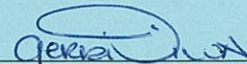


CONTRACT ROUTING SHEET

Date Prepared: 07/19/2010

Need Date: ~~07/23/2010~~ ASAP

PROCESSING DEPARTMENT:

Department: Environmental Mgmt
Dept. Contact: Kristin Davis
Phone #: 6664
Department
Head Signature: 

CONTRACTOR:


Name: Macauley Construction
Address: 1205 Greenstone Cut Off
Placerville, CA 95667
Phone: (530) 622-2936

EL DORADO COUNTY COUNSEL
JUL 20 10 10 2:10

CONTRACTING DEPARTMENT: Environmental Management-CHARGE TO 424100

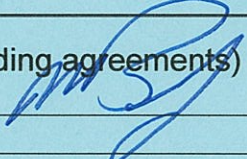
Service Requested: Legal & Risk review of proposed contract with Macauley Construction
Contract Term: 3 years Contract/Amendment Value: \$300,000
Compliance with Human Resources requirements? Yes: No:
Compliance verified by: _____

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: Disapproved: Date: 7/30/10 By: 
Approved: Disapproved: Date: _____ By: _____

RECEIVED
HUMAN RESOURCES DEPT
10 AUG - 3 AM 11:47

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved: Disapproved: Date: 8/4/10 By: 
Approved: Disapproved: Date: _____ By: _____

Need remarks in Sept.

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Departments:
Approved: Disapproved: Date: _____ By: _____
Approved: Disapproved: Date: _____ By: _____



CONTRACT NO. 003-PW-10/11
137-C1199

EL DORADO COUNTY
ENVIRONMENTAL MANAGEMENT DEPARTMENT

THIS PUBLIC WORKS CONTRACT NO. 003-PW-10/11 made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as “County”), acting by and through County Service Area No. 10, a lawfully established County Service Area as defined by Government Code Section 25210 et seq., and Macauley Construction, a sole proprietor, duly qualified to conduct business in the State of California, whose principal place of business is 1205 Greenstone Cut Off, Placerville, California, 95667; (hereinafter referred to as “Contractor”);

W I T N E S S E T H

That for and in consideration of the mutual promises, covenants, Contracts and conditions herein contained, the parties hereto agree with each other as follows:

1. Contract Documents

The complete Contract (hereafter “Contract”) between the parties consists of and is set forth in the Contract Documents. The Contract documents consist of: (a) this Contract; (b) an executed Certificate of Insurance form; (c) an executed California Form 590; (d) an executed Internal Revenue Service Form W-9; (e) payment bond; (f) performance bond; (g) a copy of the State Contractor’s License; (h) a copy of El Dorado County, City of Placerville, or City of South Lake Tahoe Business License. All obligations of the parties are contained in the Contract Documents and by acceptance of this Contract the parties hereto agree to be bound by the provisions of all of said documents. All of said documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa, is to be executed the same as if mentioned in all of them.

2. The Work

The Contractor agrees to furnish all tools, equipment, materials, transportation, labor, and incidentals associated with performing on-site maintenance and the routine and usual work for the preservation, operation and protection of the Union Mine Disposal Site, as directed by the County, including but not limited to, erosion control, sediment removal, soil/synthetic/clay cover, pumping, trenching, grading, drainage, slope repairs, pipe laying, spray irrigation, fencing and similar construction and repair work necessary to maintain day to day landfill operations (hereafter the “Work”). An onsite response time, including all necessary personnel and equipment, of 48 hours is the maximum allowable timeframe to the County's request to remedy any of the aforementioned tasks. If mitigating circumstances exist this response timeframe may be extended in writing by the Environmental Management Department. The Work shall be performed in accordance with all terms and conditions of the Contract Documents.

Before proceeding with any work under this Agreement in excess of **ONE THOUSAND DOLLARS 00/100** (\$1,000.00), the parties will identify the specific services to be provided for each assignment in writing. The specific services for each assignment shall be determined on a task-by-task basis. The writing will include a written scope of work, a schedule including a list of tasks with completion dates and a target

completion date for the overall scope of work, and a not-to-exceed cost to complete the work, which shall require written approval, authorization, and written notification to proceed from the County's Contract Administrator, or their designee, prior to the commencement of the work. No payment will be made for amounts in excess of the not-to-exceed amount of the written agreement. No such written agreement shall authorize work in excess of the cumulative total of the not-to-exceed Contract amount.

