

**TOWN OF FAIRFAX
STAFF REPORT**

To: Mayor, Members of the Town Council

From: Michael Rock, Town Manager 
Kathy Wilkie, Public Works Director

Date: April 7, 2010

Subject: Authorize the Town Manager to Sign a Contract with Van Midde and Son Concrete for the Removal and Replacement of the Fire Station Driveways

RECOMMENDATION

Authorize the Town Manager to sign a Contract with Van Midde and Son Concrete for the Removal and Replacement of the Fire Station Driveways

DISCUSSION

The two Fire Station driveways on Park Road are cracked and in poor condition. Several individuals have tripped and fallen while walking along the sidewalk. In addition, the existing cross slope exceeds the maximum required to meet current ADA standards.

This particular project will be completed following the Uniform Construction Standards for the municipalities in Marin County. The work includes the removal and replacement of 105 linear feet of concrete. Public Works staff will off haul the concrete removed from the site. The work will be completed in sections in order to allow emergency vehicle access at all times. The work schedule will be coordinated with Ross Valley Fire Department to insure all interested parties are aware of any potential impacts.

Three bids were received for this project and Van Midde & Son Concrete was the lowest bidder.

<i>Bidder</i>	<i>Estimated Cost</i>
Van Midde & Son	\$14,400
Ghilotti Brother's Inc.	\$22,323
Sonoma Marin Construction	\$22,690

Van Midde & Son Concrete has a proven track record with the Town for providing high quality work and meeting ADA compliance standards. Staff recommends retaining the services of Van Midde & Son Concrete to complete this project.

FISCAL IMPACT

\$14,400 from the FY 09/10 Capital Improvement Project Budget for the Sidewalk Hazard Elimination Program.

ATTACHMENTS

Contract Agreement with Van Midde & Son Concrete

CONSTRUCTION CONTRACT

TOWN OF FAIRFAX
STATE OF CALIFORNIA

Fire Department Driveway Replacement

THIS AGREEMENT, made and entered into this 8th day of April, 2010, by and between Van Midde & Son Concrete, hereinafter referred to as "CONTRACTOR" and the TOWN OF FAIRFAX, CALIFORNIA, hereinafter referred to as "TOWN".

WITNESSETH:

That for and in consideration of the promises and agreements hereinafter made and exchanged, the Town and the CONTRACTOR agree as follows:

1. That the CONTRACTOR will furnish all labor, materials, equipment, tools, transportation, services, appliances, and appurtenances for the construction of the Fire Department Driveway Replacement Project in Fairfax, California, (sometimes referred to as "the work") in accordance with the Plans and Specifications therefore, adopted by the Town Council of the above Town as prepared by ILS Associates, Inc. and Weir Andrewson Associates, Inc., and in full accord with the provisions of the Federal, State and local codes, including all addenda and approved change orders.
2. Projects under this Agreement:

Project Name(s):

Fire Department Driveway Replacement

Total Project Cost: \$14,400.00

The Town will pay the CONTRACTOR progress payments and the final payment, withholding 10% retention from each payment until after the lien period is over, and less any penalties and charges and in accordance with the method set forth in the Specifications with warrants drawn on the appropriate fund or funds as required, according to the prices as bid and accepted, based upon the Plans and Addenda, as follows:

- a. In accordance with California Public Contracts Code '22300, CONTRACTOR shall be permitted to substitute securities for any moneys to be withheld by the Town to ensure performance under this Agreement. At the request and expense of the CONTRACTOR, securities equivalent to the amount withheld shall be deposited with the Town, or with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the CONTRACTOR. Upon satisfactory completion of this Agreement and the passage of any requisite lien period without the filing of stop payment notices or suit, the securities shall be returned to the CONTRACTOR.

Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the CONTRACTOR and the Town. The CONTRACTOR shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

- b. The Town shall pay the CONTRACTOR the final payment plus any withheld retentions after the requisite lien period has passed provided: (1) no stop payment notices have been filed; (2) the CONTRACTOR is not in default hereunder; and (3) the work has been satisfactorily completed.
3. CONTRACTOR reserves the right to modify said plans and specifications as the development progresses should unforeseen conditions occur, providing written approval is first obtained from the Town's Engineer and appropriate adjustments are made to the contract price. Town reserves the right to make reasonable modifications to the plans and specifications whenever field conditions and/or public safety require such modifications. In addition, the Town may make changes in this agreement or the plans and specifications in the course of construction to bring the completed work into compliance with environmental requirements or standards established by state or federal statutes and regulations enacted after the agreement has been awarded or entered into. The CONTRACTOR shall be paid for the changes in accordance with paragraph 22.
 - a. This agreement may be terminated for environmental considerations at the discretion of the Town. Notice of termination of this Agreement shall be given in writing to CONTRACTOR, and shall be sufficient and complete when same is deposited in the United States mail postage prepaid and certified, addressed as set forth in paragraph 35 of this Agreement. The Agreement shall be terminated upon receipt of the Notice of Termination by CONTRACTOR. If Town should terminate this Agreement, the CONTRACTOR shall be compensated for all work satisfactorily performed prior to time of receipt of cancellation notice, and shall be compensated for materials ordered by the CONTRACTOR or his employees, or services of others ordered by the CONTRACTOR or his employees prior to receipt of notice of cancellation whether or not such materials or final instruments of services of others have actually been delivered, provided that the CONTRACTOR or employees are not able to cancel such orders for materials or services of others. Compensation for the CONTRACTOR in the event of cancellation shall be determined by the Public Works Director in accordance with the percentage of project completed and agreed to by the CONTRACTOR. In the event of cancellation, all notes, sketches, computations, drawings and specifications, or other data, whether complete or not, produced through the time of the Town's last payment shall be relinquished to the Town. The Town may, at its own expense, make copies or extract information from any such notes, sketches, computations, drawings, and specifications, or other data whether complete or not.

- b. CONTRACTOR shall comply with all federal, state and local regulations and laws pertaining to hazardous materials or hazardous substances as those terms are defined by any such law or regulation. CONTRACTOR shall indemnify, hold harmless, release and defend Town, its officers, employees and agents from and against any and all actions, claims, demands, damages, disabilities, losses, costs of clean-up, remediation and/or expenses, including attorney's fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including CONTRACTOR arising out of or in any way connected with CONTRACTOR's failure to comply with said hazardous substance and/or hazardous materials laws and regulations.
4. The Town's Engineer and inspector shall inspect all of the improvements to be accepted for maintenance by the Town. All improvements shall be inspected for compliance with Town standards, plans, and specifications.
5. CONTRACTOR shall allow Town's duly authorized representatives access to the work at all times and shall furnish them with every reasonable facility for ascertaining that the methods, materials, and workmanship comply with the requirements and intent of the approved plans. Town may reject defective work and require its repair, replacement, or removal by CONTRACTOR, all at the CONTRACTOR'S sole cost.
6. Town shall not be required to exonerate any surety, release any security relating to satisfactory completion of the improvements until acceptance of proposed public improvements by the Town or, in the case of improvements which will not be dedicated to and accepted by Town, until the improvements have passed final inspection by Town. In addition, release of security or exoneration of sureties will be predicated upon the receipt of required maintenance and/or warranty agreements and security therefore.
7. No improvement shall be accepted by the Town unless and until it is free of all liens and encumbrances, and free of all material defects and conditions which may create a hazard to the public health, safety, or welfare. In addition, all properties, rights-of-way, easements, and other interests to be dedicated to the Town shall be, before acceptance thereof by the Town, free and clear of all liens and encumbrances of any kind or character whatsoever and free of any and all material defects and conditions creating a hazard to public health or public safety.
8. Time is of the essence of each and every provision of this Contract.
9. CONTRACTOR will pay, and will require all SUBCONTRACTORS to pay, all workers on the work a salary or wage at least equal to the prevailing rate of per diem wages for such work as set forth in the wage determinations and wage standards applicable to this work, a copy of which is on file with the Town Clerk. A copy of the prevailing rate of per diem wage shall be posted at the job site. CONTRACTOR shall forfeit to the Town, as a penalty, TWENTY-FIVE DOLLARS (\$25.00) for each calendar day or portion thereof for each worker paid (either by CONTRACTOR or any SUBCONTRACTORS) less than the prevailing rate set forth herein on the work provided for in the contract, all in accordance with section 1775 of the Labor Code of the State of California.

