

WORK ORDER CONTRACT

THIS WORK ORDER CONTRACT, dated for convenience this 3rdth day of May, 2011, between the CITY OF MILPITAS and the MILPITAS REDEVELOPMENTY AGENCY, in the County of Santa Clara, State of California (hereinafter collectively called "CITY"), and Swenson & Associates, (hereinafter called "CONTRACTOR"):

NOW, THEREFOREE, the parties agree:

ARTICLE I: WORK TO BE DONE AND DOCUMENTS FORMING THE CONTRACT

That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the said CITY, and under the conditions expressed in two bonds hereunto annexed, the said CONTRACTOR agrees with the said CITY, at his/her own proper cost and expense, to do all the work and furnish all the materials and equipment necessary to construct and complete, in accordance with the plans and specifications hereinafter mentioned, in a good, workmanlike and substantial manner, all the work and improvements described, mentioned and set forth in those plans and specifications on file in the Office of the City Engineer, entitled:

"Contract Documents and Specifications for
Work Order Contract (Warranty Work) for the Barbara Lee Senior Center Project"

which said plan and specifications and all the documents therein contained are hereby specially referred to and by such reference made part of this contract.

ARTICLE II: CONTRACTOR'S ACCEPTANCE

The CONTRACTOR agrees to receive and accept the prices shown on Exhibit "A", which is attached hereto and incorporated by reference herewith, as full compensation for furnishing all materials and equipment and for doing all the work contemplated and embraced in this Agreement; also for all loss or damage arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City Council of the CITY OF MILPITAS, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of the work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the contract documents, plans and specifications, and the requirements of the City Engineer.

ARTICLE III: ACCEPTANCE BY CITY

The said CITY hereby promises and agrees with said CONTRACTOR to employ, and does hereby employ the said CONTRACTOR to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions above set forth; and the said parties for themselves their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ARTICLE IV: COMPLETION OF AGREEMENT

Reference is made to Section D-01 "Prosecution of the Work and Time of Completion", of the Special Conditions included within the specifications of this contract. Inasmuch as the work called for under this contract concerns a needed public improvement, the time of performance and completion of this work is of the essence of this contract. It is expressly understood and agreed by the parties hereto that all the work called for under this contract, in all its parts and requirements, shall be completed before **July 1, 2011**.

Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss in the form of contract administration expenses (including project management and consultant expenses), if Work is not completed within the time specified above, plus any extensions thereof allowed in accordance with the Contract Documents. Consistent with Section D-3, Liquidated Damages," Owner and Contractor agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by Owner because of a delay in completion of the Work. Accordingly, Owner and Contractor agree that as liquidated damages for delay, Contractor shall pay Owner Five Hundred **dollars (\$500)** for each calendar day that expires after the time specified herein.

These measures of liquidated damages shall apply cumulatively and except as provided below, shall be presumed to be the damages suffered by Owner resulting from delay in completion of the Work.

Liquidated damages for delay shall only cover administrative, overhead, interest on bonds, lost revenues and general loss of public use damages suffered by Owner as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from defective work, costs of substitute facilities, or damages suffered by others who then seek to recover their damages from Owner (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

ARTICLE V: HOURS OF LABOR

The CONTRACTOR shall forfeit, as a penalty, to the CITY, Twenty-Five Dollars (\$25) or maximum amount required by law [check amount] for each workman employed in the execution of the contract by him or by any subcontractor for each calendar day during which any workman is required or permitted to labor more than eight (8) hours in violation of the provisions of Sections 1810-1815 inclusive of the Labor Code and all amendments thereto.

ARTICLE VI: APPRENTICES

Attention is directed to the provisions in Sections 1777.5, 1777.6 and 1777.7 of the Labor Code governing the employment of apprentices by the CONTRACTOR or any subcontractor under him. CONTRACTOR and any of his/her subcontractors shall comply with the requirements of said sections of the Labor Code; CONTRACTOR shall have full responsibility for compliance with the said sections regardless of any other contractual or employment relationships alleged to exist.

