

**ORIGINAL**

**County of El Dorado, State of California**

**BID #14-968-001  
AGREEMENT #187-C1499**

**PLACERVILLE GENERATOR REPLACEMENT**

**THIS AGREEMENT** ("Agreement") approved by the County of El Dorado Board of Supervisors, this 27th day of August, in the year of 2013, made and concluded, in duplicate, between the COUNTY OF EL DORADO, a political subdivision of the State of California, by the Chief Administrative Office, Facilities Division thereof, the party of the first part hereinafter called "County," and P N P Construction, Inc. party of the second part hereinafter called "Contractor."

**RECITALS:**

**WHEREAS**, County has caused the above-captioned project to be let to formal bidding process; and

**WHEREAS**, Contractor has duly submitted a bid response for the captioned project upon which County has awarded this Contract;

**NOW, THEREFORE**, the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree, each with the other, as follows:

**Article 1. THE WORK**

The improvement contemplated in the performance of this Contract is an improvement over which the County of El Dorado shall exercise general supervision. The County therefore, shall have the right, but not the duty to assume full and direct control over this Contract whenever the County at its sole discretion, shall determine that its responsibility is so required.

The Contractor shall complete the Work as specified or indicated under the County's Contract Documents entitled:

**PLACERVILLE GENERATOR REPLACEMENT**

The project is located at 360 Fair Lane Drive, Placerville, CA 95667 in El Dorado County. The Work to be done is shown on the Plans, and generally consists of furnishing of all labor, materials and equipment for construction of improvements to the emergency back-up power system at the main government center. Improvements include but are not limited to installation of two packaged generator systems, associated conduits, switch gear, load banks, controls and mechanical screening.

**Article 2. CONTRACT DOCUMENTS**

The Contract Documents consist of: the Notice to Bidders; the bid forms which include the accepted Proposal, Proposal Bid Price Schedule, Subcontractors Listing, Section 10285.1 Statement, Section 10162 Questionnaire, Section 10232 Statement, and the Noncollusion Affidavit; the Contract which includes this Agreement with all Exhibits thereto, the Performance Bond and Payment Bond; Conditions of the Contract; the drawings listed and identified as the Project Plans; the Technical Specifications; all Addenda incorporated in those documents before their execution, all Contract Change Orders, Architect's Supplemental Instructions, and Construction Change Directives issued in accordance with the Contract Documents which may be delivered or issued after the Effective Date of this Agreement and are not attached hereto; the prevailing Labor Surcharge And Equipment Rental Rates (when required) as determined by the Department of Industrial Relations to be in effect on the date the Work is accomplished; all the obligations of County and of Contractor which are fully set forth and described therein; and all Contract Documents which are hereby specifically referred to and by such reference made a part hereof. All Contract Documents are intended to cooperate so that any work called for in one and not mentioned in the other is to be executed the same as if mentioned in all Contract Documents. Contractor agrees to perform all of its promises, covenants, and conditions set forth in the Contract Documents, and to abide by and perform all terms and conditions set forth therein. In case of conflict between this Agreement and any other contract document, this Agreement shall take precedence.

**Article 3. CONTRACT PRICE**

As compensation agreed upon for said Work, County shall pay or cause to be paid to Contractor, in full, and for the full contract price and compensation for said completion of the Work, including without limitation, all bonds and insurance, **THE NOT TO EXCEED SUM OF THREE HUNDRED EIGHTY-EIGHT THOUSAND NINE HUNDRED FORTY-FOUR DOLLARS (\$388,944.00)** which sum constitutes the Contract Price for the complete Project (the "Contract Price").

**Article 4. COMMENCEMENT AND COMPLETION**

The Work to be performed under this Contract shall commence on the date specified in the Notice to Proceed issued by County. The work shall be diligently prosecuted to completion within **150 Calendar days** commencing from the date shown on the Contractor Notice To Proceed.

