

**COUNTY OF EL DORADO**  
**CONSTRUCTION MANAGEMENT SERVICES**  
**PUBLIC SAFETY FACILITY**



**REQUEST FOR PROPOSAL**

**#17-918-035**

**PROPOSALS MUST BE RECEIVED BY:**  
**3:00 P.M. ON FEBRUARY 10, 2017**  
**PROCUREMENT & CONTRACTS**  
**330 Fair Lane, Placerville, CA 95667**

**This institution is an equal opportunity provider and employer.**

*If you wish to file a Civil Right program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at: <https://www.ascr.usda.gov/filing-program-discrimination-complaint-usda-customer> or at any USDA office or call (866) 632-6992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at: U.S. Department of Agriculture, Director, Office of Adjudication 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or by fax (202) 690-7442 or email at program [intake@usda.gov](mailto:intake@usda.gov).*

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## RFP ATTACHMENTS

Attachment 1	Scope of Services
Attachment 2	Construction Management Services Agreement
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Attachment 3	Non-Collusion Affidavit
Attachment 4	Disclosure of Government Positions
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Attachment 6	USDA Form RD 400-6 Compliance Statement
Attachment 7	USDA RD Instruction 1940- Q, Certification for Contracts, Grants, and Loans
Attachment 8	Preliminary Architectural Report by Architectural Nexus dated July 19, 2016
Attachment 9	<b>County Master Project Schedule</b>

## ANTICIPATED RFP SCHEDULE

Proposer Questions Due	February 2, 2017
County Answers Due	February 6, 2017
Proposals Due to County	February 10, 2017
Interviews/Negotiations (if required)	Week of February 13, 2017
Award/Negotiation Process	Week of February 28, 2017
Award by Board of Supervisors	March 7, 2017

# Request for Proposal

## 1. ELIGIBILITY

**1.1** The following three (3) firms (“Proposers”) are invited by the County of El Dorado (“County”) to submit a Proposal to perform Construction Management Services (“Services”) required for Public Safety Facility (“Project”) pursuant to the Instructions to Proposers included in this Request for Proposals and in accordance with Government Code Section 4525(e).

1.1.1 Consolidated CM

1.1.2 Moss & Associates of California

1.1.3 Vanir Construction Management

**1.2** Each of the above-referenced Proposers was deemed eligible and qualified to bid this Project on December 8, 2016 by the County based upon its evaluation of all construction management firms that submitted responses to the prequalification process described in the “Request for Qualification” issued on October 11, 2016.

## Instructions to Proposers

### 1. DEADLINES AND EVALUATION PROCESS

**1.1 Proposal Deadline.** Sealed Proposals must be submitted to the Chief Administrative Office, Procurement & Contracts Division located at 330 Fair Lane, Placerville, CA 95667 by **3:00 p.m. on February 10, 2017**. All Proposals will be stamped with the date and time upon receipt.

**1.2 Submission of Proposals.** Proposers must submit one (1) original and five (5) bound copies each of the Proposal and Cost Proposal. Proposer must also submit one (1) copy of the Proposal and Cost Proposal on a flash (USB) drive in pdf format. No fax or email copies will be accepted. In order to be responsive, all Proposals must include a sealed Proposal that includes the firm's name entitled, “Proposal for Construction Management Services – Public Safety Facility”. Proposals should be numbered sequentially and include a tab for each of the proposal categories set forth in Section 4 of the Instructions to Proposers taking into account the proposal evaluation criteria set forth in Section 7 of the Instructions to Proposers. The County may reject all Proposals received after the specified time. Any Proposals submitted after the deadline will be rejected and returned to the Proposer unopened.

**1.3 Withdrawal of Proposal.** A Proposer may withdraw its Proposal any time before the date and time when bids are due, without prejudice, by submitting a written request for its withdrawal to Terri Knowlton, Purchasing Agent at [terri.knowlton@edcgov.us](mailto:terri.knowlton@edcgov.us). The withdrawal of a Proposal does not prejudice the right of a Proposer to submit another Proposal by the bid deadline. After the Proposal submission deadline, a Proposal may be withdrawn only if the County fails to award an Agreement within one hundred eighty (180) days of the Proposal deadline.

**1.4 Submission of Questions.** All questions must be submitted in writing, via email, to Terri Knowlton, Purchasing Agent at [terri.knowlton@edcgov.us](mailto:terri.knowlton@edcgov.us) no later than 5:00 p.m.

on February 2, 2017. No other questions will be received after the deadline. Only written inquiries will be permitted. Copies of all questions and answers will be distributed in a written document to all Proposers. The date and time for Proposals may be extended by the County if the County issues material changes, additions, or deletions to the Instructions to Proposers that necessitate more time for Proposers to submit their Proposals. Under no circumstance should any prospective Proposer receiving this Request for Proposals (“RFP”) contact or discuss this Project with any County Officials, officers, or employees about matters relating to this solicitation process. This requirement is to ensure that the same information is communicated to all Proposers and that no inconsistent, incomplete, or inaccurate information is transmitted separately. Answers to questions received will be emailed to all Proposers by 5:00 p.m. on February 6, 2017.

**1.5 Evaluation Process.** The County will ultimately award a construction management contract to the most qualified, responsible Proposer that submits a responsive Proposal to this RFP and pursuant to the negotiation process described below. Proposers will be evaluated and scored on their Proposal based on the specific evaluation criteria outlined in this RFP. The County reserves the right to reject all Proposals at any time during this process. Award shall be recommended to the Proposer whose proposal best meets the needs of County. County reserves the right to reject any or all proposals, and to solicit additional proposals if deemed in the best interest of County to do so. The decision of the County Board of Supervisors shall be final in making such determination. Response and selection of a Proposal will not necessarily result in a contract with the County of El Dorado. Proposal opening does not constitute awarding of a contract.

**1.6 Interviews/Negotiation.** Interviews/negotiations, if required, are expected to commence concurrently with the evaluation with most qualified, responsive Proposer beginning the week of **February 13, 2017**.

**1.7 Award .** Contract award is by action of the County of El Dorado Board of Supervisors and is not in force until fully executed by that Board. Award or negotiation process is expected to commence with most qualified, responsive Proposer on or about **February 28, 2017 with award by the Board of Supervisors anticipated on March 7, 2017**.

**1.8 County’s Reserved Rights.** The County reserves the right to amend, alter or revoke this RFP at any time and the right to reject any or all Proposals.

## **2. PROJECT INFORMATION**

**2.1 General Description.** The County intends to design and construct a new Public Safety Facility situated on a new site that is owned by the County (“Project”). The site is located in Diamond Springs and will serve as the administrative and operational headquarters for the County of El Dorado Sheriff’s Office. The design criteria documents describe five (5) new buildings totaling approximately ninety-nine thousand square feet (99,000 sf); however, this may change as the design-build process evolves. Preliminary concept plans describe the following:

- **Public Safety Building:** Two (2) story facility, mainly administrative, but also includes a community room, a large locker room and exercise room, Patrol and Detective Units, an Emergency Operations Center and a Dispatch Center.
- **Morgue Building:** Autopsy rooms, labs, and technician spaces.

- **Evidence Building:** Will be mainly used for both general and specialty storage.
- **Shooting Range and Armory:** Will be comprised of ten (10) lane, fifty (50) yard shooting range as well as a simulation room, an armory, ammunition storage, and gun cleaning space.
- **Special Operations and Training Building:** Will include service/shop areas, specialty storage, general storage, a loading bay, classrooms and training facilities.

The site is accessible from Highway 50 and Missouri Flat Road, which is one of the area’s main transportation routes and is served by utility infrastructure on both the north and south edges of the identified Project parcel. Adjacent to the property is a proposed seven (7) acre solar project and there will be frontage improvements adjacent to the Project. These elements will require coordination with the proposed Public Safety Facility construction activities.

The estimated cost for design and construction of the Project is approximately \$50,000,000 (“Project Budget”).

The Project will be delivered using a design-build delivery method per California Public Contract Code Section 22160, et seq. Portions of the Project are subject to Essential Services Buildings Seismic Safety Act of 1986. The Project will be funded by capital contributions of County and a direct loan from the United States Department of Agriculture (USDA) pursuant to the consolidated Farm and Rural Development Act (7 U.S.C. Section 1926, et seq.). The County has completed CEQA, and has received notification from the USDA that the NEPA environmental assessment has been reviewed and accepted.

**2.2 Schedule Overview and Deadlines.** The schedule will be determined after award of this RFP, with input from the selected Proposer and the Design-Builder. Milestone projected deadlines are as follows.

Award Construction Management Services	March 2017
Advertise for Design-Builder	Spring 2017
Award to Design-Builder	Summer 2017
Commence Construction	Fall 2017

**2.3 Project Goals.** The following summarizes objectives for the Project.

2.3.1 Provide public safety infrastructure necessary to meet both the current and future needs of the community.

2.3.2 Present a professional image to the public.

2.3.3 Demonstrate the pride of the Sheriff’s Office.

2.3.4 Encourage communication and collaboration between units of the Sheriff’s Office.

2.3.5 Create a more effective, efficient and productive environment.

2.3.6 Provide quality, healthy, inspiring workplace for members of the Sheriff's Office.

2.3.7 Cost efficient utility systems and energy conservation.

### 3. SCOPE OF SERVICES

3.1 **General.** The successful Proposer will represent the County's interests and work collaboratively with the County's selected Design Criteria Consultant, the Design-Builder and other contractors and consultants throughout the design and construction process, including commissioning and Project close-out to provide the best value to the County at or below the Project Budget. The eligible firms will be expected to be knowledgeable about essential services and capable of utilizing collaborative design and construction integrated processes, including the use of building information modeling ("BIM"). The Construction Manager will perform the Services that are specified in Attachment 1 to this RFP.

