

**Construction and Funding Agreement
Between
County of El Dorado &
South Tahoe Public Utility District**

This **Construction and Funding Agreement** (“Agreement”), is entered into on _____, 2024, by and between the County of El Dorado, a political subdivision of the State of California, referred to as “COUNTY,” and the South Tahoe Public Utility District, a California public utility district, referred to as “DISTRICT” at South Lake Tahoe, California, with reference to the following facts and intentions:

Recitals

1. COUNTY secured funding, prepared contract documents, will advertise, and intends to award and administer a construction contract for the approved work, to be completed by the lowest responsive and responsible bidder, for installation of improvements for the Apache Ave Pedestrian Safety and Connectivity Project, Contract No. 7922, CIP 36107021, referred to herein as “PROJECT.”
2. DISTRICT owns and maintains potable water utility facilities within the limits of the PROJECT which DISTRICT will need to relocate due to accommodate the new storm drain system being installed.
3. DISTRICT prepared plans and specifications titled, “2024 Apache Waterline Replacement Project” for upgrade and relocation of the existing water main that is in conflict with a proposed storm drain to be installed with the PROJECT. The installation of DISTRICT water system facilities will be included as part of the PROJECT (referred to as “DISTRICT WORK.”).
4. DISTRICT acknowledges that it has reviewed the PROJECT plans and specifications for DISTRICT WORK and agrees in principle to the construction in the manner proposed.
5. COUNTY acknowledges that it has reviewed DISTRICT WORK plans and specifications and agrees in principle to the construction in the manner proposed.
6. DISTRICT agrees to pay COUNTY for the approved DISTRICT WORK:
 - a. On the basis of identified bid items for the PROJECT at actual bid prices from the lowest, responsive, responsible bidder, as determined solely by COUNTY, which are incorporated by this reference into this Agreement;
 - b. For required extra work or additional work related to or caused by DISTRICT’s facilities.
7. The parties define below the terms and conditions under which DISTRICT WORK is to be financed, constructed, and owned.

NOW THEREFORE, the parties agree as follows:

I. COUNTY Agrees:

1. On its behalf by a licensed contractor, to perform DISTRICT WORK in accordance with the PROJECT plans and specifications in order to achieve its intended purpose.
2. DISTRICT WORK performed by COUNTY on its behalf by a licensed contractor, shall be monitored for compliance with the PROJECT plans and specifications by DISTRICT personnel or designated representative; however, COUNTY will provide overarching project management.
3. To permit DISTRICT personnel to monitor, participate, and perform any additional quality assurance measures as deemed necessary for compliance of DISTRICT WORK with DISTRICT standards and practices for DISTRICT WORK that COUNTY’S licensed contractor is performing for DISTRICT.

4. For each pay period and upon completion of DISTRICT WORK, and all work incidental thereto, to furnish DISTRICT with a detailed statement of construction costs, the basis of which is identified bid items or change order work for the PROJECT subject to payment from DISTRICT.
5. To the extent that the guarantees or bonds required by COUNTY's contracts for the PROJECT that pertain to DISTRICT WORK, COUNTY agrees to enforce its rights thereunder in order to protect DISTRICT'S interests in the potable water utility facilities.
6. After completion of DISTRICT WORK, COUNTY agrees to enforce any contractor or product manufacturer warranties or guarantees for the portion of DISTRICT WORK that COUNTY is performing for DISTRICT for the benefit of DISTRICT.
7. To indemnify, defend and hold harmless DISTRICT, its elected officials, officers, employees and agents from and against all liability, claims, demands, costs, charges and expenses (including, without limitation, attorney's and expert witness fees and other expenses of litigation) and causes of action of whatsoever character on account of loss or damage to DISTRICT'S water utility facilities that are relocated or modified pursuant to this Agreement and as part of the PROJECT and loss of use thereof, or for bodily injury to or death of any persons (including, without limitation, property, employees, subcontractors, agents, and invitees of each party hereto) arising out of or in any way connected with the PROJECT, and arising from any cause whatsoever. The exception to this indemnity is liability, claims, suits, damages, or expenses that are proximately caused by, and in direct proportion to, the active negligence or willful acts of DISTRICT, its elected officials, officers, employees, and agents; any claims, suits, damages, or expenses that are proximately caused by or related to the reasonableness of the design of DISTRICT WORK; or as expressly prescribed by statute.