3. Location of Work

The Work is to be performed at the Union Mine Disposal Site.

4. Payment, Labor and Equipment Rates

Payment for the Work activities shall be by force account, in accordance with the Standard Specifications set forth in the State of California, Department of Transportation (CalTrans) Standard Specifications current version. Payment for all labor and equipment rental rates shall be per Section 9 of the Standard Specifications. This will include actual wages plus labor surcharges as identified in the Department of Transportation Publication entitled Labor Surcharge and Equipment Rental Rates. For all materials used pursuant to this Contract, Contractor shall receive the actual cost plus sales tax, if any, plus 5% of actual cost.

The total payment for Work directed by the County pursuant to this Contract to Contractor **SHALL NOT EXCEED THREE HUNDRED THOUSAND DOLLARS AND 00/100 (\$300,000.00)**.

5. Covenants

For and in consideration of the covenants, promises, and agreements as set forth herein, the Contractor promises and agrees with the County to do all the Work and to furnish at Contractor's own cost and expense, personnel, sub-contractors, all equipment, tools, materials, transportation, labor, and incidentals necessary to complete in a good, workmanlike and substantial manner, in strict accordance with the Contract Documents, the entire Work for the assigned project.

All of the Work assigned by the County is the responsibility of the Contractor, unless specifically described as an item of Work to be provided by the County. The Contractor shall be responsible for the supervision, administration, and Work performed by any sub-contractor.

6. Commencements and Completion

The Contract shall commence upon execution by the County, and shall expire three (3) years from the date of execution thereof.

7. Notification of Surety Company

The surety company shall familiarize itself with all of the conditions and provisions of this Contract, and shall waive the right of special notification of any change or modifications of this Contract or extension of time, or if decreased or increased Work, or of the cancellation of the Contract, or of any other act or acts by

the County or its authorized agents, under the terms of this Contract; and failure to so notify the aforesaid surety company of changes shall in no way relieve the surety company of its obligation under this Contract.

8. Payment Bond

As a part of the execution of this Contract, the Contractor shall furnish, in triplicate, a bond of a surety company authorized to do business in the State of California, conditioned upon the payment in full of all claims for labor and materials in accordance with the provisions of the law of the State of California. The amount of this bond shall be one hundred percent (100%) of the total Contract amount.

9. Performance Bond

As a part of the execution of this contract, the Contractor shall furnish in triplicate, a bond of a surety company authorized to do business in the State of California, conditioned upon the faithful performances of all covenants and stipulations under this contract. The amount of this bond shall be one hundred percent (100%) of the total contract price.

10. Compliance with all Applicable Laws

Contractor shall conform to and abide by all Federal, State, Regional Water Board, CalRecycle (formerly California Integrated Waste Management Board and local building, labor and safety laws, ordinances, rules and regulations. All Work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshall, safety orders of the Division of Industrial Safety, National Electrical code, Uniform Building Code, Uniform Plumbing Code, and any/all other applicable laws and regulations. Nothing in these plans or specifications is to be construed to permit Work not conforming to these codes.

11. Reporting Accidents

The Contractor shall prepare and submit (within 24 hours of such incidents) reports of accidents at the site and anywhere else the Work is in progress in which bodily injury is sustained or property loss in excess of FIVE HUNDRED DOLLARS AND NO/100 (\$500.00) occurs.

12. Payment of all Federal, State, or City Taxes

Any federal, state or city tax payable on the articles furnished by the Contractor under the Contract shall be included in the Contract price and paid by the Contractor except as otherwise stated in paragraph 4.

13. State Labor Requirements

Hours of Work:

- A. Eight hours of labor shall constitute a legal day's Work upon all Work done hereunder, and it is expressly stipulated that no workman employed at any time by the Contractor, or by any subcontractor under this Contract, upon the Work, shall be required or permitted to Work thereon more than 8 hours in any 1 calendar day and/or more than 40 hours in any 1 calendar week except as provided in Section 1815 of the Labor Code of California, and it is further expressly stipulated that for each and every

violation of said last named stipulation, said Contractor shall forfeit, as penalty to the said County, \$50.00 for each workman employed in the execution of this Contract, or by any sub-contractor under this Contract, for each calendar day during which said workman is required or permitted to labor more than 8 hours in any 1 calendar day or more than 40 hours in any 1 calendar week in violation of the provisions of said Labor Code.