### 4. QUALIFICATIONS PROPOSAL CONTENT

As part of the Proposal, the County may consider any of the materials submitted in the RFQ process. In addition to the information already submitted, the following information is required as part of the Proposal:

4.1 **Cover Letter.** A cover letter must identify the Proposer and provide a brief introduction of the firm, and its experience and capabilities to perform the required Services. The cover letter must also identify the individual within the proposing organization who will respond to questions the County may have regarding the Proposal. This person's title, firm affiliation, phone number, email address, fax number and mailing address should be included. The cover letter must confirm that the terms contained in the Construction Management Services Agreement (Attachment 2 to this RFP) are accepted as proposed or with exceptions. Any exceptions should be clearly noted on a separate sheet per Section 4.6. The letter must be signed and dated by an authorized person of the firm submitting the Proposal. The cover letter must also confirm that the Proposal is a firm offer to the County for one hundred eighty (180) days from the submission deadline. The letter must include a listing indicating any addenda, by number of issue, which the Proposer has received, as well as Disclosure of Government Positions per Section 9 and Attachment 4, and the completed Non-Collusion Affidavit set forth in Attachment 3.

4.2 **Construction Management Expertise.** The County will consider the Proposer's construction management experience as previously submitted in response to Request for Qualifications (#17-918-018) with a strong emphasis on public safety facilities and sheriff's headquarters. Proposals should include any additional information Proposer considers relevant.

4.2.1 List of experience with federally funded projects within the last five (5) years. Specifically state whether you have experience with projects funded through the USDA.

4.2.2 List of projects subject to Essential Services Buildings Seismic Safety Act of 1986 that your proposed team is either currently working on or previously delivered. Describe issues that arose and how your team helped to successfully resolve those issues with the design and construction team, project inspectors (if applicable), or building officials.



4.3 **Proposed Project Strategy.** Provide a narrative description of your overall approach and strategy for providing Services including, at a minimum, the following information:

4.3.1 Explain how your Project Team will add value to this Project.

4.3.2 Approach to the delivery of construction management services in El Dorado County.

4.3.3 Approach and strategies for procurement of Design-Builder. The County anticipates that the Request for Qualifications (RFQ) process to procure a Design-Build firm will be initiated prior to the award of the Construction Management contract. The Construction Manager will be involved in the selection process for the Design-Build firm, including bid evaluation, and recommendations for contract award in accordance with statutory requirements and the USDA Rural Development Design-Build Requirements.

4.3.4 Strategies for encouraging Design-Builder efforts towards procurement of local labor, Subcontractors, vendors, and a “skilled and trained workforce”.

4.3.5 Description of internal processes and software systems for project controls and administration, including but not limited to processes and procedures for BIM protocol, design submittal, document control and processing of Requests for Information, Amendments, Claims and other communications related to the administration and management of the Project.

4.3.6 Description of methods to develop a project master calendar and to prepare and maintain meeting agendas and minutes, and their use as management tools.

4.3.7 Description of what innovative approaches and strategy your team recommends employing on this Project and your team's level of expertise in the use of collaborative processes and tools (e.g., the use of Building Information Modeling, etc.).

4.3.8 Description of your team's approach to assisting with claims review and negotiation. Provide examples (without mentioning any party names) of successful outcomes in resolving claims through business negotiations.

4.3.9 Description of how your team would bring value to the Project through your interactions with the Design-Builder, the Design Criteria Consultant and the County.

4.4 **Master Project Schedule With Key Milestones.** Review and provide comments and recommendations on the County's Master Project Schedule (Attachment 9) that sets forth preliminary timeframes for completion of the Project, design and construction of the Project; and any other key milestone dates. The Proposer should account for weather, plan check review, and other factors Proposer deems appropriate for timing and sequencing. The County is not evaluating Proposers on the time of completion, but on the demonstrated ability to understand the basic scope of design services and construction work.

4.5 **Organization Chart and Staffing Plan.** Provide an organization chart for your firm providing positions, titles, responsibilities, and interrelationships. Provide a staffing plan based on the County's Master Project Schedule. List all proposed Project staff and the percentage of time that each staff member will spend on the Project on a monthly basis during the design, preconstruction, construction, commissioning and close-out phases. Identify which

Project staff will be located on the job site and which staff will remain at the home office. Indicate the frequency of Project visits for applicable staff working from the home office. Identify all key personnel that may not be replaced during the duration of the Project without the County's consent unless due to serious illness, death or departure from employment. Include resumes for all proposed staff included in the Staffing Plan other than administrative staff.

4.6 **Exceptions to Agreement.** Submittal of a Proposal will be deemed an acceptance of all the terms set forth in this RFP and the Construction Management Services Agreement included with this RFP in Attachment 2 unless the Proposer lists exceptions in its Proposal.

## 5. COST PROPOSAL CONTENT

Cost Proposals must include the following information:

5.1 **Billable Rates.** Submit a fee schedule that contains the fixed hourly rates ("Billable Rates") for the Project personnel included in your Staffing Plan, and job site facilities and expenses. Proposer's Billable Rates must include all costs necessary for employees' performance of the Construction Management Services including basic wages, payroll taxes, and employer benefit payments for health and welfare (net of employee contribution withholding), pensions, vacations/holidays, supplemental dues, training, 401K benefits, and other benefits or payments required by law, and will include overhead, burden, and profit. Overhead includes the cost of insurance, full compensation for any home office personnel who are not directly assigned to the Project or included in the Staffing Plan, as well as any other reasonable home office overhead expenses, and incidental costs such as routine telecommunications, cell phones, technology fees, copying, electronic mail, facsimile transmissions, and computer time. Billable Rates may **NOT** include annual bonuses or salary adjustments that include annual bonuses.

5.2 **Cost Load Resource Schedule.** Provide a Cost Loaded Resource Schedule showing the time and cost allocated for staff members or services throughout the duration of the Project for the major elements of Work and organized by Project Phase:

- Design-Builder Selection
- Design and Preconstruction
- Construction
- Closeout and Commissioning

5.3 **Job Site Conditions.** Provide a description of job-site resources and systems needed to support staff located on the job-site. Include these costs as an identifiable line item in the Cost Proposal.

5.4 **Travel/Per Diem.** Any travel and per diem costs must be built into the Proposer's Billable Rates.

5.5 **Insurance.** The successful Construction Manager will be required to provide insurance in accordance with Exhibit 4 to the Sample Construction Management Services Agreement (Attachment 1 of the RFP).

5.6 **Construction Manager's Fee.** Submit a Not-to-Exceed Amount for Construction Manager's Fee as defined in Exhibit 1 to the Sample Construction Management Services Agreement (Attachment 1 of the RFP). The Construction Manager's Fee must take into account

Proposer's Staffing Plan, Billable Rates, and a duration of twenty-eight (28) months (four (4) months from Construction Management Contract award to award of Design-Build Agreement and twenty-four (24) months for Design-Builder to design and construct the Project) plus travel and per diem expenses and other Reimbursable Expenses as defined in Exhibit 3B to the Sample Construction Management Services Agreement (Attachment 1 of the RFP). Proposers should note that Construction Manager's Fee will be the sum of the actual cost of the Services performed by the Construction Manager per the Billable Rates plus the actual cost for Reimbursable Expenses up to the Not-to-Exceed Amount. The Not-to-Exceed Amount submitted by Proposer will be subject to adjustment through Amendments for additional services or an extension of the Contract Time per Article 7 of the Sample Construction Management Services Agreement (Attachment 1 of the RFP). The Contract Time will be adjusted if the Design-Builder's Project Schedule is longer than twenty-four (24) months or if the time frame for awarding the Design-Builder takes more than four (4) months from the date of award for Construction Management Services (more than twenty-eight (28) months in total), and provided that the extension is not due to any negligent act or omission of the Construction Manager in rendering its Services as described in Attachment 1 of the RFP.

## **6. USDA REQUIREMENTS**

**6.1 USDA Forms.** The following USDA forms must be submitted with Proposer's Proposal if the Proposal fits within the conditions set forth below. To the extent the conditions are inapplicable, Proposer must include a statement in its Proposal referencing this Article 6 and the applicable Attachment (5, 6, and/or 7) and state "not applicable". The County may deem the Proposal non-responsive for failure to submit the required forms or to state which forms are inapplicable.

6.1.1 Proposer is notified of the requirement for affirmative action to ensure equal employment opportunity (Executive Order No. 11246) as set forth in the Equal Opportunity Requirements. If the Proposal amount exceeds \$10,000, Proposer must complete and submit Attachment 6, USDA Form RD 400-6 Compliance Statement of Non-segregated Facilities, with its Proposal.

6.1.2 If the Proposal amount exceeds \$25,000, Proposer must sign and submit Attachment 5, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions (AD-1048) with its Proposal.

6.1.3 If the Proposal amount exceeds \$100,000, Proposer must sign and submit Attachment 7, USDA RD Instruction 1940- Q, Certification for Contracts, Grants, and Loans, with its Proposal.