The work covered by this agreement is a "public work" as that term is defined in California Labor Code, Division 2, Part 7, Chapter 1.

10. CONTRACTOR agrees that in the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and the CONTRACTOR shall not require more than eight (8) hours of labor in a day from any person employed by CONTRACTOR hereunder, except as provided in the Labor Code of the State of California. CONTRACTOR shall conform to Article 3, Chapter 1, Part 7 (Section 1810, et seq.) of the Labor Code of the State of California, and it is agreed that the CONTRACTOR shall forfeit to the Town as a penalty the sum of TWENTY-FIVE DOLLARS (\$25.00) for each worker employed in the execution of this Contract by the CONTRACTOR or any SUBCONTRACTOR for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in violation of said Article.
11. CONTRACTOR shall comply with applicable provisions of '1777.5 of the Labor Code for all apprenticeable occupations. In the event CONTRACTOR willfully fails to comply with the applicable provisions of '1777.5, CONTRACTOR shall forfeit as a civil penalty the sum of FIFTY DOLLARS (\$50.00) for each calendar day of non-compliance, which money may be withheld by Town pursuant to the provisions of Labor Code '1777.7.
12. CONTRACTOR shall comply with the applicable provisions of '1773.8 of the Labor Code regarding the payment of *travel and subsistence payments to each worker necessary to execute the work.*
 - a. It shall be the responsibility of the CONTRACTOR to insure compliance with this section 12(a). Each CONTRACTOR and SUBCONTRACTOR shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONTRACTOR in connection with the work described herein. The CONTRACTOR shall comply with each and every provision of Labor Code Section 1776 pertinent to said records as well as any other records governed by said Section 1776, including, but not limited to, providing copies of payroll records to employees and to the Town, advising the Town of the location of said records, preserving the confidentiality of the identities of individual employees, and complying with the penalty provisions of Section 1776. Specifically, in the event that the CONTRACTOR'S noncompliance with Section 1776 is evident after the ten day period specified in subparagraph (f) of Section 1776, CONTRACTOR shall pay, as a penalty, to the Town \$25 for each calendar day or portion thereof for each worker until strict compliance is effectuated.
13. CONTRACTOR agrees to complete the work within fifty (50) working days from the date of issuance of the Notice to Proceed (or approved extensions thereof), but in any case no later than October 15, 2008. All work will be completed to the entire satisfaction of the Town before final payment is made. The CONTRACTOR is required to give at least one day's

advance notice of the date upon which work is commenced and the date upon which the work is to be completed.

14. It is agreed that CONTRACTOR'S failure to complete the work within the time allowed will result in damages being sustained by the Town. Such damages are, and will continue to be, impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified, as adjusted in accordance with standard specifications, for completion of the work the CONTRACTOR shall pay to the Town, or have withheld from monies due it, the sum as stipulated in the special provisions (\$1000 per day) as liquidated damages. Progress payments made after the scheduled completion date shall not constitute a waiver of liquidated damages.
15. CONTRACTOR shall comply with all applicable laws, rules and regulations barring discrimination on the basis of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status or sex.
16. Town may withhold, or on account of later discovered evidence, nullify all or part of any certification made to the CONTRACTOR by the Town as to the amount determined to be due the CONTRACTOR, to such extent and period of time only as may be necessary to protect the Town from loss on account of: defective work not remedied; claims filed or reasonable evidence indicating probable filing; failure to properly pay SUBCONTRACTORS for material or labor; reasonable doubt that the work can be completed for the balance remaining; damage to third parties; and/or damage to property because of any defective works.
17. Town shall have the option to require additional testing. However, in the event the results indicate defective work or materials, CONTRACTOR shall pay the costs of such tests and an appropriate change order shall be issued.
18. A. CONTRACTOR agrees that when work involves digging trenches or other excavations that extend deeper than four feet below the surface, that the CONTRACTOR shall promptly notify the public entity in writing, before conditions are disturbed, of any of the following:
 - 1) Material that the CONTRACTOR believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - 2) Subsurface or latent physical conditions at the site differing from those indicated.
 - 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