- B. In accordance with the provisions of the Labor Code of the State of California, the Contractor, and each sub-contractor, shall also keep an accurate record showing the names and actual hours worked for all workers employed by him in connection with the Work contemplated by the Contract, which record shall be open at all reasonable hours to the inspection of the County or its officers or agents, and to the Chief of the Division of Labor Statistics and Law Enforcement or the Department of Industrial Relations, his deputies or agents.

14. Travel and Subsistence Pay

Pursuant to the provisions of Section 1773.8 of the Labor Code of the State of California, the Contractor shall pay travel and subsistence payments to each workman needed to execute the Work, as such Travel and Subsistence payments are defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations in accordance with said Section 1773.8.

15. Apprentice Employment

- A. Pursuant to the provisions of Section 1777.5 as amended, the Contractor or sub-contractor employing tradesmen in any apprenticeable occupation shall apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a Certificate of Approval. The certificate will also fix the ratio of apprentices to journeymen that will be used in the performance of the Contract. All requirements and exceptions to those requirements set forth herein for Apprenticeship Employment are contained in Labor Code Section 1777.5 and are available from the applicable Joint Apprenticeship Committee.
- B. The administration of the apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.
- C. The Contractor and any sub-contractor under him shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

16. Wage Rates

- A. Pursuant to Labor Code Section 1770 et seq., each laborer or mechanic of Contractor or any sub-contractor engaged in Work on the Project under this Contract shall be paid not less than the hourly wage rate of per diem wages set forth in the prevailing wage rate schedule published by the Director of

Industrial Relations regardless of any contractual relationship which may be alleged to exist between Contractor or any sub-contractor and such laborers and mechanics.

- B. Any laborer or mechanic employed to perform Work on the Project under this Contract, which Work is not covered by any of the foregoing classifications, shall be paid not less than the prevailing rate of per diem wages specified herein for the classification, which most nearly corresponds to the Work to be performed by him.
- C. The foregoing specified prevailing wage rates are minimum rates only, and the Contractor may pay any wage rate in excess of the applicable rate contained in this Contract.
- D. Pursuant to Labor Code Section 1775, the Contractor as a penalty to the County shall forfeit \$50.00 for each calendar day, or portion thereof for each worker paid less than prevailing rate established by the Department of Industrial Relations for such Work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which the worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.
- E. An error on the part of an awarding body does not relieve the Contractor from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code Sections 1770 - 1775.
- F. All Contractors and sub-contractors are subject to the provisions of Sections 1810-1814 of the California Labor Code which provide that the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the Contractor or sub-contractor shall forfeit, as a penalty, \$25 for each worker employed in the execution of the Contract for each calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than 40 hours in any calendar week and is not paid overtime.
- G. Section 1815 of the California Labor Code requires that notwithstanding the provisions of Sections 1810-1814, employees of Contractors who Work in excess of eight hours per day and 40 hours per week shall be compensated for all hours worked in excess of eight hours per day at not less than 1-1/2 times the basic rate of pay.
- H. Copies of the applicable prevailing wage rates are on file with the El Dorado County Department of Transportation at 2850 Fairlane Court, Building C, Placerville, California 95667, and they are available to any interested party on request.

17. Certified Payroll

As required under the provisions of Labor Code Section 1776 Contractor and sub-contractors shall keep accurate payroll records:

- A. The payroll records shall show the name, address, social security number, Work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee by him or her in connection with the Work.

- B. A certified copy of all payroll records enumerated above shall be available for inspection at all reasonable hours at the principal office of the Contractor as follows:
- C. Make available or furnish to the employee or his or her authorized representative on request.
- D. Make available for inspection or furnished upon request to a representative of the County, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- E. Make available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County, the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards. The requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, sub-contractor, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the Contractor.

18. Discrimination In Employment

No discrimination shall occur in the employment of persons upon the Work because of race, color, sex, national origin, or ancestry or religion of such persons.

19. Convict-Made Materials

Except as may be provided by law, the Contractor agrees that no materials manufactured or produced in a penal or correctional institution shall be incorporated in the construction under this Contract.

20. Workers' Compensation Certification

By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

CERTIFICATE OF KNOWLEDGE - LABOR CODE SECTION 3700

I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for the worker's compensation or self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of Work of this Contract.

Signed: _____ Dated: _____

21. Relocation of Utilities

As required by Section 4215 of the California Government Code, the County will assume responsibility for the removal, relocation, and protection of main or trunk-line utility facilities existing on the construction site, if such facilities are not shown to the Contractor and/or as not identified on any plans and specifications and the County shall compensate the Contractor for the costs of locating and repairing damage to such facilities not due to the failure of the Contractor to exercise reasonable care.