## **7. PROPOSAL EVALUATION PROCESS.**

**7.1 Qualifications Proposal Evaluation Process.** The Proposer's Proposal will be evaluated by a selection committee utilizing the criteria identified below. In ranking Proposals, the County's selection committee will consider all proposal material submitted, the Proposer's previously submitted Statement of Qualifications, and any other relevant information about a given Proposer (e.g. references). The selection committee will not assume that a Proposer possesses any capability unless established by the submitted information. The Proposals will be evaluated and ranked based on the factors identified below and described in Section 4 above. The County reserves the right to request additional information and conduct interviews in order to clarify any Proposal. Upon completion of review of the Proposals, the County will

rank each firm in accordance with the criteria set forth below and notify Proposers of the rankings.

<b><u>Award Evaluation Factor</u></b>	<b><u>Points</u></b>
Public Safety Facility Construction Management Expertise	30 Points
Cost Proposal	25 Points
Proposed Project Strategy, Organization & Staffing	20 Points
Responsiveness to the RFP	15 Points
Master Project Schedule	5 Points
Exceptions to the Agreement	5 Points
<b>Total Possible Points</b>	<b>100 Points</b>

7.2 **Right to Accept or Reject Proposals.** The County reserves the right to accept or reject any or all Proposals received as a result of this solicitation, to negotiate with any qualified firm, to modify or cancel in part or in its entirety the RFP or to request revised Proposals if it is in the best interest of the County to do so. The County, however, may award a Contract to the highest ranked Proposer without negotiation; therefore Proposers are encouraged to submit their best offers and Proposals.

## 8. CONFIDENTIALITY

8.1 **Application of Public Records Act.** The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the content of any Proposal, request for explanation, exception, or substitution, response to these Specifications, or any other written communication between the County and any Proposer will be available to the public.

Any materials that Proposer believes contains trade secrets or other proprietary information must be identified and clearly marked as such, and submitted in a separate envelope clearly labeled as proprietary/confidential. Pricing and service elements of the proposal are not considered proprietary information. Proposer may not designate its entire proposal as proprietary or confidential. Upon receipt of a request under the Public Records Act, County will notify Proposer. If Proposer requests that County withhold from disclosure the information identified as proprietary/confidential, Proposer will assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the County from and against all damages (including but not limited to attorney's fees that may be awarded to the party requesting the Proposer information), and pay any and all cost and expenses related to the withholding of Proposer information. Proposer will not make a claim, sue, or maintain any legal action against the County or its directors, officers, employees, or agents concerning the withholding from disclosure of Proposer information. Failure to respond to County's notice or enter into a defense and indemnity agreement with the County shall constitute a complete waiver of any rights regarding the information designated as proprietary/confidential and such information will be disclosed pursuant to applicable procedures under the Public Records Act. If Proposer does not request that the County withhold from disclosure information identified as confidential, the County will have no obligation to withhold the information from disclosure and may release the information sought without any liability to the County.

## 9. CONFLICTS AND DISCLOSURE

9.1 **Disclosure of Governmental Positions.** Depending on the nature of the services performed, a consultant to the County may be subject to the same conflict of interest prohibitions established by California law that governs County employees and officers (California Government Code Section 1090 et seq. and California Government Code Section 87100 et seq.). In order to analyze possible conflicts that might prevent a consultant from acting on behalf of the County or other governmental entity prior to contract award, the County requires that all prospective Proposer disclose in their Proposals, any positions that they hold as directors, officers, or employees of any governmental entity. Additional disclosures may be required prior to contract award or during the term of the contract. Responses will be kept confidential to the extent permitted by law. Therefore, each Proposer must disclose whether any owner or employee of the firm currently hold positions as directors, officers, or employees of a governmental entity or held such positions in the past twelve (12) months. On Attachment 4, state "none" or provide a list of owners and employees who currently hold such positions.

9.2 **Conflict of Interest Disclosure.** Provide a list of current contracts and a brief description of each. Identify any potential conflicts that may compromise the unbiased delivery of Services to the County.

## 10. COUNTY RIGHTS

10.1 **Cancellation Right.** The County reserves the right to cancel the procurement in whole or in part, at its sole discretion, at any time before the Construction Management Services Agreement is fully executed and approved on behalf of the County. Proposer accepts all risks and costs associated with submission of a Proposal in response to this RFP.

10.2 **Right to Modify or Reject.** This RFP does not commit the County to award the Construction Management Services Agreement, to pay any costs incurred in the preparation of the Proposal for this request, or to procure or contract for the Services described in this RFP. No guarantees are made or implied that the Project will be constructed, either in whole or in part. The County reserves the right to modify or cancel in whole or in part this RFP, to reject any and all Proposals, to accept the Proposal it considers most favorable to the County's interest in its sole discretion, and to waive irregularities or informalities in any Proposal or in the proposal procedures. The County further reserves the right to reject all Proposals and seek new Proposals when the County considers such procedure to be in its best interest.

10.3 **Non-Collusion.** If there is any evidence indicating that two (2) or more Proposers are in collusion to restrict competition or are otherwise engaged in anti-competitive practices, the Proposals of all such Proposers will be rejected, and such evidence may be a cause for disqualification of the participants in any future solicitations undertaken by the County. All Proposers must fill out and include the Non-Collusion Affidavit set forth in Attachment 3 with the cover letter.

10.4 **Ownership of Documents/Submitted Materials.** All proposals and materials submitted shall become property of the County and will not be returned. All Proposals and materials shall be subject to Application of Public Records Act, Section 8.1 above.

## 11. CONTRACT AWARD

11.1 **Notice of Award.** Upon completion of the evaluation process, the selection committee will make a recommendation of award for Services, if any, to the County's Board of Supervisors. All Proposers will be notified of the recommended contract award by email.

11.2 **Execution of Contract.** The Proposer to whom award is made will execute a written Construction Management Services Agreement provided in Attachment 2 within five (5) business days after receiving the form of contract for execution. No contract will be in force until execution.

# ATTACHMENT A

## SCOPE OF SERVICES

Construction Manager (CM) shall be responsible for providing personnel, job site support and business systems needed to supplement the County's resources in the management, administration and the delivery of the completed facility in the most expeditious and cost effective manner possible. CM will represent the County's interests and work collaboratively with the County's selected Design Criteria Consultant, the Design-Builder and other contractors and consultants throughout the design and construction process, including commissioning and Project close-out to provide the best value to the County at or below the Project Budget. Eligible firms will be expected to be knowledgeable about essential services and capable of utilizing collaborative design and construction integrated processes, including the use of building information modeling (BIM). **NOTE:** Scope of services may be subject to modifications or further refinement after final negotiations with the selected Proposer:

### 1. PROJECT SETUP AND ADMINISTRATION

- 1.1 Review County's program and project documentation including the Preliminary Architectural Report, criteria documents, and engineering reports.
- 1.2 Review California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) documents including all mitigation requirements.
- 1.3 Evaluate permitting requirements including identification of associated agencies, required permits and timing.
- 1.4 Prepare an independent cost estimate based on the Design Criteria Documents. If necessary, work with the Project Team to develop recommendations for reducing the project costs.
- 1.5 Conduct such meetings and communications as necessary to implement recommendations to the final Construction Documents to maintain costs within the Project Budget.
- 1.6 Prepare a Master Project Schedule identifying the major activities and milestones in the design-build process, including the activities of the County's other subcontractors.
- 1.7 Develop a project management plan and update as circumstances require.
- 1.8 Provide a web-based project reporting portal for access to construction documents and communications and for facilitating Project Team collaboration.
- 1.9 Coordinate all communications on the project or relating to the project, including communications among the Project Team. In addition, alert County of any irregularities or inconsistencies in such communications.

## **ATTACHMENT A**

- 1.10 Assist County in fulfilling the requirements of funding agencies and other Governmental Authorities.

### **2. SELECTION OF DESIGN-BUILD FIRM**

- 2.1 Assist the County with Design-Builder Request for Proposal (RFP) development and any addenda.
- 2.2 Participate in the mandatory pre-proposal meeting(s) with the Design-Builder Proposers.
- 2.3 Collaborate with the County to review and evaluate the Design-Builder RFP responses including quality of design, value, cost estimates and technical specifications.
- 2.4 Review and comment on the life cycle analysis provided by the Proposers.
- 2.5 Assist the County with the Design-Builder selection process, including participation in interviews and confidential meetings with Design-Builder Proposers.

### **3. CONSTRUCTION DOCUMENT /DESIGN INTENT REVIEW**

- 3.1 Schedule and lead kick off meetings with project stakeholders.
- 3.2 Assist the Design Criteria Consultant with design intent verification and constructability reviews of the construction documents at selected milestones.
- 3.3 Provide value engineering/cost control input to the Project Team.
- 3.4 Provide monthly written project reports describing the Design-Builder's' progress on the construction documents, potential cost and design issues, decision tracking, and other relevant matters affecting the Project Program.
- 3.5 Establish and maintain the master project budget utilizing information from the Design-Builder and others contracting with the County. Forecast the estimated final cost of the project relative the Project Budget and make recommendations in the event of forecasted overages.
- 3.6 Serve as a conduit to communicate project information to regulatory agencies, building department and utility companies to ensure timely delivery of all services and approvals.
- 3.7 As requested, assist the County in retaining other prime contractors and vendors for major items such as furniture, fixtures and equipment.



## ATTACHMENT A

- 3.8 Coordinate the efforts of County's contractors and vendors with the Design-Builder.
- 3.9 Work with the County's commissioning agent to develop functional performance tests.
- 3.10 Update of Master Project Schedule as circumstances require.
- 3.11 Develop a coordinated quality control program with the Project Inspector, testing companies, and the Design-Builder.
- 3.12 Review and comment on Design-Builder's Storm Water Pollution Prevention Program and safety plans.