- B. Upon receipt of the notice specified in paragraph 18(A) above, the Town shall promptly investigate the conditions reported, and if the Town finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the CONTRACTOR's cost of, or the time required for, performance of any part of the work, the Town shall issue a change order under the procedures described herein.
- C. In the event that a dispute arises between the Town and the CONTRACTOR as to whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in the CONTRACTOR's cost of, or time required for, performance of any part of the work, the CONTRACTOR shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The CONTRACTOR shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the CONTRACTOR and Town.
- D. CONTRACTOR shall make a diligent visual and, where reasonably indicated, other investigatory and exploratory inspections of the area, property and/or site upon which the work shall be performed. In addition, the CONTRACTOR shall make those investigations and inspections reasonably required of the area surrounding the site on which the work will be performed where that surrounding area may be used by the CONTRACTOR or affected by the CONTRACTOR's work and determine whether or not said surrounding area, as affected by the performance of the work presents a danger or hazard to person or property. If such a danger or hazard is likely to be caused by the performance by the CONTRACTOR of the work, the CONTRACTOR shall take those steps reasonably necessary to eliminate said danger and hazard, to the extent reasonably feasible, and the CONTRACTOR shall indemnify the Town in accordance with paragraph 20, below, for any liability arising from CONTRACTOR's failure to comply with this paragraph or from injury or damage to property or person located in said surrounding area caused by CONTRACTOR's activities hereunder.
19. CONTRACTOR shall, prior to the execution of the contract, furnish two bonds in a form approved by the Town, one in the amount of One Hundred Percent (100%) of the contract price to guarantee the faithful performance of the work, and one in the amount of One Hundred Percent (100%) of the contract price to guarantee payment of all claims for labor and materials furnished. The surety for such security shall be currently admitted to transact surety insurance by the California Department of Insurance and shall carry a Best's rating of no less than A+. This contract shall not become effective until such bonds are supplied to and approved by the Town.
20. To the extent permitted by law, CONTRACTOR shall indemnify, hold harmless, release and defend Town, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, failure to comply with any current or prospective laws, expenses including attorney's fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including CONTRACTOR from any cause whatsoever including another's concurrent negligence arising out of or in any way connected with the

activities of CONTRACTOR, his SUBCONTRACTOR, employees and agents hereunder and regardless of Town's passive negligence. CONTRACTOR shall be solely responsible and save Town harmless from all matters relative to payment of his employees including compliance with Social Security, withholding, etc.

This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for CONTRACTOR under Worker's Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this agreement, or the terms, applicability or limitations of any insurance held by CONTRACTOR.

21. CONTRACTOR shall obtain insurance acceptable to the Town in a company or companies acceptable to the Town and with a Best Rating of no less than A:XIII. The required documentation of such insurance shall be furnished to the Town at the time CONTRACTOR returns the executed contract. The proper insurance shall be provided within ten (10) days of the date of mailing of the notice that the contract has been awarded and prior to the Town executing the contract and issuing a notice to proceed. The CONTRACTOR shall not commence work nor shall s/he allow his employees or SUBCONTRACTORS or anyone to commence work until all insurance required hereunder has been submitted and approved and a notice to proceed has been issued.

Without limiting CONTRACTOR'S indemnification provided hereunder, CONTRACTOR shall take out and maintain at all times during the life of this contract, up to the date of acceptance of the work by the Town, the following policies of insurance:

- a. Worker's Compensation insurance to cover its employees and the CONTRACTOR shall require all SUBCONTRACTORS similarly to provide Worker's Compensation insurance as required by the Labor Code of the State of California for all of the SUBCONTRACTOR'S employees. All Worker's Compensation policies shall be endorsed with the provision that it will not be canceled without first giving thirty (30) days prior notice to the Town.

In the event any class of employees engaged in hazardous work under this Contract is not protected under Workers' Compensation Statutes, the CONTRACTOR shall provide, and shall cause all SUBCONTRACTORS to provide, adequate and suitable insurance for the protection of its employees not otherwise protected. Such policy must be acceptable to Town and shall provide that it will not be canceled without first giving thirty (30) days notice to Town.