ARTICLE VII: TRAVEL AND SUBSISTENCE PAY

Each worker needed to execute the work set forth in this Agreement shall be paid travel and subsistence pay by the CONTRACTOR as required in Section 1773.8 of the Labor Code.

ARTICLE VIII: DISCRIMINATION PROHIBITED

The CONTRACTOR shall not refuse to accept otherwise qualified employees for employment for any work set forth in this Agreement solely on the grounds of race, religion, creed, color, national origin, ancestry, physical handicap, marital status, sexual preference, political affiliation, or age of such employee.

ARTICLE IX: INSURANCE

A. Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

B. Insurance Required:

No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the CITY, nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been so obtained and approved. The CONTRACTOR shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by him or by any subcontractor under him who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's general liability insurance for the benefit of his employees and the employees of any subcontractor under him not protected by such compensation laws.

The CONTRACTOR shall furnish satisfactory proof (City form and Insurance Accord form), by certificate or otherwise as may be required, that it has taken out public liability and property damage insurance with insurance carriers satisfactory to the CITY, and in such form as shall be satisfactory to the CITY to protect said CONTRACTOR and said CITY as an additional insured against loss from liability imposed by law from damages on account of bodily injury, including death resulting there from, suffered or alleged to have been suffered by any person or persons other than employees, resulting directly or indirectly from the performance or execution of this contract or any subcontract hereunder, and also to protect said CONTRACTOR and said CITY as an additional insured against loss from liability imposed by law for damage to any property caused directly or indirectly by the performance or execution of this contract or any subcontract hereunder, which insurance shall also cover accidents arising out of the use and operation of automobiles and trucks. Said policy shall include, but not be limited to coverage for the omissions and supervisory acts of the CITY, its officers and employees.

Said policy shall also provide that the coverage afforded thereby to CITY, its officers, engineer and consultants, and employees, is primary coverage to the full limit of liability stated in the Declaration, and if the City, its officers or employees have other insurance against loss covered by said policy, said other insurance shall be excess insurance only, and that CITY, its officers and employees are not precluded from claims there under against other insured parties.

C. Comprehensive General and Automobile Liability:

The CONTRACTOR agrees to obtain and maintain in full force and effect during the term of this Agreement comprehensive general and automobile liability insurance protecting Contractor in the amounts of coverage of not less than the limits shown below. Such insurance shall name the City of Milpitas as

defined above, and as additional insured. Coverage shall be in accordance with the limits specified above and the provisions indicated herein. Claims-made policies are not acceptable. When umbrella or excess coverage is in effect, it must follow the form of the underlying coverage. Such insurance shall not be canceled or materially altered to reduce coverage without giving CITY at least thirty (30) days advance written notice of such cancellation or change, and it shall be the responsibility of CONTRACTOR to notify CITY of such change or cancellation.

General & Automobile Liability -----	\$1,000,000 per person \$1,000,000 for each occurrence
Property Damage-----	\$1,000,000 for each occurrence \$1,000,000 aggregate

Said policies shall have a non-cancellation clause providing that thirty (30) days written notice shall be given the CITY prior to such cancellation. Where the work includes a structure or structures subject to loss or damage by fire, the CONTRACTOR shall maintain or cause to be maintained fire insurance sufficient to protect against such loss or damage in full until the work is accepted by the CITY. Nothing herein contained shall be construed as limiting in any way the extent to which the CONTRACTOR may be held responsible for the payment of damages to persons or property resulting from his or her operations or operations of any subcontractor under him or her.

Proof of all such insurance shall be given by filing certificates of such insurance with the City Engineer prior to execution of the contract by the CITY.

D. Certificates of Insurance with Endorsements:

The CONTRACTOR shall file the required original Certificate of Insurance with endorsements prior to the commencement of the work or event; it shall be subject to CITY's approval and shall clearly state:

1. Policy number; name of insurance company; name, address and telephone number of agent or authorized representative; name, address and telephone number of insured; Project name and number; policy expiration date; and specific coverage amounts;
2. That thirty (30) days cancellation notice, unqualified as to the acceptance of liability for failure to notify City; and
3. The CONTRACTOR's insurance is primary.