### 4. CONSTRUCTION PHASE

- 4.1 Provide all required staffing including on-site construction management staff and temporary facilities for CM staff and Project Inspector. If CM's personnel fail to perform to County's satisfaction, County may, upon written notice of **ten (10) calendar days**, cause CM to remove such person(s) from the project and replace them with another staff person acceptable to the County.
- 4.2 Maintain and update the Master Project Schedule at a minimum of once per month or as necessary to reflect significant events including documentation of delays and material changes affecting project completion or major activities.
- 4.3 Change order management: Review all change orders, request for substitutions, and requests for additional services submitted by the Design Builder and Separate Contractors, and Separate Consultants, and make a recommendation to the County on whether the services, product, or Work are additional and whether the costs and expenses are reasonable. To the extent required, engage in initial negotiations to resolve disputes. **Unless specifically directed by County, CM shall not have authority to authorize a change in Design Builder's contract cost, scope or contract time; issue Notices of Completion; or approve pay requests.**
- 4.4 Distribution and tracking of Request for Information (RFI's), shop drawings, and submittals and other documents necessary for the efficient administration and management of the Work.
- 4.5 Review applications for payment and make recommendations to the County as to their reasonableness and accuracy.
- 4.6 Construction Document tracking and control including changes, revisions and as-built conditions.

## ATTACHMENT A

- 4.7 Quality Control: Ensure that the Design-Builder, testing agencies, and the Project Inspector conduct the appropriate inspections. This is for the purpose of facilitating administration and management by CM and not for the purpose of discovering errors, omissions or inconsistencies in the Contract Documents. Any design errors or omissions noted by CM during this review shall be reported promptly to the County.
- 4.8 Document the activities of the Building Services Division of the County's Community Development Agency, the County's special inspections and testing firms, and other agencies having jurisdiction over the project. Track non-compliance items and corrections.
- 4.9 Ensure that Design-Builder, Separate Contractors and Separate Consultants comply with monitoring and reporting for USDA and government mandated programs such as prevailing wage reports and "skilled and trained workforce" programs.
- 4.10 Lead weekly on-site meetings with the Design-Builder, County staff and other necessary members of the Project Team to review progress, address any current or potential issues affecting schedule, budget or design issues and to address concerns of the Design-Builder. Produce and distribute meeting minutes.
- 4.11 Provide monthly project reporting, or more frequently as required by the County, summarizing progress, project schedule status, budget status, change orders, testing and inspection logs and reports, daily logs or construction reports by the Design-Builder, disputes, potential claims and other material issues affecting the project.
- 4.12 Coordinate and manage County's third party contractors ensuring that their work is smoothly integrated with the efforts of the Design-Builder.
- 4.13 Coordinate with utility companies.
- 4.14 Review and analyze all notice of claims received by the County regarding the Project from Design-Builder and other contractors and assist the County with initial business negotiations. Services requested in relation to a legal proceeding will be considered additional services.

### 5. FACILITY COMMISSIONING AND PROJECT CLOSEOUT

- 5.1 Development and management of Project punch list.
- 5.2 Working with the Commissioning Agent, observe startup and testing of project equipment.
- 5.3 Conduct inspections at substantial completion and final completion of the Project with the Project Inspector, County, Design Criteria Consultant, and Design-Builder.

## **ATTACHMENT A**

- 5.4 Receive, review and document contractor provided spare parts, operation and maintenance manuals.
  - 5.5 Review the Design-Builder's as-built documents for completeness and accuracy.
  - 5.6 Recommend Project acceptance and completion to the County. Assist with Project closeout.
  - 5.7 Work with Design-Builder to coordinate training of Sheriff personnel and other County staff regarding facility operations and building systems.
  - 5.8 Coordinate with the Sheriff's Office transition team to ensure an orderly move in.
  - 5.9 Assist the County with any warranty issues.
- 6. ALTERNATE SERVICES**
- 6.1 Provide licensed and certified staff to act in the capacity of Project Inspector (Inspector of Record) to meet the requirements of the USDA and the Essential Services Seismic Safety Act of 1986.

**SAMPLE AGREEMENT**

**CONSTRUCTION MANAGEMENT SERVICES AGREEMENT**

**THIS AGREEMENT** ("Agreement") is made as of the \_\_\_\_ day of \_\_\_\_, 2017 ("Effective Date") between County of El Dorado, a political subdivision of the State of California ("County") located and **[insert name of firm]**, \_\_\_\_\_, duly qualified to conduct business in the State of California, whose principal place of business is located at **[insert address]** (hereinafter referred to as ("CM")).

**RECITALS**

**WHEREAS**, County has determined that it is necessary to obtain a consultant to provide construction management services pursuant to Government Code section 4525 et seq. in connection with the design and construction of the El Dorado County Public Safety Facility ("Project"); and

**WHEREAS**, CM has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

**WHEREAS**, it is the intent of the Parties hereto that such services be in conformity with all applicable federal, state and local laws; and

**WHEREAS**, County has determined that the provision of these services provided by CM is in the public's best interest, and that these services are more economically and feasibly performed by outside independent consultants as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

**NOW, THEREFORE**, County and CM agree as set forth below.

By executing this Agreement, each of the Signatories represents that he or she has authority to bind the Party on whose behalf his or her execution is made.

<b>County</b>	<b>CM:</b>
By: _____ (Signature)	By: _____ (Signature)
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____
	Telephone #: _____

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## EXHIBITS

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## 1. DEFINITIONS

**1.1 Defined Terms.** Defined terms and titles of Exhibits will be capitalized throughout the Agreement and any Exhibits to the Agreement. The definitions for this Agreement are set forth in alphabetical order in Exhibit 1.

## 2. PROJECT DESCRIPTION AND RELATIONSHIP OF PARTIES

**2.1 Project.** The County intends to design and construct a new Public Safety Facility situated on a new site that is owned by the County ("Project"). The site is located in Diamond Springs and will serve as the administrative and operational headquarters for the County of El Dorado Sheriff's Office. The design criteria documents describe five (5) new buildings totaling approximately ninety-nine thousand square feet (99,000 sf); however, this may change as the design-build process evolves. Preliminary concept plans describe the following:

- **Public Safety Building:** Two (2) story facility, mainly administrative, but also includes a community room, a large locker room and exercise room, Patrol and Detective Units, an Emergency Operations Center and a Dispatch Center.
- **Morgue Building:** Autopsy rooms, labs, and technician spaces.
- **Evidence Building:** Will be mainly used for both general and specialty storage.
- **Shooting Range and Armory:** Will be comprised of ten (10) lane, fifty (50) yard shooting range as well as a simulation room, an armory, ammunition storage, and gun cleaning space.
- **Special Operations and Training Building:** Will include service/shop areas, specialty storage, general storage, a loading bay, classrooms and training facilities.

The site is accessible from Highway 50 and Missouri Flat Road, which is one of the area's main transportation routes and is served by utility infrastructure on both the north and south edges of the identified Project parcel. Adjacent to the property is a proposed seven (7) acre solar project and there will be frontage improvements adjacent to the Project. These elements will require coordination with the proposed Public Safety Facility construction activities.

The estimated cost for design and construction of the Project is approximately \$50,000,000 ("Project Budget").

The Project will be delivered using a design-build delivery method per California Public Contract Code Section 22160, et seq. Portions of the Project are subject to Essential Services Buildings Seismic Safety Act of 1986. The Project will be funded by capital contributions of County and a direct loan from the United States Department of Agriculture (USDA) pursuant to the consolidated Farm and Rural Development Act (7 U.S.C. Section 1926, et seq.). The County has completed CEQA, and has received notification from the USDA that the NEPA environmental assessment has been reviewed and accepted.

**2.2 Project Delivery Method.** The Project will be delivered as a design/build pursuant to California Public Contract Code Section 22160, et seq.

**2.3 Project Team** The Project Team will include the County, CM, Design-Builder and its design consultants and Subcontractors, as well as the County's Separate Consultants and Separate Contractors.

**2.4 Good Faith and Fair Dealing.** CM accepts the relationship of trust and confidence and agrees to act in good faith and to exercise its skill and judgment in furthering the interests of the County. CM will furnish efficient business administration and supervision related to coordination of its Services, will collaborate with the County, the Design Criteria Consultant, the Design-Builder and the County's other Separate Consultants and Separate Contractors in the performance of their respective tasks, and will use CM's best efforts in performing all Services in the most expeditious and economical manner consistent with the Contract Documents and the County's best interests.

**2.5 Direct Communications.** The CM may communicate directly with other Project Team members in furthering the best interests of the Project. However, CM must keep the Design-Builder and the County in the communications loop when having direct communications with Design-Builder's subcontractors and design consultants.

**2.6 Project Staffing and Key Personnel.** The CM's personnel, their respective positions, and the Billable Rates will be designated in Exhibit 3A. The CM must also identify its key personnel in Exhibit 3A. Unless otherwise requested by the County, the key personnel may not be removed from, or added to, the Project without prior written consent of the County except for death, disability, or departure of person from employment. If a replacement is necessary, the proposed key personnel will have substantially equivalent or better qualifications than the former principal or employee, and all candidates are subject to final approval by the County.

**2.6.1 Principal.** CM will name a principal whose duties include, without limitation, directing and coordinating the Services of CM. The principal will represent CM, and all communications given to the principal will be deemed to have been delivered to CM. The principal identified in Exhibit 3A is key personnel.