CONTRACTOR'S worker's compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the TOWN OF FAIRFAX, its officers and employees when acting within the scope of their appointment or employment."

- b. Commercial General Liability and Automobile Liability insurance coverage which shall be at least as broad as:

- (1) Insurance Services Office Commercial Liability coverage (occurrence form CG 00 01 11 88).
- (2) Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, code 1 (any auto).
- (3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.

CONTRACTOR shall maintain insurance limits no less than:

- (1) General Liability: \$5,000,000 per occurrence for bodily injury, personal and property damage. If Commercial General Liability Insurance or other form with a general aggregate is used, either the general aggregate limit shall apply separately to this contract or the general aggregate limit shall be twice the required occurrence limit.
- (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- (3) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Completed operations and product liability insurance shall continue for not less than 365 days following acceptance of the work by the Town. Each Policy required herein shall be endorsed with the following language:

- (1) The TOWN OF FAIRFAX, its officers, officials, employees, agents and volunteers are named as additional insureds for all liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONTRACTOR and; with respect to liability arising out of the work or operations by or on behalf of the named insured, including materials, parts or equipment furnished in connection with such work or operations, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.
- (2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.
- (3) The insurance provided herein is primary as respects the Town, its officers, officials, employees, agents and volunteers, and no insurance held or owned by the TOWN OF FAIRFAX shall be called upon to contribute to a loss.

- (4) The coverage provided by this policy shall not be canceled without thirty (30) days prior written notice given to the Town by certified mail, return receipt requested.
- (5) This policy does not exclude explosion, collapse, underground excavation hazards or removal of lateral support.

CONTRACTOR shall furnish the Town with original certificates and amendatory endorsements effecting coverage required by this clause. The certificates and endorsements shall be on the TOWN OF FAIRFAX forms attached hereto as Exhibits "A", "B", "C", and "D", properly executed by the authorized agent and the insurance company(ies). All certificates and endorsements are to be received and approved by the Town before work commences. The Town reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

- c. To the extent the following described damage is not covered by insurance, the CONTRACTOR shall be responsible for the cost of repairing or restoring damage to the work ("the costs"), which damage occurs prior to acceptance of the work by the Town and the damage is determined to be proximately caused by an act of God.
 - (1) Notwithstanding anything to the contrary stated herein, if said act of God constitutes an earthquake in excess of a magnitude of 3.5 on the Richter Scale and/or tidal waves, the CONTRACTOR shall be responsible for the costs in the amount of 5% of the amount paid to the CONTRACTOR hereunder.
 - (2) Subparagraph c(1) shall not be applicable if the work paid for by this agreement is financed by revenue bonds.
- d. In the event the work involves the construction of a building, bridge or other structure, Builder's Risk "All Risk" completed value insurance coverage (including flood but unless otherwise specified in the bid documents excluding earthquake and tidal wave) upon the entire project and including completed work and work in progress shall be obtained and maintained by CONTRACTOR throughout the term of this Agreement. The TOWN OF FAIRFAX shall be named as an additional insured. The policy shall be endorsed to provide that it will not be canceled without giving thirty (30) days prior written notice to Town by mail. Evidence of said insurance shall be provided to the Town as a condition precedent to the effectiveness of this Agreement.
- e. Any deductible or self-insured retentions must be declared to and approved by Town. At the option of Town insurer shall reduce or eliminate such deductible or self-insured retention as respects Town, its officers and

employees or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigation, claims, administration and defense expenses.