Nothing herein shall be deemed to require the County to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the construction Work can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction.

If the Contractor, while performing Work under this Contract, discovers utility facilities not identified in the contract plans or specifications, he shall immediately notify the Project Manager. The County shall not be liable for the Contractor's performance of unauthorized Work.

22. Notice of Discovery of Hazardous Waste or Unusual Conditions

- A. The Contractor shall promptly, and before the following conditions are disturbed, notify the County in writing, in the event the Contractor encounters, after excavating to a depth of greater than four (4) feet, any of the following:
 - a. Material that the Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - b. Subsurface or latent physical conditions at the site differing from those indicated in the Plan or in any Special Provisions as stated in the Specifications.
 - c. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract.
- B. The County shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work shall issue a change order under the procedures described herein.
- C. In the event a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for in the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the Contractor and the County.

23. Sub-contracting

The provisions of Sections 4100-4114, inclusive, of the Public Contract Code regarding sub-contracting shall apply to this Contract and Contractor represents that he/she will comply with all provisions therein. At no time shall County be obligated to pay separately for sub-contractor services.

24. Additional Work

County reserves the right to make such alterations, deviations, additions to or deletions from the scope of Work, including the right to increase or decrease the quantity of any item or portion of Work or to delete any items or portion of Work, as may be deemed by the Contract Administrator to be necessary or advisable, and to require such additional Work to be required for the proper completion of the whole Work contemplated.

Any such changes will be set forth in a contract change order (Change Order) which will specify the additional Work, adjustment of performance time, if any, and basis for additional compensation, if any. Any Change Order shall not become effective until approved in writing by the Director of Environmental Management.

If Change Orders are given in accordance with the provisions of this Contract, such Work shall be considered a part hereof and subject to each and all of its terms and requirements.

25. Changes in the Work

This Contract may be amended by mutual consent of the parties hereto. Said amendment shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto. There shall be no changes in the Contractor's Project Manager or sub-contractors without prior written approval by the County's Project Administrator.

26. Successors and Assigns

This Contract shall bind and inure to the heirs, devisees, assignees, and successors in interest of the Contractor and to the successors in interest of the County in the same manner as if such parties had been expressly named herein.

The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the County, nor shall the Contractor assign any monies due or to become due to him hereunder without the previous written consent of the County and surety.

27. Assignment and Delegation of Contract

Neither this Contract, nor any part thereof, or any monies due or to become due hereunder, may be assigned by the Contractor without the approval of the County. County may assign this Contract to a lender, or any third party that assumes the obligations of the County hereunder.

28. Separate Contracts

The County reserves the right to let other contracts in connection with this Work. The Contractor shall afford all other such contractors reasonable opportunity for storage of their materials, shall provide that the execution of his Work properly connects and coordinates with theirs, and shall cooperate with them to the end of facilitating the Work.

29. Default, Termination and Cancellation

- A. Default: Upon the occurrence of any default of the provisions of this Contract, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended in the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reasons(s) for the extension and the date in which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Contract provision and shall demand that the party in default perform the provisions of this Contract within the applicable period of time. No such notice shall be deemed a termination of this Contract unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

- B. Bankruptcy: This Contract, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. Ceasing Performance: County may terminate this Contract in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of the Contract.
- D. Termination or Cancellation without Cause: Notwithstanding any other provisions in this Contract, County may terminate this Contract in whole or in part seven (7) calendar days upon written notice by County for any reason. If such termination is effected, County will pay for satisfactory services rendered prior to the effective date as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for Contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.
- E. In the event of termination for Default, Bankruptcy, or Contractor Ceasing Performance, County reserves the right to take over and complete the Work by Contract or by other means.

30. Liquidated Damages

County and Contractor recognize that time is of the essence of this Contract and that County will suffer financial loss if the Work is not completed within the time specified in Section 5, "Commencements and Completion"

above, plus any extensions thereof allowed in accordance with the Specifications. They also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by County if the Work is not completed on time. Accordingly, instead of requiring any such proof, County and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay County one thousand dollars (\$1,000.00) for each day that expires after the time specified in Section 5 above until the Work is complete.