**2.7 Resource Loaded Work Plan.** The CM will provide a Resource Loaded Work Plan ("RLWP") (Exhibit 3C) identifying its staff members and allocating portions of its Fee based on each staff member, broken down by phase, and spread over the Contract Time. The RLWP will be maintained in a format approved by County and will be used as a management tool when evaluating CM's invoices.

### **3. SERVICES**

**3.1 Scope.** The CM's role is to assist the County with completion of the Project Program, procurement of the Design-Builder, and to help the County oversee and manage the design and construction process during all phases of the Project, including commissioning. The CM Services are described in Exhibit 2. All Services will be performed in accordance with the Contract Documents. The CM will represent the County's interests and work collaboratively with the County's selected Design Criteria Consultant, the Design-Builder and other Separate Contractors and Separate Consultants throughout the design and construction process, including commissioning and Project close-out to provide the best value to the County at or below the Project Budget.

**3.2 Licensing Requirements.** CM warrants that it is either a California state licensed general contractor, or a firm practicing architectural or engineering services satisfying the

requirements of the applicable Business and Professions Code sections, and is authorized to do business in the State of California. CM is required to possess a County business license in order to furnish supplies, Services, or transact any kind of business in the unincorporated territory of El Dorado County unless exempt under County Code Section 5.08.070.

**3.3 Standard of Care.** CM meets the experience requirements of Government Code Section 4525(e) and the licensing requirements of Government Code Section 4529.5 and will timely perform its Services using skill and judgment consistent with the degree of care ordinarily used by competent CMs who provide construction management services for projects of similar size, scope, location, and complexity.

**3.4 Legal Compliance.** CM agrees to comply with all federal, state, municipal and local laws, ordinances, rules, regulations, building codes and standards, orders, notices and requirements applicable to its Services on the Project.

**3.5 County's Approvals.** All requests for approval must be in writing. County approval will be in accordance with Section 4.3. An approval by the County of any Services will not relieve CM from its obligations or liabilities for the technical or professional adequacy of its Services.

**3.6 CM's Authority.** The CM has the authority to order minor changes in the Work that do not impact the Design-Builder's Contract Time or contract price; to reject Design-Builder's Work that does not comply with the Project Program or Construction Documents; to participate in the preparation of punch list items for correction upon substantial completion and final completion; and other tasks to fulfill CM's Services. Minor revisions may be made through responses to requests for information or other such clarifications. Interpretations and decisions of CM will be consistent with the intent and reasonably inferable from the Project Program. At the direction of the County, the CM may review Design-Builder's change order requests or prepare change orders for review and approval by the County, and may provide construction change directives for signature by the County.

**3.7 Independent Contractor/Liability.** CM is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs Services required by terms of this Agreement. CM exclusively assumes responsibility for acts of its employees, associates, and Subcontractors, if any are authorized herein, as they relate to Services to be provided under this Agreement during the course and scope of their employment. CM shall be responsible for performing the Work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees, associates, and Subcontractors. County shall have no right of control over the manner in which Work is to be done and shall, therefore, not be charged with responsibility of preventing risk to CM or its employees, associates, and Subcontractors.

#### **4. COUNTY'S RESPONSIBILITIES**

**4.1 Information and Documents.** The County will provide full information regarding requirements for the Project, including preliminary architectural studies, other information describing the Project site including any geotechnical and environmental impact reports, schedule requirements, County's Budget constraints and other criteria.

**4.2 Permits and Fees.** The County will secure and pay for all applicable permits, approval, easements, assessments and fees required for the development, construction, use or occupancy of the Project.

**4.3 County Contract Administrator.** The designated County officer or employee with responsibility for administering this Agreement is Russell Fackrell, Facilities Manager, or successor. The County Contract Administrator will render decisions in a timely manner pertaining to documents submitted by the CM in order to avoid unreasonable delay in the progress of the CM's Services and the Design-Builder's Work.

**4.4 Design-Builder.** The County will retain a Design-Builder for design and construction of the Project. The terms and conditions of the agreement between the County and Design-Builder, as amended, will be furnished to the CM. The CM will not be responsible for acts or omissions by Design-Builder or its design consultants or subcontractors.

**4.5 Test and Inspections.** The County will provide and be financially responsible for all third party testing, inspections, or commissioning (only applicable if County will contract separately for these services).

**4.6 Legal Accounting and Insurance Services.** The County will furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the County may require to verify invoices or to ascertain how or for what purposes the money paid by or on behalf of the County has been used.

**4.7 Separate Contracts.** The County reserves the right to perform administration and operations related to the Project with the County's own forces, and to award contracts in connection with the Project that are not part of the CM's responsibilities. The CM will notify the County if any such independent action will interfere with the CM's ability to perform the CM's Services under this Agreement.

## **5. COMPENSATION**

**5.1 CM's Fee.** The CM will be paid based on the actual cost of the Services performed by CM per the Billable Rates set forth in Exhibit 3A plus Reimbursable Expenses per the terms and conditions set forth in Exhibit 3B ("Fee") up to the Not-to-Exceed (NTE) Amount of **\$TBD**. The Billable Rates shall be in accordance with the terms and conditions set forth in Exhibit 3B and must include overhead and profit. Payment will be calculated by multiplying the Billable Rates by the number of hours spent performing the Services. In addition to payment based on the Billable Rates, the CM will be reimbursed at actual cost for those Reimbursable Expenses defined in Exhibit 3B. All other costs are excluded and CM will not be compensated beyond the NTE Amount. The NTE Amount will only be adjusted through executed Amendment(s) under Article 7 of this Agreement for additional Services or an extension of the Contract Time.

## **6. PAYMENT**

**6.1 Invoicing.** For Services provided herein, including any deliverables that may be identified herein, County agrees to pay CM in arrears. Invoices for payment will be prepared by CM in the format agreed to by the County Contract Administrator and the USDA representative. The period covered by each invoice will be one (1) calendar month. The invoice will include an itemized breakdown of the Services performed for that particular calendar month and itemized

Reimbursable Expenses. All Reimbursable Expenses must be supported by sufficient documentation such as receipts, invoices, etc., substantiating the amount requested.

**6.2 Payments.** For the purposes hereof, the billing rates shall be in accordance with Exhibit 3B for the Services rendered. CM shall submit invoices within fifteen (15) days of the end of the previous month for review by the County Contract Administrator. The County Contract Administrator and CM will attempt to resolve any disagreements regarding amounts before processing the invoice. The County will make payment for all approved amounts within forty-five (45) days of receipt of approved invoice.

**6.3 Right to Withhold.** The County Contract Administrator may refuse to approve an invoice, in whole or in part, or, because of subsequently discovered evidence, subsequent observations, or post review issues raised by the USDA that may nullify the whole or any part of a prior invoice to the extent the County determines it is necessary to protect County from loss due to, among other things, deficient Services or failure to perform Services in accordance with the Contract Documents; disputed amounts; third party Claims against the County allegedly arising from the Services; or reasonable doubt that the Services can be completed within the NTE Amount set forth in Section 5.1, as adjusted through approved Amendments.

**6.4 Final Payment.** The County will make final payment to the CM after completion of the Services, and within forty-five (45) days of receipt of an approved invoice for final payment.

**6.5 No Waiver.** Payment by County will not constitute approval or acceptance of any Services included in the invoice or final acceptance or approval of that portion of the Services.

**6.6 No Right to Stop Services.** If CM disputes any determination with respect to an invoice, CM will nevertheless expeditiously continue to perform the Services, provided that undisputed amounts are timely paid. County will not be deemed to be in default or breach of contract for withholding of any payment under Section 6.3. CM may submit unresolved payment disputes as a Claim under Article 10.

**6.7 Audit Right.**

6.7.1 The County may audit CM records at any time throughout the duration of the Project and for a period up to three (3) years after final payment is made and all other pending matters upon are closed. CM will be provided with ten (10) business days' written notice. The audit will take place during normal business hours and will be coordinated with CM. CM will produce all records related to its Fee, as amended, invoices, as well as any other Project records deemed necessary by the County Contract Administrator to substantiate charges related to the Services. Should the audit indicate that CM's records were fraudulently or negligently prepared or maintained, the County reserves the right to seek damages and legal remedies from CM.

6.7.2 County, USDA Rural Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the CM which are directly pertinent to a specific federal loan program for the purpose of making audits, examinations, excerpts, and transcriptions. CM shall maintain all required records for a period of 3 years after final payment is made and all other pending matters are closed.

**6.8 Audit by California State Auditor.** CM acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code Section 8546.7. In order to facilitate these potential examinations and audits, CM shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement

## **7. AMENDMENTS**

**7.1 Amendments.** An Amendment is a mutually agreed written order adjusting the CM's Services or NTE Amount. Changes will only be authorized by an executed Amendment and performed under the applicable conditions of the Contract Documents. An Amendment signed by the CM indicates the CM's agreement to the adjustment in its compensation and fully and completely resolves any Claim by CM for additional compensation arising from or related to the additional Services required as a result of the change, or an extension of the Contract Time. Additional compensation will only be allowed to the extent that the changed condition requires additional Services or if the Contract Time is extended, and provided that the extension is not due to any negligent act or omission of the CM in rendering its Services. No payment will be made for any additional Services performed prior to the approval and full execution of an Amendment.

**7.2 Changes.** CM must submit pricing to the County within ten (10) business days of discovering facts or circumstances giving rise to the change. If CM does not timely request adjustment of its NTE Amount, CM's claim for adjustment will be waived. Change requests must comply with the Billable Rates and Reimbursable Expenses set forth in Exhibit 3A and Exhibit 3B.