22. Only the Public Works Director has the authority to allow changed or extra work which will result in additional cost to Town. Any work done without proper authorization shall not render Town liable to CONTRACTOR and CONTRACTOR shall not be entitled to any payment whether by means of restitution, quantum meruit or otherwise. In the event extra or changed work is duly authorized by the Town, but agreement regarding payment is not reached with the CONTRACTOR, the Town can, at its discretion, order CONTRACTOR to proceed with the work and CONTRACTOR shall proceed with work subject to resolution of the dispute at a later date. In the event Specifications or other documents are incorporated into this agreement which provide for procedures pertinent to changed or extra work, those other documents shall control.
23. In the event that the work is not completed to the satisfaction of Town within the time specified by this agreement, Town, in addition to any other remedy at law or equity, may complete such work with its own forces or by contract. By execution of this agreement, CONTRACTOR grants Town permission to enter onto the subject property as may be necessary or convenient to construct such improvements. In the event of such default, CONTRACTOR, the surety and any person, firm, partnership, entity, corporation or association claiming any interest in the real property hereinabove described and each of them shall totally reimburse Town for its entire cost and expense (including attorneys' fees and costs) including interest thereon at the maximum rate allowed by law from the date of notification of such cost and expense until paid. Such obligation for reimbursement shall be unlimited by the amount of the estimates set forth in or by such security as may have been provided to Town in connection with this agreement. Such amounts and interest accrued thereon shall constitute a lien on the subject property and shall not be reimbursable to the CONTRACTOR under any agreement between the CONTRACTOR and Town. CONTRACTOR acknowledges and agrees that if the improvements are not completed to the satisfaction of the Town within the time specified by this agreement, the Town, in addition to any other remedy at law or equity or provided in this agreement, may withhold occupancy, building, and zoning permits until the work and improvements have been satisfactorily completed.
24. Neither the final certificate of payment nor any provision in the contract nor partial or entire use of the improvements embraced in this contract by the Town or the public shall constitute an acceptance of work not done in accordance with the contract or relieve the CONTRACTOR of liability in respect to any warranties or responsibility for faulty materials or workmanship. The CONTRACTOR shall promptly remedy any defects in the work and materials and pay for the costs of any damages resulting therefrom which shall appear within a period of twelve (12) months from the date of final acceptance of the work. The Town will give notice of defective materials and work with reasonable promptness. Before requesting acceptance of the project, the CONTRACTOR shall execute the attached guarantee that all work shall be free from defects in material and workmanship for a period of at least one year after acceptance of the work. CONTRACTOR shall also post a guarantee bond or security in an amount of not less than 10% of the contract amount assuring corrective work required

during the guarantee period. For purposes of determining the amount of the guarantee bond, "contract amount" shall mean the entire amount paid by the Town to the CONTRACTOR under this agreement, including but not limited to, the bid amount and any change orders.

25. No material, supplies, or equipment to be installed or furnished under this contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease-purchase or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. The CONTRACTOR shall warrant good title to all materials, supplies, and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same together with all improvements and appurtenances constructed or placed thereon by him to the Town free from any claims, liens, or charges. Neither the CONTRACTOR nor any person, firm or corporation furnishing any material or labor for any work covered by this contract shall have any right to a lien upon any improvement or appurtenance thereon. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any bond given by the CONTRACTOR for their protection or any rights under any law permitting such persons to look to funds due the CONTRACTOR in the hands of the Town. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.
26. In order to minimize traffic hazards and public nuisance arising out of CONTRACTOR'S work, CONTRACTOR shall ensure that adjacent properties and improved surfaces of surrounding streets stay free and clear of silt, tracked mud, dust, etc., coming from or any way related to CONTRACTOR'S work. In the event CONTRACTOR fails to comply with this condition, CONTRACTOR grants Town the rights to take or cause to be taken, without prior notice to CONTRACTOR, immediate corrective action, including, without limitation, utilizing CONTRACTOR'S cash deposit posted as specified above.
27. The CONTRACTOR shall be solely responsible and save Town harmless for all matters relating to the payment of his/her employees, including compliance with social security, withholding and all other regulations governing such matters.
28. This Contract by reference includes the Notice Inviting Bids, Bidder's Proposal, Affidavits, Bonds, Insurance Certificates, Guarantee, Plans, Special Provisions, Technical Specifications, and Addenda if any, and all items defined under the term "Contract" in the Special Provisions, and all as filed in the Public Works Director's File.

All documents forming the complete contract are intended to integrate so that any condition or work called for in and one and not mentioned in another shall be executed as if mentioned in all documents and set forth in the drawings. In addition, the terms of the none [additional documents not mentioned above] are incorporated in this contract. However, in the event of any inconsistencies between such other documents and provisions of this contract, the provisions of this contract shall prevail.