The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention City Engineer, 455 East Calaveras Boulevard, Milpitas California, 95035.

E. Workers Compensation Insurance:

The CONTRACTOR agrees to obtain and maintain statutory workers compensation and employers liability in an amount not less than One Million Dollars (\$1,000,000) and furnish City with a certificate showing proof of such coverage.

F. Deductibles, Self-Insured Retentions, and Proof of Insurance:

Prior to commencing any work under this Agreement, deductibles and self-insured retentions acceptable to CITY must be stated on Certificates of Insurance, and the Certificate of Insurance must be approved by CITY.

G. Absence of Insurance:

If the CONTRACTOR allows the insurance to laps, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered CONTRACTOR's delay and shall not be considered to increase cost to the CITY or increase time in which the Project shall be completed.

H. Insurance Companies:

Insurance provided pursuant to this Contract must be from insurance companies admitted in California and rated at least A in Best's Insurance Guide; or such other insurance companies as are acceptable to CITY in its sole and unfettered decision.

ARTICLE X: HOLD HARMLESS

The CONTRACTOR hereby agrees to and shall hold CITY, its elective and appointive boards, commissions, officers, agents, registered volunteers, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage and any other claims of any sort whatsoever, including, but not limited to, any liabilities, claims, losses, or expenses in any manner caused by, arising out of, or in connection with, either directly or indirectly, the construction or installation of the work, the guarding of the work, the use of improper materials in construction of the work, or the negligent, willful, or intentional acts or omissions by CONTRACTOR or CONTRACTOR's subcontractors, agents, or employee operations under this Agreement, whether such operations by CONTRACTOR or by any of CONTRACTOR's subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for CONTRACTOR or any of CONTRACTOR's subcontractors during the progress of the work or at any time before its completion and final acceptance, excepting suits and actions brought by the CONTRACTOR for default of this Agreement or arising from the sole active negligence or willful misconduct of the CITY. The City Council may retain so much of the money due to the CONTRACTOR as shall be reasonably necessary to protect the City, until disposition has been made of such suits or claims for damages as aforesaid.

The CONTRACTOR agrees to and shall pay CITY's cost of defense (or, at the sole option of the CITY, CONTRACTOR shall defend with counsel approved by the City Attorney) and indemnify CITY and its elective and appointive boards, commissions, officers, agents, and employees from any suits or actions at law or in equity arising out of the execution, adoption or implementation of this Agreement (exclusive of any such action brought by CONTRACTOR), such indemnification to include all costs of defense, judgments, and any awards of attorneys' fees.

Should any accident or incident causing death, personal injury or property damage occur between the date CONTRACTOR is notified that its General Liability and/or Workers Compensation Insurance is canceled and the effective date of such cancellation, CONTRACTOR'S obligation to indemnify, defend and save harmless the CITY, as provided for hereinabove, shall in no manner be affected by the fact that the CITY had not received the notice of cancellation prior to the date of such accident or incident.

ARTICLE XIII: MAINTENANCE AND GUARANTY

The CONTRACTOR shall promptly repair, replace, restore, or rebuild, as the CITY may determine, any finished product in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during a one (1)-year period subsequent to the date of final acceptance.

This Article does not in any way limit the guaranty on any items for which a longer guaranty is specified or on any items which a manufacturer give a guaranty for a longer period, nor does it limit the other remedies of the CITY in respect to a latent defect, fraud or implied warranties. CONTRACTOR shall furnish the CITY all appropriate guaranties or warranty certificates upon completion of the project.

ARTICLE XIV

[Reserved]

ARTICLE XV: INTERPRETATION OF CONTRACT

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said CONTRACTOR, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE XVI: AMENDMENTS

This Contract may be amended from time to time as necessary by formal and written amendment executed by the City Manager or his designee and principal acting on behalf of the CONTRACTOR.