**7.3 Submission.** All requests for additional compensation or an extension of Contract Time to the CM will be presented in writing to the County Contract Administrator and approved by County and the USDA representative before the expense is incurred. The County Contract Administrator and USDA representative will review all requests for additional compensation or an extension of the Contract Time within 10 business days of receipt and make a recommendation to the County on whether or not to proceed with the additional Services.

**7.4 Pricing.** CM will provide a not to exceed amount for the additional Services per the Billable Rates (Exhibit 3B) plus a Not-to-Exceed Amount for additional Reimbursable Expenses directly related to the additional Services. Upon approval, the NTE Amount will be adjusted. CM will keep and present an itemized summary of the additional Services performed on an employee and task basis, and will itemize additional Reimbursable Expenses and present receipts (as applicable). CM will be paid the actual cost for Services rendered in accordance with Article 6.

**7.5 Continued Performance.** CM shall continue to provide current Services pending any adjustment in the Services or NTE Amount through an Amendment. Disputes regarding Amendments will be resolved in accordance with Article 10. Failure to properly execute the Services as directed by the County Contract Administrator will constitute a material breach of contract.

## 8. INDEMNIFICATION AND DEFENSE

**8.1 Indemnification and Defense.** To the fullest extent allowed by law, CM shall defend, indemnify, and hold harmless the County and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CM, its officers, agents, employees, volunteers, representatives, contractors and Subcontractors. This duty of CM includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

**8.2 Enforcement.** Nothing contained in this Article 8 will be construed to impose any obligation in conflict with current California state law. In the event of a conflict with California State law, as may be amended, the Agreement will be modified to allow indemnification and defense by CM to the greatest extent permitted by law.

## 9. INSURANCE

**9.1 Requirements.** The CM will carry the insurance required in Exhibit 4. Proof of appropriate insurance, including endorsements of additional insureds as required per Exhibit 4 must be submitted to the County Contract Administrator before commencement of the Services. CM will provide additional insured status to County, and any other entities or persons set forth in Exhibit 4 on all required coverage.

## 10. DISPUTE RESOLUTION

**10.1 Disputes.** In the event of any dispute, Claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the Contract Administrator and Principal CM identified in Exhibit 3A shall use their best efforts to settle the dispute, Claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach such resolution within a period of five (5) days, then, upon notice by either Party to the other, all disputes, Claims, questions, or differences shall be escalated to the County's Chief Administrative Office and CM Chief Executive Officer. An informal conference to meet and confer for settlement of the issues in dispute shall be conducted within fifteen (15) days. In the event that the meet and confer conference is unsuccessful, Parties may pursue any and all available remedies under the law.

**10.2 Joinder of Parties.** Notwithstanding the above, CM acknowledges that the Project is being constructed under a design-build project delivery method where the Design-Builder is under direct contract with County. If any Claim arises under the Design-Builder's contract for the Project that also involves CM, the dispute resolution process set forth in the Design-Builder's contract shall apply. Any other Claims by the Parties under this Agreement arising out of or in connection with the Design-Builder's contract may also be asserted in the same dispute resolution process, arbitration, or litigation.



## 11. TERMINATION

**11.1 Termination for Convenience.** County may terminate this Agreement for convenience upon ten (10) calendar days' prior written notice at any time before completion of the Services. Upon termination, County will pay CM the earned billable amounts and Reimbursable Expenses per Article 5 as of the Effective Date of termination. CM expressly waives any Claims for consequential damages, including anticipated lost profits and unabsorbed overhead. The notice will state the Effective Date of termination. All payments under this Section are subject to the payment provisions in Article 6.

**11.2 Termination for Cause.** County may terminate this Agreement for material breach of any term or conditions of the Contract Documents upon ten (10) business days' written notice unless CM has commenced curing its breach to the County's satisfaction. The notice will set forth the reason for termination and the Effective Date of termination. If the County terminates this Agreement for cause, CM will be entitled to payment for all undisputed Services performed prior to the date of termination less any costs or expenses anticipated or projected by County to satisfy any Claims arising out of, or Services required for, curing the breach. In no event shall County be obligated to pay any consequential damages and CM expressly waives any Claims for consequential damages, including anticipated lost profits and unabsorbed overhead. CM will not be entitled to receive any further payments until 35 calendar days after final completion of the Project, and only to the extent that the cost of completing the Services does not exceed the remaining NTE Amount. Nothing stated in this paragraph will prevent the County from pursuing and recovering any damages allowed by law from CM arising out of the breach of the Contract Documents. If a court of competent jurisdiction deems that termination of this Agreement was wrongful or otherwise improper, the termination will be deemed a termination for convenience under Section 11.1.

**11.3 Insolvency.** This Agreement, at the option of County, shall be terminable in the event of bankruptcy, voluntary or involuntary, or insolvency of CM.

**11.4 Non-Appropriation.** The Parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or Services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the Services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the Effective Date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which Services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for Services performed prior to cancellation.

**11.5 Force Majeure.** Neither Party shall be held liable for any delay or failure in the performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as fire or other casualty, earthquake, explosion, flood, hurricane, acts of God, enemy or hostile government action, civil commotion, war, invasion, terrorist attack, riots, strikes, lockouts, or any other cause or occurrence beyond the reasonable control of the Party obligated to perform.”

## **12. MISCELLANEOUS PROVISIONS**

**12.1 Confidentiality.** CM will keep information provided by County or made available to CM during performance of the Services confidential, and will not disclose confidential information to persons or entities other than as necessary to perform the Services.

**12.2 Governing Law.** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

**12.3 Taxes.** CM certifies that as of Effective Date, it is not in default on any unsecured property taxes or other taxes or fees owed by CM to County. CM agrees that it shall not default on any obligations to County during the term of this Agreement.

**12.4 Assignment.** County and CM respectively bind themselves, their partners, successors, assignees, and legal representatives to the other Party to this Agreement. CM may not assign this Agreement. Upon notice, County may assign this Agreement to any lender in obtaining Project financing, and CM will cooperate with the County and execute required assignment and subordination agreements.

**12.5 Notices.** Any notice required to be given by this Agreement will be in writing and deemed effective upon: (i) the date of personal delivery, or fax, if received by the addressee before 5:00 p.m. local time on a business day; (ii) 3 business days after being sent via registered or certified mail with a return receipt requested; or (iii) 1 business day after being sent by overnight commercial courier providing next-business-day delivery. Fax delivery must be evidenced by an automated fax confirmation. Notices will be addressed to the following respective Parties:

<b>County:</b>	<b>CM:</b>
Russell Fackrell	(Name of Person)
Facilities Manager	(Title)
County of El Dorado	(Name of Entity)
Chief Administrative Office	(Street Address)
Facilities Division	(City, CA zip)
3000 Fair Lane Court, Suite One	(Fax)
Placerville, CA 95667	(Email)
russell.fackrell@edcgov.us	

**12.6 Interpretation and Severability.** This Agreement's terms and conditions will be interpreted according to their plain meaning, and not strictly for or against either County or CM. Any contrary rule of construction or interpretation will be of no force or effect with respect to this Agreement. If a court of competent jurisdiction finds any term or provision of this Agreement to be void or unenforceable for any reason, the term or provision will be amended to comply with the law. If a term or condition is severed, the remainder of the Agreement will remain in full

force and effect to the maximum extent permitted by law and consistent with the County's and CM's overall intent.

**12.7 Third Party Beneficiaries.** Nothing contained in this Agreement creates a contractual relationship with, or a cause of action in favor of, a third party against the County or the CM. The Parties acknowledge and agree that the obligations of the CM are solely for the benefit of the County and are not intended in any respect to benefit any third parties.

**12.8 Rights and Remedies.** All rights and remedies under the Contract Documents will be cumulative and in addition to, and not in limitation of, all other rights and remedies of the Parties under the Contract Documents or otherwise available at law or in equity.

**12.9 Survival.** The following provisions will survive termination of this Agreement or completion of the Services: Sections 6.7 (Audit Rights), 6.8 (Audit by California State Auditor), Article 8 (Indemnification and Defense), Article 10 (Dispute Resolution), Section 11.4 (Non-Appropriation), Sections 12.1, 12.2, 12.6, 12.7, 12.8, 12.12, and 12.15.2 of Article 12 (Miscellaneous Provisions).

**12.10 Waiver.** Unless otherwise indicated in this Agreement, County's and CM's action or failure to act will not waive any right or duty it has under the Agreement, and such action or failure to act will not be an approval of or acquiescence in a breach of the Agreement unless specifically agreed to in writing by the Party.

**12.11 Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original. When proving this Agreement, it will only be necessary to produce or account for the counterpart signed by the Party against whom enforcement is sought. Electronic copies or photocopies of this Agreement showing the true signatures may be used for all purposes as originals.

**12.12 Attorneys' Fees.** If County or CM commences an action or dispute resolution process in accordance with the terms and provisions of this Agreement against the other Party for Claims arising out of or in connection with the Contract Documents, the prevailing Party will be entitled to recover all reasonable attorneys' fees and costs (including charges and expenses related to the suit, expert witness, and consultants' fees) as may be determined by a court with competent jurisdiction.

**12.13 Equal Employment.** Pursuant to Labor Code Section 1735, the Fair Employment and Housing Act (Gov. Code Section 12900 et seq.), California Administrative Code, Title 2, sections 7285 et seq., Government Code Sections 11135-11139.5, Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by Department of Labor regulations 41 CFR Part 60, and other Applicable Law, the CM will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or disability on this Project. The CM will take affirmative action to ensure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or disability. CM will maintain policies in compliance with California state and federal law regarding equal employment opportunities through-out the duration of this Project.

