXECUTION OF TRY SERVICES OR THE TERMINATION OF THIS AGREEMENT FOR ANY REASON. IF ANY PROVISION OF THIS AGREEMENT, OR THE APPLICATION OF SUCH PROVISION TO ANY PERSON OR CIRCUMSTANCES, ARE HELD INVALID OR UNENFORCEABLE, THE REMAINDER OF THIS AGREEMENT OR THE APPLICATION OF SUCH PROVISION TO PERSONS OR CIRCUMSTANCES OTHER THAN THOSE AS TO WHICH IT IS HELD INVALID OR UNENFORCEABLE, SHALL NOT BE AFFECTED.
- 7.8 A TRS IS REQUESTED TO OFFER ITS OPINION OR INTERPRETATION OF MATTERS CONCERNING PERFORMANCE OF WORK PRACTICES BY OTHER PARTIES, TRS RESPONSE TO SUCH REQUESTS WILL BE MADE WITH REASONABLE PROMPTNESS. WHEN MAKING SUCH INTERPRETATIONS, TRS WILL ENDEAVOR TO SECURE FAITHFUL PERFORMANCE BY BOTH CLIENT AND THE OTHER PARTY, WILL NOT SHOW PARTIALITY TO EITHER, AND SHALL NOT BE LIABLE FOR RESULTS OF INTERPRETATION OR OPINIONS SO RENDERED IN GOOD FAITH.
- 7.9 TRY LIABILITY SHALL BE LIMITED TO A MAXIMUM OF THREE TIMES THE TOTAL VALUE OF INVOICED TIME TO DATE ON ANY PROJECT.
- 7.10 WHEN ADDRESSING EXISTING LEAK CONDITIONS, TRS CANNOT AND WILL NOT ACCEPT RESPONSIBILITY FOR DAMAGES THAT MAY BE CAUSED BY LEAKAGE INVESTIGATION OR TESTING.
- 7.11 TRS WILL NOT CONTROL AND WILL NOT BE RESPONSIBLE FOR CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES OR PROCEDURES, OR FOR SAFETY PRECAUTIONS AND PROGRAMS IN CONNECTION WITH THE CONSTRUCTION WORK (WORK), THEY ARE THE RESPONSIBILITY OF THE CLIENT/CONTRACTOR. TRS WILL NOT BE RESPONSIBLE FOR THE CONTRACTOR'S SCHEDULES OR FAILURE TO CARRY OUT THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS. TRS WILL NOT BE RESPONSIBLE FOR NEGLIGENCE, NON-COMPLIANCE CONSTRUCTION ISSUES, ACTS OR OMISSIONS OF THE CLIENT, OWNER, CONTRACTOR, SUBCONTRACTOR, OR THEIR AGENTS OR EMPLOYEES, OR OF ANY OTHER PERSONS PERFORMING A PORTION OF THE WORK.

**8.0 FEES AND COMPENSATION**

- 8.1 TRS shall be entitled to compensation in accordance with this Agreement for all services performed whether or not a construction project has commenced.
- 8.2 TRS' fees are invoiced monthly as a summary of hours, based on the hourly rates indicated for individuals and is not dependent on submission of "completed work product".
- 8.3 If and to the extent that the time initially established in this Agreement is exceeded or extended through no fault of TRS, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in paragraph 9.1.
- 8.4 The Client (past or present) is responsible for payment to TRS for TRS' time charges and expenses resulting from our required response to subpoenas and litigation issued by any party in conjunction with services provided on this Project. Charges shall be based on Fee Schedules in effect at the time the service is provided.

**9.0 ADDITIONAL SERVICES**

- 9.1 If more TRS time for project representation or internal control is required beyond the proposed anticipated, proportioned time; including any time required after completion of TRS work, TRS shall be compensated at a rate in accordance with TRS' current Fee Schedule at that time. Typically, Additional Services include but are not limited to: site visits, additional submittal reviews, change orders and construction change directives, contractor proposal evaluation, documentation, follow-up construction disputes, safety preparation and protection on-site, expert assistance, and any other service not specifically listed in connection with TRS' services for the project.

COUNTY OF SANTA CRUZ  
REQUEST FOR APPROVAL OF AGREEMENT

0065

Vendor D.O. 5522

TO: Board of Supervisors  
County Administrative Officer  
County Counsel  
Auditor-Controller

FROM: General Services (Dept.)  
BOW (Signature) 5/30/01 (Date)

The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of the same.

- Said agreement is between the County of Santa Cruz (Agency)  
and Technical Roof Services Inc. 2840 Howe Rd, Suite A, Martinez, CA 94553 (Name & Address)
- The agreement will provide Consulting services in connection with the re-roof of the County  
Health Clinic located at 9 Crestview Lane, Watsonville, CA.
- The agreement is needed as the work can be most expeditiously completed by contract.
- Period of the agreement is from Board Approval to July 30, 2002
- Anticipated cost is \$ 15,600 (Fixed amount; Monthly rate; Not to exceed)
- Remarks:
- Appropriations are budgeted in 191076/Q63001 (Index#) 6610 (Subobject)

NOTE: IF APPROPRIATIONS ARE INSUFFICIENT, ATTACH COMPLETED FORM AUD-74

Appropriations are available and have been encumbered.  
W-9 ON FILE  
Encumber in FY 00/01

Contract No. 02437 Date 6-1-01  
GARY KNOTSON, Auditor - Controller  
By P. S. Bough Deputy.

Proposal reviewed and approved. It is recommended that the Board of Supervisors approve the agreement and authorize the General Services Dept to execute the same on behalf of the County of Santa Cruz (Agency).  
C. H. H. County Administrative Officer

Remarks: \_\_\_\_\_ (Analyst) By C. H. H. Date 6/4/01

Agreement approved as to form. Date \_\_\_\_\_

Distribution:

Bd. of Supv. - White  
Auditor-Controller - Blue  
County Counsel - Pink  
Co. Admin. Officer - Canary  
Auditor-Controller - Pink  
Originating Dept. - Goldenrod

To Orig. Dept. if rejected.

ADM - 29 (6/95)

State of California )  
County of Santa Cruz ) ss

I \_\_\_\_\_ ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz,  
State of California, do hereby certify that the foregoing request for approval of agreement was approved by  
said Board of Supervisors as recommended by the County Administrative Officer by an order duly entered  
in the minutes of said Board on \_\_\_\_\_ 19 \_\_\_\_\_.  
County Administrative Officer  
By \_\_\_\_\_ Deputy Clerk

20