ARTICLE XVII: CHANGES OR EXTRA WORK

The CONTRACTOR acknowledges that in conformance with the Contract Documents, any changes or extra work must be authorized in writing by the City Engineer prior to the CONTRACTOR performing said work. CONTRACTOR further acknowledges that it is solely responsible for obtaining written authorization from the CITY and that it shall not be compensated for any additional work performed without said written authorization. Oral authorization shall not be sufficient to bind the CITY absent specific written authorization.

ARTICLE XVIII MEDIATION

All claims for \$375,000 and less shall be arbitrated pursuant to the provisions of Public Contract Code Section 20104 et seq.

ARTICLE XIX CERTIFIED PAYROLL

Refer to General Conditions of the Contract Documents. All wages paid by the CONTRACTOR and its subcontractors shall be the current applicable prevailing wage rates, and as

specified in project Contract Documents.

ARTICLE XX CONTRACT DOCUMENTS

Contract documents consist of the Sections A, B, C, D and E of the specifications and plans of the Milpitas Senior Center Project, Project No. 8176, Dated February 6, 2009.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date first written above.

Approved as to Form:

By: _____
Agency Council/City Attorney

By: _____
Agency Director/City Manager

Approved as to Sufficiency:

By: _____
City Engineer

By: _____
Swenson & Associates

Approved:

By: _____
Finance Director/Risk Manager

CITY OF MILPITAS
CERTIFICATE OF INSURANCE
General and Automobile Liability

The undersigned insurance company hereby certifies to the City of Milpitas, California that it has issued a policy of insurance bearing Policy No. _____ to _____ in connection with the improvements generally described as _____, being a certain general and automobile liability policy which names the City of Milpitas, its officers and employees as additional insured, and which insures said City, officers and employees against liability of financial loss resulting from injuries occurring to persons or property in or about or in connection with said work of improvement, including, but not limited to, coverage for all work performed by, for or on behalf _____.

Said policy of insurance provides coverage in the following minimum amounts and for the following periods:

	<u>COVERAGE</u>	<u>POLICY NO.</u>	<u>POLICY PERIOD</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
1)	Bodily Injury			\$1,000,000 each person \$1,000,000 each occurrence
2)	Property Damage			\$1,000,000 each person \$1,000,000 each occurrence

This policy provides: (1) primary coverage for additional insured parties; if said additional insured have other insurance against loss covered by this policy, the other insurance shall be excess insurance only; (2) That said additional insured parties are not precluded from claim under this policy against other insured parties; and (3) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City Clerk.

Insurance Company

Address of Signatory:

Authorized Signature (Sign)

Authorized Signature (Type)

VERIFICATION

I declare under the penalty of perjury that I am authorized to sign this Certificate on behalf of the above-named insurer. Executed at _____, California, on the _____ day of _____, 20____. *

Authorized Signatory (Sign)

(Type Name)

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, this _____ day of _____, 20____.

(Sign)

(Type Name)

* If this certificate is executed outside of California, it must be sworn to before a Notary Public.

FORM APPROVED: _____, 20____, by _____

CITY OF MILPITAS

CONTRACTOR'S CERTIFICATE RELATING TO WORKER'S COMPENSATION INSURANCE

I, THE UNDERSIGNED, HEREBY CERTIFY that at all times during the performance of any work under contract or agreement with the City of Milpitas (check one of the following):

_____ I will have in full force and effect Worker's Compensation Insurance pursuant to the attached Certificate of Worker's Compensation Insurance issued by an admitted insurer. Said certificate shall state that there is in existence a valid policy for Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give City at least ten (10) days advance notice of the cancellation of the policy (an exact copy or duplicate of the Certificate of Worker's Compensation Insurance certified by the Director of Industrial Relations or the insurer may be attached).

_____ I have in full force and effect and have attached hereto a Certificate of Consent to Self-insure issued by the Director of Industrial Relations (an exact copy or duplicate thereof certified by the Director may be attached).