Where applicable, CM shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the Services performed herein. CM shall

provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

**12.14 Gratuities.** CM warrants that it has not offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of the County or the USDA in an attempt to secure this contract or favorable treatment in awarding, amending, or making any determinations related to the performance of the Services under this Agreement. County may, by written notice to CM, terminate this Agreement in the event of a breach of this provision and County may pursue other rights and remedies under the law or this Agreement provides. In the event this Agreement as terminated as provided herein, County may pursue the same remedies against CM as it could pursue in the event of a breach of the Agreement by CM. As a penalty, in addition to any other damages to which County may be entitled by law, County may pursue exemplary damages in an amount as determined by County which shall not be less than three nor more than ten times the costs the CM incurs in providing any such gratuities to any such official, employee, or agent of the County or USDA.

### **12.15 Conflict of Interest**

12.15.1 CM will comply with the County's Conflict of Interest Policy set forth in Exhibit 5. At all times in the performance of this Agreement, CM shall comply with the laws of the State of California regarding conflicts of interests including, but not limited to, Government Code Section 1090 et seq. and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission now in effect or hereafter enacted during the term of this Agreement. CM represents and warrants that it is not in violation of said conflicts of interest provisions nor is CM aware of any facts that create a conflict of interest in the performance of Services contemplated under this Agreement. CM shall immediately notify County if it becomes aware of any facts that might raise a conflict of interest issue at any time during the term of this Agreement.

12.15.2 CM further agrees to defend, indemnify and hold harmless the County, and its officers, employees and authorized representatives, from and against any and all Claims, actions, liabilities, suits, demands, losses, costs and expenses, including reasonable attorneys' fees and all legal expenses and fees incurred, arising out of or related to CM's breach of the representations and warranties herein or failure to comply with the provisions of this section. CM shall be solely liable for any damages incurred by County, including compensatory, special, incidental, exemplary, punitive or consequential damages connected with or resulting from CM's breach of the representations and warranties herein.

**12.16 Drug Free Workplace.** CM certifies that it has complied with Government Code section 8355 relating to a drug free workplace and will comply with the requirements included in the safety program.

**12.17 Anti-Kickback.** CM will comply with the Copeland Anti-Kickback Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that CM will be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled.

**12.18 California Residency (Form 590).** If CM is a California resident, CM must file a State of California Form 590, certifying its California residency or, in the case of a corporation,

certifying that it has a permanent place of business in California. CM will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven percent (7%) of each payment made to the CM during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

**12.19 Nonresident Withholding.** If CM is not a California resident, CM shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7%) percent of each payment made to the Consultant during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. CM shall indemnify and hold the County harmless for any action taken by the California Franchise Tax Board.

**12.20 Exhibits.** The Exhibits listed in the table of exhibits are incorporated into this Agreement by reference as though set forth in full.

. The Parties agree that a "Digital Signature" as defined under Government Code Section 16.5 and California Code of Regulations section 22000 is an acceptable form of signature for written communications with the County and will have the same force and effect as the use of a manual signature provided that the Digital Signature is: (i) unique to the person using it; (ii) capable of verification; (iii) under the sole control of the person using it; and (iv) linked to the data in such a manner that if the data are changed, the Digital signature will be invalidated. In order to be valid, the Digital Signature must be created by an acceptable technology as defined in California Code of Regulations Section 22001 et. seq.

**12.22 Legal Citations.** Legal citations to statutory requirements are included in the Agreement for convenience and an omission of any statutory requirement will not relieve the CM from compliance with Applicable Law.

**12.23 Entire Agreement.** The Contract Documents as defined in Exhibit 1 form the entire contract between County and CM and supersede all prior oral and other written negotiations, representations, or agreements between the County and CM with respect to the Services performed for this Project.

**12.24 Rural Development concurrence.** This Agreement shall not be effective unless and until concurred in writing by the USDA Rural Development State Director or designee.

**12.25 State Energy Conservation Plan.** CM shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

**12.26 Clean Air and Water Act.** CM shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations 40 CFR part 15, which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Contractor shall report violations to the EPA.

## EXHIBIT 1

### DEFINITIONS

1. **"Agreement"** means the written contract between the County and CM inclusive of all Exhibits.
2. **"Amendment"** is a document executed by the Parties that amends the terms and/or conditions of this Agreement, including a written order authorizing additional Services or an extension of Contract Time by increasing or decreasing CM's Fee.
3. **"Billable Rates"** are set forth in Exhibit 3A.
4. **"Claim"** is an unresolved dispute among the Parties, which may include other Project Team members through joinder, involving monetary or equitable relief that arises out of or relates to the Project, Contract Documents, performance of the Services or Work, indemnification, or third party claims for personal injury or property damage.
5. **"CM"** means the California State licensed general contractor, architect, or registered engineer who is responsible for performing the Services described in Exhibit 2.
6. **"CM's Fee"** is the total amount that CM will be compensated for performance of the Services and all Reimbursable Expenses.
7. **"Construction Documents"** means the 2-D Drawings and Specifications developed by the Design-Builder that are approved and permitted for construction by Governmental Authorities, any clarifications through responses to requests for information, design sketches, or other such clarifications issued post-permit, and any modifications through executed change orders with the Design-Builder.
8. **"Contract Documents"** includes the Agreement (inclusive of all Exhibits), and any subsequent modifications through executed Amendments.
9. **"Contract Time"** is 28 months from the Effective Date of the Agreement.
10. **"County"** is County of El Dorado.
11. **"County's Budget"** is the County's cost model for owner costs associated with entitlements, permits, development, insurance, fixtures, furnishings, and equipment, IT, etc., Separate Contractors, Separate Consultants, CM, and design and construction of the Project.
12. **"County Contract Administrator"** is the designated County officer or employee with responsibility for administering this Agreement.
13. **"Design-Builder"** is the California state licensed general contractor that is responsible for performing all design services and construction Work ("Work").
14. **"Drawings"** means the 2-dimensional graphic illustrating the design, how the buildings are situated on the site, and the location, building elevations, plan views, dimensions, and details of the Work.

15. **"Effective Date"** is the date that the Parties agree the Agreement was executed.
16. **"Governmental Authority" or "Governmental Authorities"** means any and all federal, state, county, or municipal boards, departments, courts, offices, or agencies that have jurisdiction over the Project.
17. **"Not-to-Exceed Amount" or "NTE Amount"** is the maximum Fee that the CM will be compensated for performance of the Services. Reimbursable Expenses per Article 5 are included in the NTE Amount.
18. **"Party"** means either County or CM and "Parties" refers to County and CM collectively.
19. **"Project"** is County of El Dorado Public Safety Facility as described in Section 2.1 of the Agreement.
20. **"Project Budget"** is the amount of money that the County has to spend for design and construction of the Project.
21. **"Project Program"** includes those documents provided by the County to the Design-Builder that describe the Project and define the goals and requirements for the Project.
22. **"Project Team"** includes the County, CM, Design-Builder and its design consultants and Subcontractors, as well as the County's Separate Consultants and Separate Contractors.
23. **"Reimbursable Expenses"** are the items subject to reimbursement set forth in Exhibit 3B.
24. **"Resource Loaded Work Plan"** is the cost loaded staffing plan prepared by the CM allocating its NTE Amount broken down by phase and spread over the duration of the Project.
25. **"Separate Consultants"** means those consultants, other than CM or Design-Builder, who enter into a direct agreement with the County to perform Services related to this Project.
26. **"Separate Contractor"** means those contractors, vendors, or consultants, other than CM or Design-Builder, that enter into a direct agreement with the County to perform Work or Services related to a Project.
27. **"Services"** are all Services performed by CM under this Agreement including any additional Services amended into the Agreement through executed Amendment.
28. **"Signatory" or "Signatories"** are those persons authorized by the County and CM to execute this Agreement and any Amendments.
29. **"Specifications"** are the written requirements for materials, equipment, systems, standards, execution, and workmanship for the Work, and performance of related Services. The Specifications are included in the Contract Documents.

**30. "Subcontractor(s)"** are those trade contractors in direct privity of contract with Design-Builder.

**31. "Work"** means all design Services, labor, materials, equipment, and appurtenances required of the Design-Builder and its consultants and Subcontractors to properly design, construct, and commission the Project in accordance with the approved, final Construction Documents.



**EXHIBIT 2**

**SCOPE OF SERVICES**

**Scope of Services as described in Attachment 1 to this RFP.**

**EXHIBIT 3**  
**COMPENSATION**

Exhibit 3A - Staffing Plan, Billable Rates, and Key Personnel

Exhibit 3B - Terms for Billable Rates and Reimbursable Expenses

Exhibit 3C - Resource Loaded Work Plan

**EXHIBIT 3A**

**STAFFING PLAN, BILLABLE RATES, AND KEY PERSONNEL**

**CM's Billable Rates**

<b>Name</b>	<b>Position</b>	<b>Billable Rate</b>	<b>Key Personnel [ yes / no ]</b>

## EXHIBIT 3B

### TERMS FOR BILLABLE RATES AND REIMBURSABLE EXPENSES

#### 1. BILLABLE RATES

**1.1 Billable Rates.** Services performed by the CM's employees will be charged based on the Billable Rates set forth in Exhibit 3A. The Billable Rates will be effective for the duration of the Project, and any necessary adjustments to the Billable Rates, given the duration of the Project, will be established and agreed to in Exhibit 3A. No salaried employee is allowed to bill more than 40 hours per week unless express written consent is provided by the County. The Billable Rates shall be inclusive of all CM's overhead and profit. CM may charge for Services performed by employees who are not listed in Exhibit 3A, only upon approval by the County and provided that the employee's billable rates are consistent with the Billable Rates for other employees with the same title and level of experience.