II. DISTRICT Agrees:

1. To open an account with the California Asset Management Program ("CAMP") and deposit an amount equal to the Maximum Authorized Payment Amount set forth in Section 6, below, and to increase the amount of the deposit if the parties mutually agree to an increase in the cost of DISTRICT WORK.
2. To pay COUNTY for DISTRICT WORK performed, as shown on the PROJECT plans and specifications and any additional work or change order work to DISTRICT'S potable water utility systems that is found necessary during construction that is first approved in writing by DISTRICT.
3. To review each detailed statement of construction costs from COUNTY and authorize payment to COUNTY from the CAMP account within 30 days of receipt of each detailed statement of construction costs for DISTRICT WORK; subsequent to acceptance of each detailed statement of construction of DISTRICT WORK by DISTRICT and payment for DISTRICT WORK by COUNTY to its contractor.
4. To provide inspection and construction field management of DISTRICT improvements.
5. To perform, at no cost to COUNTY, any additional quality assurance measures as DISTRICT deems necessary, beyond that which is currently scheduled for and identified in the PROJECT plans and specifications. DISTRICT will be solely responsible for all additional costs incurred by COUNTY or COUNTY'S licensed contractor if DISTRICT requires quality assurance measures or other work not specified in DISTRICT'S or COUNTY'S plans or specifications.
6. To accept ownership of the completed DISTRICT WORK. Upon acceptance of DISTRICT WORK as complete, DISTRICT will become the sole owner of DISTRICT WORK and COUNTY has no responsibility to maintain or repair DISTRICT WORK.
7. To defend, indemnify, and hold COUNTY and its officers, agents, employees and representatives 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 DISTRICTS's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of COUNTY, DISTRICT, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of COUNTY, its officers, agents, employees and representatives, or as expressly provided by statute. This duty of DISTRICT to indemnify and save COUNTY harmless includes the duties to defend set forth in California Civil Code Section 2778.

III. Mutually Agreed:

1. DISTRICT may review the lowest responsible, responsive bidder’s documents and may provide recommendations, if any, to COUNTY within five business days of bid opening. Notwithstanding that review, COUNTY shall have sole authority to reject any or all construction bids, resolve any bid protests, or to award the construction contract for the entire work.
2. If the PROJECT is canceled or modified, COUNTY will notify DISTRICT in writing and either party may then terminate this Agreement. DISTRICT shall pay COUNTY for any portion of DISTRICT WORK completed prior to termination.
3. COUNTY and DISTRICT agree that each entity shall be responsible for one-hundred percent (100%) of the actual costs associated with construction, improvement, or modification of COUNTY roadways or DISTRICT facilities improvements.
4. COUNTY agrees to pay its licensed contractor for work completed on the identified bid items, which are incorporated by this reference as DISTRICT WORK, subject to payment from DISTRICT as provided above. Any changes in quantities of the bid items shall be agreed to by both COUNTY and DISTRICT.
5. That the parties will be relieved of their respective duties and obligations hereunder if performance of this Agreement is prevented by the elements, natural disaster or acts of God, or if they are ordered or enjoined from performing hereunder by any court or regulatory agency having jurisdiction. Either party may discontinue performance of its duties and obligations hereunder if, after notice from the non-breaching party that the other party has breached any term or condition of this Agreement, and the breaching party has not commenced to timely cure the breach.
6. That the PROJECT bid items (by No.) representing DISTRICT WORK are listed below. The unit prices shown are DISTRICT estimates of cost and do not reflect bid prices submitted by the lowest responsive, responsible bidder as determined by COUNTY. The unit prices shown below will be replaced by the actual bid prices submitted by the lowest responsive, responsible bidder as determined by COUNTY, and DISTRICT agrees to reimburse COUNTY for payment based on the aforementioned actual bid prices.

Item No.	Bid Item Description	Units	Est. Qty	Unit Price	% for Payment	Amount
43	Mobilization and Demobilization specific to Additive Alternate Bid – Schedule B	LS	1	\$ 100,000.00	100%	\$ 100,000
44	Erosion Control specific to Additive Alternate Bid – Schedule B	LS	1	\$10,000	100%	\$ 10,000
45	Groundwater Dewatering	LS	1	\$ 50,000.00	100%	\$ 50,000
46	Traffic Control specific to Additive Alternate Bid – Schedule B	LS	1	\$15,000	100%	\$ 15,000
47	Potholing	LS	1	\$ 50,000.00	100%	\$ 50,000
48	8-inch C900 Water Main	LF	2500	\$ 200.00	100%	\$ 500,000
49	3/4-Inch Service	EA	32	\$ 6,000.00	100%	\$ 192,000