I declare under penalty of perjury that the foregoing is true and correct and executed on this _____ day of _____, 20__ at Milpitas, California.

By: _____

Official Title

On behalf of: _____
Contractor

NOTE: YOUR CERTIFICATE OF WORKER'S COMPENSATION INSURANCE MUST BE ATTACHED AND MUST MEET THE REQUIREMENTS SET FORTH ABOVE.

PLEASE NOTE THAT IF YOU HAVE ANYONE WORKING FOR OR WITH YOU, YOU MAY BE REQUIRED TO HAVE WORKER'S COMPENSATION INSURANCE.

CERTIFICATE OF WORKER'S COMPENSATION INSURANCE

FOR THE CITY OF MILPITAS

The undersigned insurance company hereby certifies to the City of Milpitas, California, that it is an admitted Worker's Compensation Insurer and that it has issued a policy of Worker's Compensation Insurance bearing poli- number _____ to _____. Said policy is a valid policy of Worker's Compensation Insurance issued in a form approved by the California Insurance Commissioner and is now in full force and effect. The full deposit on said policy has been paid. The expiration date of said policy is the _____ day of _____, 20____. The undersigned insurer will give said City of Milpitas at least ten (10) days advance notice of the cancellation of said policy.

Dated: _____

INSURANCE COMPANY

Address: _____

AUTHORIZED REPRESENTATIVE (Signature)

AUTHORIZED REPRESENTATIVE (Type Name)

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Milpitas, California, on the ____ day of _____, 20_____.

AUTHORIZED REPRESENTATIVE (Signature)

AUTHORIZED REPRESENTATIVE (Type Name)

SWENSON & ASSOCIATES



581 DIVISION STREET, SUITE A

APRIL 18, 2011

CAMPBELL, CA 95008

Mr. Steve Erickson
 City of Milpitas
 455 E. Calaveras Blvd.
 Milpitas, CA 95035

TEL 408.866.7600

FAX 408.866.7692

Re: Milpitas Senior Center
 40 N. Milpitas Blvd.
 Milpitas, CA 95035

STATE LICENSE No. 493666

Subj: City Proposal Request
 Furnish and Install Chair Rail at South Wing Classrooms

Dear Mr. Erickson:

The pricing for Salem Cabinetry to furnish and install clear finished white maple flat chair rail at rooms 138, 140, 141, 142, 144 & 146 is as follows:

Furnish and install finished chair rail – Salem	\$ 13,420.00
Paint Touch-up as necessary – 1 man day	\$ 712.00
Swenson & Associates OH&P	<u>\$ 2,120.00</u>
Total	\$ 16,252.00

This work is expected to take up to three days to complete. During installation, each room under progress shall be vacant of senior center visitors to for safety purposes. Pricing does not include floating of gaps or "wows" in drywall finish on the wood walls. A field survey following the completed installation can be performed to explore and discuss additional finish tasks that may be performed to certify a final desired chair rail product. Certified payroll will be provided to the City upon request.

Sincerely,

Erik**Murawsky**

Erik Murawsky
 Project Manager

Digitally signed by Erik Murawsky
 DN: cn=Erik Murawsky,
 o=Swenson & Associates, ou,
 email=emurawsky@swensonassoci
 ates.com, c=US
 Date: 2011.04.18 10:06:44 -07'00'

Encl: Sub quote(s) attached

SALIM CABINETRY, INC.
A WOODWORKERS INSTITUTE MEMBER

778 Francis St.
San Luis Obispo, Ca. 93401
Phone (805) 544-2758
Fax (805) 544-9229
Lic. #915317

March 21, 2011

Project : Barbara Lee Senior Center
Milpitas, CA

Cost Proposal:

rev 4.18.11: Certified Payroll provided upon
City request.

Provide and install ~~(non-certified payroll)~~ simple 5" x 3/4" white maple chair rail with clear finish
along all walls @ Rooms 138, 140, 141, 142, 144 & 146 (appr. 550 lf).

Total: 13,420