#### 2. REIMBURSABLE AND NON-REIMBURSABLE EXPENSES

**2.1 Reimbursable Expenses.** All Reimbursable Expenses are listed below and are billable at cost, without mark-up, except for items which have limits as noted below.

2.1.1 The direct cost of reproductions, postage, and handling of Drawings, Specifications and other Project documents at CM's cost without markup, to the extent not directly provided by the County.

2.1.2 Other direct costs incurred in the performance of the Services at CM's cost without markup, if, and to the extent, approved in advance in writing by the County's Contract Administrator.

**2.2 Non-Reimbursable Expenses.** Costs due to the negligence or failure of the CM or anyone directly or indirectly employed by CM for whose acts CM may be liable, to fulfill a specific responsibility under the Contract Documents.

**EXHIBIT 3C**

**RESOURCE LOADED WORK PLAN**

[Insert here or attach]

Need from Facilities.

Include language to allow movement of funds from one line item to another in the work plan.

## EXHIBIT 4

### 1. REQUIRED INSURANCE LIMITS:

Workers' Compensation Employers' Liability	Statutory Limits \$1,000,000 each accident
Commercial General Liability (Occurrence Form Only)	\$2,000,000 each occurrence \$2,000,000 general aggregate/per project
Automobile Liability	\$2,000,000 each accident, and \$2,000,000 each occurrence
Professional Liability	\$2,000,000 per claim \$4,000,000 in aggregate

### 2. PROVISIONS APPLICABLE TO ALL INSURANCE REQUIRED FOR THIS PROJECT

**2.1 Term of Insurance Policies.** All liability insurance must be in force prior to any Services being performed under this Agreement and must be maintained in force for three (3) years following completion of the Services. Workers compensation insurance must be in force from the inception of this Agreement through completion of the Services and final payment. In the event of cancellation or non-renewal, the reporting period during which a claim may first be made will be extended until at least three (3) years after cancellation or non-renewal.

**2.2 Qualifications and Rating.** All insurance must be placed with insurers that are admitted or licensed to issue insurance in the state of California. All insurers must maintain an A.M. Best rating of at least A VII.

**2.3 Additional Insureds.** The County of El Dorado its officers, officials, employees and volunteers, successors and assigns will be named as additional insureds on all required commercial general liability and automobile policies for Services performed under or incident to this Agreement. If the additional insured has other insurance applicable to the loss, it will be on an excess or contingent basis. The amounts and types of insurance will conform to the minimum terms, conditions, and coverages of the Insurance Service Office (ISO) policies, forms, and endorsements in effect when this Agreement is executed, but which must be at least as broad as ISO CG 20 10 07 04 and ISO CG 20 37 07 04 unless pre-approved by the County.

**2.4 Insurance Certificates and Copies of Policies.** Before commencing any Services under this Agreement, the CM will provide the County with insurance certificates and endorsements reflecting the insurance required by this Agreement. Receipt of insurance certificates or copies of policies without objection by the County does not constitute acceptance or approval of insurance or relieve the CM from its obligations to provide the required insurance under this Exhibit 4. Upon renewal of any required insurance that expires before completion of the Services, the applicable Party must provide the County with renewal certificates not less than 15 days prior to the expiration. The CM will promptly furnish copies of all required policies of insurance, including any renewal or replacement policies, within 10 days of the County's written request.

**2.5 No Reduction, Modification or Cancellation of Coverage.** No insurance required by this Agreement may be reduced in coverage, modified, or cancelled without 30 days' written notice to County. All policy renewals during the term of insurance policies must be equal, or better, in terms and limits.

**2.6 Primary Insurance.** All liability policies required by CM under this Agreement are primary and non-contributory to any similar insurance maintained by County for its own respective benefit.

**2.7 Waivers of Subrogation.** CM will waive all rights against County, as well as any other entities set forth in Article 2.3 for loss or damage to the extent reimbursed by any property insurance. A waiver of subrogation is effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. This waiver does not apply to professional liability insurance. If any applicable policies of insurance require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owner of those policies will cause them to either provide a "blanket waiver" endorsement or a subrogation endorsement that includes the name of the Project and the location of the Project site.

**2.8 Deductibles and Self-Insured Retentions.** All deductibles and/or self-insured retentions over \$25,000 are subject to County approval, and unless approved in writing, are the sole responsibility of the first named insured and are not a Reimbursable Expense.

### **3. SPECIFIC PROVISIONS.**

**3.1 Workers Compensation.** Coverage will include insurance as required by California state law and employer's liability coverage per Article 1.

**3.2 Commercial General Liability (CGL).** Commercial general liability coverage must be issued on a policy at least as broad as ISO form CG 0001 with Project specific endorsement ISO CG 12 04 with combined single limits and aggregates in the amounts listed in Article 1. The insurance must cover all operations of the CM and must include, but is not limited to: (i) premises and operations liability; (ii) completed operations and products liability; (iii) contractual liability for liability assumed under this Agreement; (iv) broad form property damage liability (including loss of use); (v) medical and personal injury liability including coverage for sickness, disease, and death; (vi) explosion, collapse, and underground hazards; (vii) personal and advertising injury; (viii) severability of interests; and (ix) cross-liability.

**3.3 Automobile Liability.** Commercial automobile liability insurance must be issued on policies at least as broad as ISO Form CA 00 01, CA 00 05, CA 00 12 or CA 00 20 with each accident limits as stated in Article 1. This insurance must apply to bodily injury and property damage for all owned, non-owned, or hired vehicles to be used by the insured in performance of its obligations under this Agreement.

**3.4 Occurrence Basis.** All commercial general liability and automobile liability policies must be written on an occurrence basis.

**3.5 Professional Liability.** CM must have coverage for damages caused by CM's negligent acts, errors, or omissions arising out of the performance of the Services. CM's coverage must be in the amounts specified in Article 1.

Covering liability imposed by law or contract arising out of an error, omission or negligent act in the performance, or lack thereof, of professional services and any physical property damage, bodily injury or death resulting there from. The insurance shall include a vicarious

liability endorsement to indemnify, defend, and hold harmless El Dorado County for claims arising out of covered professional services and shall have an extended reporting period of not less than two years. That policy retroactive date coincides with or precedes CM's start of Work (including subsequent policies purchased as renewals or replacements).

If the policy is terminated for any reason during the term of this Agreement, CM shall either purchase a replacement policy with a retroactive date coinciding with or preceding the retroactive date of the terminating policy, or shall purchase an extended reporting provision of at least two years to report claims arising from Work performed in connection with this Agreement and a replacement policy with a retroactive date coinciding with or preceding the expiration date of the terminating policy.

If this Agreement is terminated or not renewed, CM shall maintain the policy in effect on the date of termination or non-renewal for a period of not less than two years there from. If that policy is terminated for any reason during the two year period, CM shall purchase an extended reporting provision at least covering the balance of the two year period to report claims arising from Work performed in connection with this Agreement or a replacement policy with a retroactive date coinciding with or preceding the retroactive date of the terminating policy.

#### **4. MISCELLANEOUS**

**4.1 Evidence Prior to Final Payment.** Prior to receipt of final payment under the Agreement, the CM must provide evidence that its insurance coverages are effective as required by this Exhibit 4.

**4.2 Additional County Remedy.** If the CM does not comply with the requirements of this Exhibit, the County may provide insurance coverage to protect the County and back-charge CM for the cost of that insurance.

**4.3 Insurance Does Not Limit Liability.** Insurance coverage maintained by the CM does not limit the extent of liability or indemnity of the CM under the Agreement or applicable law.

**4.4 Modifications Only in Writing.** The coverage and limits of insurance required by this Exhibit may not be altered, modified, or changed except as expressly agreed to in writing. No course of dealing or acceptance of certificates or policies will constitute a waiver of any of these insurance requirements.



## EXHIBIT 5

### **CONFLICT OF INTEREST POLICY AND PROCEDURES**

In addition to the County's Conflict of Interest Code, Resolution No. 194-2016 (see attached), the following policies also apply:

Procurement Policy C-17, Section 4.2 Code of Ethics for Procurement:

Employees participating in a procurement process shall uphold and adhere to all applicable federal, state, and local laws, ordinances and regulations, and dedicate themselves to the highest ideals of honesty and integrity in that process. Employees shall discourage any inappropriate contact or encroachment on one's official duties by others who seek to influence a decision, and shall expose corruption whenever discovered.

No employee participating in a procurement process shall:

- (a) Accept any fee, compensation, gift, or payment of expenses which results in private gain in return for preferential treatment.
- (b) Grant any special consideration, treatment, or advantage to any person beyond that which is available to every other person in similar circumstance.

#### **Code of Conduct**

No employee, officer or agent of the County shall participate in the selection, award, or administration of a contract supported by Rural Development funds if a conflict of interest, real or apparent, would be involved. Examples of such conflicts would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above; has a financial or other interest in the firm selected for the award.

- (i) County officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of subagreements.
- (ii) To the extent permitted by State or local law or regulations, violations of such standards by the County officers, employees, agents, or by contractors or their agents shall be subject to penalties, sanctions, or other disciplinary actions.