50	1-inch Service	EA	3	\$ 7,000.00	100%	\$ 21,000
51	Fire Hydrants	EA	4	\$ 16,500.00	100%	\$ 66,000
52	Tie-In #1 - Apache/SB (8" C900 Westside)	LS	1	\$ 15,000.00	100%	\$ 15,000
53	Tie-In #2 - Apache/SB (6" AC Eastside)	LS	1	\$ 15,000.00	100%	\$ 15,000
54	Tie-In #3 - Apache/SB (6" AC School Service)	LS	1	\$ 15,000.00	100%	\$ 15,000
55	Tie-In #4 - Sioux 4"AC	LS	1	\$ 15,000.00	100%	\$ 15,000
56	Tie-In #5 - Tomahawk Ln 4" STL	LS	1	\$ 15,000.00	100%	\$ 15,000
57	Tie-In #6 - Pueblo St 4" AC	LS	1	\$ 15,000.00	100%	\$ 15,000
58	Tie-In #7 - Arrowhead Ave (4" AC Eastside)	LS	1	\$ 15,000.00	100%	\$ 15,000
59	Tie-In #8 - Arrowhead Ave (4" AC Westside)	LS	1	\$ 15,000.00	100%	\$ 15,000
60	Tie-In #9 - Apache (8" C900 Southend)	LS	1	\$ 15,000.00	100%	\$ 15,000
61	Demo/Salvage Fire Hydrants	EA	4	\$ 4,000.00	100%	\$ 16,000
62	Cut, Cap and Abandon in place water mains and valves	EA	9	\$ 2,000.00	100%	\$ 18,000
63	3-Inch Miscellaneous Patch Paving	SF	750	\$ 30.00	100%	\$ 22,500
64	Additional 1-foot depth of excavation, backfill and vertical pipe and fittings	LF	60	\$ 20.00	100%	\$ 1,200
				SUBTOTAL	Payment	\$ 1,196,700

Contingency for changes in quantities (25%) **\$299,175**
Estimated Cost of DISTRICT WORK (pre-bid) \$ 1,495,875

That in addition to the direct cost of construction of DISTRICT facilities, DISTRICT shall reimburse COUNTY for DISTRICT’s portion of construction administration costs, which includes COUNTY’s construction management costs (which include Contract administration, soils testing, inspection, and staking of DISTRICT work) for the modification or improvement of DISTRICT’s facilities by COUNTY’s contractor. All the above-listed costs will be billed monthly using established COUNTY hourly rates for the Fiscal Year in which the work occurred.

7. That it is understood that time is of the essence and that COUNTY would be harmed by delays to a project. In order to avoid delays, COUNTY and DISTRICT agree that COUNTY will maintain administrative control of the project. To protect COUNTY from unnecessary project delays arising from DISTRICT work, COUNTY and DISTRICT agree that changes to DISTRICT work on the project will be handled in the following manner:

a. **Extra Work Required:** For purposes of this Agreement, “extra work” means work that is not foreseen at the time the Project is bid, and is not anticipated in the bid documents, but must necessarily be performed to address conflicts, changed or differing conditions, or otherwise necessary in order to complete the project. DISTRICT will be responsible for designing and inspecting all facets of any extra work on, related to, or caused by DISTRICT’s facilities.

If a contract change order (CCO) is required, COUNTY will notify DISTRICT on the next calendar day from notification from COUNTY’s contractor, and within five (5) calendar days will prepare a CCO. DISTRICT will then have five (5) calendar days to review, approve, and return the CCO to COUNTY or return it to COUNTY for modification. If DISTRICT fails to return the submitted CCO to COUNTY as approved herein within five (5) calendar days, then COUNTY will take one of the following actions:

- i. The CCO will be executed by COUNTY per the terms, conditions, and price shown on the CCO that had been submitted to DISTRICT. DISTRICT will be required to reimburse COUNTY for DISTRICT’s share of the cost of the CCO.
- ii. COUNTY will direct the contractor to perform the work on a force account basis. For extra work to DISTRICT facilities performed on force account, DISTRICT shall be responsible for inspecting the extra work and tracking the time that the contractor's

forces spend pursuing the extra work. On each day that extra work to DISTRICT facilities is performed on force account, a DISTRICT inspector will prepare and sign a work report that details the labor, equipment, and materials that were used during that day's force account work. DISTRICT shall provide those reports to COUNTY Resident Engineer for payment processing. DISTRICT will be required to reimburse COUNTY for its share of the cost of the force account work.

- iii. COUNTY will direct the contractor to stop work on the contract only to the extent reasonably deemed necessary by COUNTY. DISTRICT will then be responsible for reasonable delay costs associated with Project delay arising from DISTRICT extra work. For purposes of this Agreement, "delay costs" means any costs that the Contractor incurs as a result of additional working days or other delay due to the extra work, including, but not limited to, right of way delays, extended Contractor overhead, additional water pollution control costs due to a project extending into winter, or equipment rental. DISTRICT will be required to reimburse COUNTY, for all said delay costs arising from DISTRICT work.