County and Contractor recognize that time is of the essence of the Agreement and that County will suffer financial loss if the Work is not completed within the time specified in the above paragraph, plus any extensions thereof allowed in accordance with Article 4.3.5 of the Conditions of the Contract. They also recognize the delays, expense, and difficulties involved with proving in a legal proceeding 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 the sum of One Thousand dollars (\$1,500.00) per day, as liquidated damages and not as a penalty, for each and every calendar day's delay in finishing the Work in excess of the contract time prescribed herein.

**Article 5. PAYMENT**

Payment shall be made to Contractor as follows:

Progress payments are to be made semi-monthly based on the percentage of completion method reached by the Contractor and invoiced using Exhibit "A", marked "Application and Certificate for Payment" incorporated herein and made by reference a part hereof.

Retention of 5% of the total Contract price will be held at the option of County. Payment by County as herein provided shall not be construed as an absolute acceptance of defects in the work or improper materials.

**Article 6. INDEMNITY**

To the fullest extent allowed by law, Contractor shall defend, indemnify, and hold the County and its officers, directors, and employees harmless against and from any and all claims, suits, losses, damages, and liability for damages, including attorney's fees and other costs of defense brought for or on account of injuries to or death of any person, including but not limited to, workers and the public, or on account of injuries to or death of County employees, or damage to property, or any economic, consequential or special damages which are claimed or which shall in any way arise out of or be connected with 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, subcontractors or employees of any of these, except for the active, or sole negligence of the County, its officers and employees, or where expressly prescribed by statute.

The duty to indemnify and hold harmless the County specifically includes the duties to defend set forth in Section 2778 of the Civil Code. The insurance obligations of the Contractor are separate, independent obligations under the Contract Documents, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Contract Documents.

**Article 7. NOTICE OF DISCOVERY OF HAZARDOUS WASTE OR UNUSUAL CONDITIONS**

- A. Contractor shall promptly, and before the following conditions are disturbed, notify County in writing, in the event Contractor encounters, after excavating to a depth of greater than four (4) feet, any of the following:

1. Material that Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; or
  2. Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or
  3. Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract.
- B. 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 Contractor's cost of, or time required for performance of any part of the Work, an adjustment, excluding loss of anticipated profits, will be made and the Contract will be modified by a Change Order. County will notify Contractor of County's determination as to whether or not an adjustment of the Contract is warranted.
- C. In the event a dispute arises between County and Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between Contractor and County.

#### **Article 8. GUARANTEES**

Contractor shall repair or replace any or all work provided hereunder which is defective due to faulty materials, poor workmanship, or defective equipment at no expense to County, ordinary wear or tear and unusual abuse or neglect excepted, during the term of the Contract and for a period of one (1) year after contract Acceptance. Contractor shall be required to repair or replace any and all adjacent facilities or areas which have been damaged or displaced due to Contractor work performed under this Agreement at no expense to County during the term of this Contract and for a period of one (1) year after Contract Acceptance.

If a warranty or guarantee exceeding one (1) year is provided by the supplier or manufacturer of any equipment or materials used in this Project, or if a warranty or guarantee exceeding one (1) year is required elsewhere in these Contract Documents, then the guarantee for such equipment or 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 its suppliers or manufacturers.

The parties agree that this guarantee and the rights and obligations accruing therefrom shall be in addition to, and not by way of limitation in any manner whatsoever to, the rights, obligations, warranties or remedies otherwise provided for by law.

In the event of Contractor's failure to comply with the above mentioned conditions within ten (10) calendar days after being notified in writing by County, Contractor hereby authorizes County to proceed to have said defects repaired and made good at Contractor's expense, and Contractor will honor and pay all costs and charges therefore upon written demand.

#### **Article 9. NOTICE**

Any notice or other correspondence required to be given under this Agreement by either party to the other may be affected by personal delivery in writing or by mail, postage prepaid. Notices personally delivered during normal business hours shall be 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 in duplicate and shall be delivered to it as follows:

**To County:**  
County of El Dorado  
Chief Administrative Office  
3000 Fairlane Court, Suite One  
Attn.: Russ Fackrell, Facilities Manager

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

**To Contractor:**  
P N P Construction, Inc.  
281 Nevada Street  
Auburn, CA 95603  
Attn.: Shawn Eric Payne, President

Either party may change its address for notices by giving written notice pursuant to this Article.