31. Guarantee

- A. Final Guarantee** The Contractor shall guarantee all materials, equipment furnished, and work performed for a period of 1 year. Contractor warrants and guarantees for a period of one year from the date of Notice of Substantial Completion that the Work is free from all defects due to faulty materials or workmanship and Contractor shall promptly make such corrections as may be necessary, including repairs of any damage to other parts of the Work resulting from such defects. County will give notice of observed defects with reasonable promptness. In the event that Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, County may do so and charge Contractor the cost thereby incurred.
- B. Extended Guarantees** If a guaranty exceeding one year is provided by the supplier or manufacturer of any equipment used in this Project, then the guarantee for such materials shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials, and Contractor shall supply County with all warranty and guaranty documents relative to equipment and materials incorporated in the job and guaranteed by their suppliers or manufacturers.
- C. Warranty** The Contractor warrants to the County that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract, that the Work will be free from defects or flaws and is of the highest quality of workmanship and that the Work will conform with the requirements of the Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

32. County Not Liable for Damages

The County or its authorized representative shall not in any way or manner be answerable or suffer loss, damage, expense, or liability for any loss or damage that may happen to said Work, or part thereof, or in or about the same during its construction and before acceptance and the said Contractor shall assume all liabilities of every kind or nature arising from said Work, either by accident, negligence, theft, vandalism, or any cause whatever; and shall hold the County and its authorized representatives harmless from all liability of every kind and nature arising from accident, negligence, or any cause whatever, other than for the active negligence of the County, its officers, agents and employees.

33. County Not Liable for Debts

Indebtedness incurred for any cause in connection with this Work must be paid by the Contractor, and the County is hereby at all times from any indebtedness or claim other than the Contract price.

34. Indemnity

The Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, sub contractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prohibited by statute. This duty of Contractor to indemnify and save the County harmless includes the duties to defend set forth in California Civil Code Section 2778.

35. Environmental Indemnification

To the fullest extent allowed by law, from and after recording of Notice of Completion, Contractor shall indemnify, defend, and save harmless County from all losses or damages resulting from injury to or death of any person and damage to property, and any fine, which is occasioned by or arises out of any breach of Environmental and Toxics Warranty, representations, or covenants of Contractor under this Contract. Contractor further agrees to indemnify and hold harmless County, its officers, employees, and agents, from and against any and all liability as follows:

- A. Including all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of hazardous materials in any location by Contractor, and
- B. Including, without limitation, the cost of any required or necessary remediation, repair, cleanup, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following filing of the Notice of Substantial Completion to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of hazardous materials by any person on the Work prior to filing of the Notice of Substantial Completion. Contractor's obligations pursuant to the foregoing indemnity shall survive the filing of Notice of Completion of the Work.
- C. This Contract as to indemnity and reimbursement as above set forth to be undertaken by the Contractor shall survive the performance of the remainder of said Contract and shall remain in full force and effect not withstanding such performance.
- D. The foregoing duties of indemnity shall not apply to loss, damage, expense, or liability caused solely by the active negligence of the County or the County's agents, servants or independent contractors.

36. Insurance

Contractor shall maintain, during the term hereof, insurance with respect to performance of this Contract of the types and in the minimum amounts described generally as follows, and provide proof of the policies of insurance satisfactory to the Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employer's Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage.
- C. Automobile liability insurance of not less than One Million Dollars (\$1,000,000) is required in the event the Contractor in the performance of the contract uses motor vehicles.
- D. In the event, Contractor is a licensed professional, and is performing services under this Contract, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than One Million Dollars (\$1,000,000) per occurrence. For the purpose of this Contract, professional liability is not required.
- E. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time during the term of this contract, contractor agrees to provide at least 30 days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less that the remainder of the term of the contract, or for a period of not less than one year. New certificates of insurance are subject to the approval of the Risk Management Division and contractor agrees that no Work or services shall be performed prior to the giving of such approval. In the event the contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - a. The insurer will not cancel the insured's coverage without 30 days prior written notice to the County; and
 - b. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Contract are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

- J. Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Contract.
- N. In the event Contractor cannot provide an occurrence policy, contractor shall provide insurance covering claims made as a result of performance of this contract for not less than three years following completion of performance of this Contract.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for protection for the County.
- P. In addition, Contractor shall ensure that all sub-contractors maintain adequate workers' compensation, liability, and professional liability insurance.

37. Licenses

Contractor warrants and represents he/she holds a valid California license pursuant to the State Contractors License Act [Business and Profession Code Section 7000, et seq.], that his/her license is in good standing and that he/she possesses a Class A License (No. 778330) as required by the categories and type of the Work. Copies of the Contractor's State Contractor license(s) must be provided with this Contract.