29. CONTRACTOR or its SUBCONTRACTOR(S) offers and agrees to assign to the TOWN OF FAIRFAX 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 Business and Professions Code), arising from purchases of goods, services or materials pursuant to this Contract or any subcontract. This assignment shall be made and become effective at the time the TOWN OF FAIRFAX tenders final payment to the CONTRACTOR, without further acknowledgment by the parties.
30. Any bidder or CONTRACTOR not properly licensed with the State of California shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the CONTRACTORS' State License Board.
31. Pre-Litigation Meet and Confer and Claims Procedures.
- (a) All claims shall be in writing, addressed and delivered as per paragraph 35, and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. The claims procedures set forth herein are supplementary to other claims procedures provided for herein (e.g., change orders), but in terms of preserving the CONTRACTOR'S rights to pursue any claims by litigation, CONTRACTOR must comply with these claim procedures described in this paragraph 31 or CONTRACTOR shall be deemed to have conclusively waived and abandoned his/her/its rights to pursue any claim for which these procedures were not followed.
- (b) "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 Town.
- (c) For claims of less than \$50,000, the Town shall respond in writing to a claim within 45 days of the receipt of the claim, or may request in writing, within 30 days of the receipt of a claim, any additional documents supporting the claim or relating to defenses or claims the Town may have against the CONTRACTOR. The CONTRACTOR shall supply the requested documentation within 15 days of the request therefor. The Town's written response to the claim, as further documented, shall be submitted to the CONTRACTOR within 15 days after receipt of the further documentation.
- (d) For claims above \$50,000 and up to \$375,000, the Town 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 needed to support the claim or relating to any defenses or claims the Town may have against the CONTRACTOR. The CONTRACTOR shall deliver the requested documentation to the Town within 30 days after the receipt of the request therefor. The Town's written

response to the claim, as further documented, shall be submitted to the CONTRACTOR within 30 days after receipt of the further documentation.

(e) If the CONTRACTOR disputes the Town's written response, or the Town fails to respond within the time prescribed, the CONTRACTOR may so notify the Town, in writing, either within 15 days of receipt of the Town's response or within 15 days of the Town'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 Town shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(i) If the meet and confer process does not produce an agreement, the CONTRACTOR may file a claim in accordance with Public Contracts Code 20104.2(e).

32. This Agreement shall inure to the benefit of, and be binding upon, the successors in interest, legal representatives, trustees, and permitted assigns of either party.
33. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to included terms and a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure, section 1856. No modification hereof shall be effective unless and until such modification is evidenced by a writing signed by all parties to this Agreement.
34. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a demand for assurance, either party's failure to provide within a reasonable time but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances is a repudiation of this Agreement by that party. Acceptance of any improper delivery of service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.
35. All notices permitted or required hereunder shall be addressed as follows and shall be deemed delivered upon the posting the notice first class, U.S. mail, postage prepaid:

If to the Town:

PUBLIC WORKS DIRECTOR
TOWN OF FAIRFAX
142 BOLINAS ROAD
FAIRFAX, CA 94930

If to the CONTRACTOR:

Ted Van Midde III

Van Midde & Son Concrete
490 B Street
San Rafael, CA 94901

36. This Agreement shall be construed in accordance with the law of the State of California. Venue shall be in the County of Marin.

IN WITNESS WHEREOF, the said CONTRACTOR and the Town Manager thereunder duly authorized, have caused the names of said parties to be affixed hereto, each in triplicate, the day and year first written above.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. CONTRACTOR REPRESENTS THAT S/HE HAS THE FOLLOWING CLASSIFICATION OF LICENSE AS REQUIRED FOR THIS WORK: C-8 Concrete. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD WHOSE ADDRESS IS:

CONTRACTORS' STATE LICENSE BOARD
9835 GOETHE ROAD
SACRAMENTO, CA 95826

MAILING ADDRESS:
P.O. BOX 26000
SACRAMENTO, CA 95826

CONTRACTOR
Van Midde & Son Concrete
License # 678584

By _____, Van Midde & Son Concrete

TOWN OF FAIRFAX, A Municipal Corporation

By _____, Town Manager

Attachments: Exhibits "A", "B", "C" and "D"
Performance and L & M Bonds (Construction)
Guarantee