It is agreed that all increases or decreases in justified costs associated with CCOs related to DISTRICT's work may include but are not limited to direct construction costs, extended contractor overhead, additional water pollution control costs due to CCOs extending a project into winter, dust control, or equipment rental.

- b. **Additional Work:** For purposes of this Agreement, "additional work" means work that is not foreseen at the time a project is bid, and is not extra work but may be desirable for the benefit of DISTRICT facilities. Any and all additional work requested by DISTRICT shall be at DISTRICT's sole expense. DISTRICT, at its sole expense, will be further responsible for designing and inspecting all facets of any additional work requested by DISTRICT. In the event that DISTRICT desires additional work to be performed by COUNTY's contractor, DISTRICT shall address its request to COUNTY.

If a price for additional work can be directly negotiated between DISTRICT and COUNTY's contractor, then the additional work may be incorporated into the contract via a CCO for the negotiated cost per section (i) above. If COUNTY's contractor and DISTRICT cannot agree to a negotiated price, DISTRICT may request that the work be performed on a force account basis as listed in section (ii) above.

It is agreed that all increases or decreases in justified costs associated with CCOs related to additional DISTRICT work may include, but are not limited to, direct construction costs, extended contractor overhead, additional water pollution control costs due to CCOs extending the project into winter, dust control, or equipment rental. DISTRICT will then be responsible for reasonable delay costs associated with Project delay arising from DISTRICT additional work.

- c. **DISTRICT Forces:** DISTRICT may alternatively request of COUNTY that DISTRICT use its own forces to perform additional work, as that term is defined hereinabove. The determination of whether to allow the additional work to be done by DISTRICT forces shall be within COUNTY's sole discretion. In these circumstances DISTRICT shall comply with all conditions of County's standard encroachment permit, inclusive of indemnity and insurance, and shall provide proof of insurance meeting those requirements in advance of the commencement of the work. All additional work performed by DISTRICT shall comply with the requirements of this Agreement, with the project construction schedule and be coordinated with COUNTY's contractor work. In order to coordinate DISTRICT's work with the work of COUNTY's contractor, COUNTY may require that DISTRICT perform its work within an agreed-upon window of time. Any and all of COUNTY's contractor justified extra work, claims or delay costs arising from or caused by DISTRICT's force work shall be DISTRICT's sole

responsibility. COUNTY and DISTRICT will determine in advance of COUNTY's approval whether any Project cost savings arise from DISTRICT's proposed force work and will mutually agree to whom said cost savings, if any, shall be credited. If the parties cannot reach agreement, COUNTY may decline to allow DISTRICT force work.

IV General Provisions

1. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

2. If to COUNTY: John Kahling
 Deputy Director of Transportation
 County of El Dorado
 2441 Headington Road
 Placerville, CA 95667

Provide a copy to: County Counsel
 County of El Dorado
 330 Fair Lane
 Placerville, CA 95667

If to DISTRICT South Tahoe Public Utility District
 Attn: Paul Hughes, General Manager
 1275 Meadow Crest Drive
 South Lake Tahoe, CA 96150

Provide a copy to: Keith Collins
 Jones Mayer
 6349 Auburn Boulevard
 Citrus Heights, CA 95621

3. No Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

4. Dispute Resolution. The parties to this Agreement agree that their respective staffs shall meet and confer in good faith for the purposes of resolving any dispute under this Agreement. If the meet and confer between staff is unsuccessful to resolve the dispute, COUNTY Chief Administrative Officer and DISTRICT General Manager shall then meet and confer in attempt to resolve the dispute. If the dispute is still not resolved, either party may file an action in court.

5. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in the Superior Courts in the County of El Dorado, South Lake Tahoe Division.

6. Amendments. This Agreement may be modified or amended only by a written document executed by both DISTRICT and COUNTY and approved as to form by COUNTY Counsel.

7. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

8. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement

between DISTRICT and COUNTY. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

9. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
10. Authority to Enter Agreement. COUNTY and DISTRICT have all requisite power and authority to conduct its business and to execute, deliver, and perform the WORK defined in this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.
11. No Third party Beneficiaries. This Agreement shall not be deemed to confer any rights upon any individual or entity which is not a party to this Agreement and the parties expressly disclaim any such third-party benefit.

Requesting Department Concurrence:

By: _____
Rafael Martinez, Director
Department of Transportation

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

-- COUNTY OF EL DORADO --

By: _____

Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

- - SOUTH TAHOE PUBLIC UTILITY DISTRICT - -

David Peterson, Board President
South Tahoe Public Utility District

Attest:

Melonie Guttry, Clerk of the Board