38. Cleaning Up

The Contractor shall not allow the site of the Work to become littered with trash, rubbish and waste material, but shall maintain the site in a neat and orderly condition throughout the Contract period.

39. Access to the Work

The County, and any state or local authorities having jurisdiction over the Work shall at all times have access to the Work.

40. Acceptance of Work

Acceptance of the Work and the filing of a notice of completion shall not constitute an acceptance of latent defects nor relieve the Contractor of responsibility for any act or omission, which is a violation of the Contract.

41. Resolution of Claims

Contractor's attention is invited to Public Contract Code, Section 20104, et seq., for resolution of construction claims, and specifically 20104.2. The provisions of the aforementioned sections shall govern claims pertaining to this Contract.

42. Environmental and Toxic Warranty

Contractor warrants that its operations concerning the Work are and were not in violation of any applicable environmental federal, state, or local statute, law, or regulation dealing with hazardous materials substances or toxic substances.

43. Notice

Any notice or other correspondence required to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Notice personally delivered during normal business hours deemed received on the actual date of delivery; mailed notices shall be deemed received one (1) day after affixed postmark. Notices and correspondence to County shall be delivered to it as follows:

County of El Dorado
Environmental Management Department
Attn: Greg Stanton, Deputy Director
2850 Fairlane Ct., Building "C"
Placerville, CA 95667

Notices and correspondence to Contractor shall be delivered when personally delivered to, or if mailed addressed to Contractor at:

Macauley Construction.
Attn: Richard Macauley
1205 Greenstone Cut Off
Placerville, CA 95667

Each party may change their address for notices by giving written notice pursuant to this paragraph.

44. Cancellation of Contract

The County reserves the right to terminate this Contract at any time for any reason by serving written notice to the Contractor.

45. Independent Contractor/Liability

Contractor 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 Contract. Contractor exclusively assumes responsibility for acts of its employees, associates, and sub contractors, if any are authorized herein, as they relate to services to be provided under this Contract during the course and scope of their employment. Contractor shall be responsible for performing the work under this Contract in a safe, professional, skillful and a workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. 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 Contractor or its employees.

46. Fiscal Considerations

The parties to this Contract 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 Contract to the contrary, County shall give notice of cancellation of this Contract 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 Contract. Upon the effective date of such notice, this Contract 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 Contract may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

47. Withholding (Form 730)

In accordance with changes in Internal Revenue Law, OASDI (Old Age, Survivors & Disability Insurance) income taxes may be withheld from any payments made under terms of this Contract if Contractor falls under "Contract-Employee" category as determined by County prior to execution of the Contract.

48. California Residency (Form 590)

All independent Contractors providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of a contract or County shall withhold seven (7) percent of each payment made to the Contractor during the term of this Contract. This requirement applies to any Contract/contract exceeding \$1,500.00.

49. Tax Payer Identification Number (Form W-9)

All independent Contractors or Corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

50. Venue

The laws of the State of California thereto shall govern the Contract Documents and all provisions. Any litigation arising herein shall be brought in the County of El Dorado, and Contractor hereby waives the removal provisions of the California Code of Civil Procedure, Section 394.

51. Authorized Signatures

The parties to this Contract warrant and represent that the undersigned individuals executing this Contract on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

52. Partial Invalidity

If any provision of this contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

53. Entire Contract

This document and the documents referred to herein or exhibits hereto are the entire Contract between the parties and they incorporate or supersede all prior written or oral Contracts or understandings.

54. Administrator

The County Officer or employee with responsibility for administering this Project is Greg Stanton, Deputy Director, or his successor.

55. County Business License

It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

56. Anit-Trust

In entering into this contract, Contractor agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this contract. This

assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

57. Execution of Contract

REQUESTING DEPARTMENT CONCURRENCE:

By: _____ **Dated:** _____
Gerri Silva, M.S., REHS
Environmental Management Director

IN WITNESS THEREOF, the parties hereto have executed this Contract the day and year first below written.

C O U N T Y O F E L D O R A D O

Dated: _____

By: _____
Chair
Board of Supervisors

ATTEST:

Dated: _____

By: _____
Suzanne Allen de Sanchez, Clerk of the
Board of Supervisors

C O N T R A C T O R

Dated: _____

By: _____
Richard Macauley, Owner
Macauley Construction