**Article 10. VENUE**

Any litigation arising out of this Contract shall be brought in El Dorado County.

**Article 11. 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 of decreased or increased work, or of the cancellation of the Contract, or of any other act or acts by 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.

**Article 12. ASSIGNMENT OF ANTITRUST ACTIONS**

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor offers and agrees and will require all of its subcontractors and suppliers to agree to assign to the awarding body 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 the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to Contractor, without further acknowledgment by the parties.

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Government Code Sections 4550-4554, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under Government Code Sections 4550-4554 if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

**Article 13. TERMINATION BY COUNTY FOR CONVENIENCE**

County reserves the right to terminate the Contract at any time upon determination by County's representative that termination of the Contract is in the best interest of County. County shall issue Contractor a written notice specifying that the Contract is to be terminated.

Upon receipt of said written notice, Contractor shall stop all work under the Contract except: (1) work specifically directed to be completed prior to termination, (2) work the Inspector deems necessary to secure the project for termination, (3) removal of equipment and plant from the site of the Work, (4) action that is necessary to protect materials from damage, (5) disposal of materials not yet used in the Work as directed by County, and (6) clean up of the site.

If the Contract is terminated for County's convenience as provided herein, all finished or unfinished work and materials previously paid for shall, at the option of County, become its property. Contractor shall be paid an amount which reflects costs incurred for work provided to the date of notification of termination. In addition, Contractor shall be paid the reasonable cost, as solely judged by County, and without profit, for all work performed to secure the project for termination.

**Article 14. TERMINATION BY COUNTY FOR CAUSE**

If Contractor is adjudged as bankrupt or insolvent, or makes a general assignment for the benefit of its creditors or if a trustee or receiver is appointed for Contractor or for any of its property, or if Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or on more than one occasion fails to supply sufficient skilled workmen or suitable material or equipment, or on more than one occasion fails to make prompt payments to subcontractors for labor, materials, or equipment, or disregards the authority of the County's representative, or the Engineer, if one is appointed, or otherwise violates any provision of the Contract Documents, then County may, without prejudice to any other right or remedy and after giving Contractor and its Surety a minimum of ten (10) days from delivery of a written termination notice, terminate the services of Contractor and take equipment and machinery thereon owned by Contractor and finish the Work by whatever method County may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished.

Without prejudice to other rights or remedies County may have, if Contractor fails to begin delivery of materials and equipment, to commence Work within the time specified, to maintain the rate of delivery of material, to execute the Work in the manner and at such locations as specified, or fails to maintain a work program which will ensure County's interest, or, if Contractor is not carrying out the intent of the Contract, an Inspector's written notice may be served upon Contractor and the Surety on its faithful performance bond demanding satisfactory compliance with the Contract. If Contractor or its Surety does not comply with such notice within five (5) days after receiving it, or after starting to comply, fails to continue, County may exclude it from the premises and take possession of all material and equipment, and complete the Work by County's own forces, by letting the unfinished Work to another Contractor, or by a combination of such methods.

Where Contractor's services have been so terminated by County, said termination shall not affect any right of County against Contractor then existing or which may thereafter accrue. Any retention or payment of monies by County due Contractor will not release Contractor from compliance with the Contract Documents.

If the unpaid balance of the Contract price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, such excess shall be paid to Contractor. If the sums under the Contract are insufficient for completion, Contractor or Surety shall pay to County within five (5) days after the completion, all costs in excess of the Contract price. In any event, the cost of completing the Work shall be charged against Contractor and its Surety and may be deducted from any money due or becoming due from County.

The provisions of this Article shall be in addition to all other rights and remedies available to County under law.

If after notice of termination, it is determined for any reason that Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued. The Contract shall be equitably adjusted to compensate for such termination.

**Article 15. SUCCESSORS AND ASSIGNS**

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

**Article 16. REPORTING ACCIDENTS**

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 (\$500.00) occurs.

**Article 17. WORKERS' COMPENSATION CERTIFICATION**

Contractor shall comply with Labor Code Sections 3700 et seq., requiring it to obtain Workers' Compensation Insurance, and sign a certificate of knowledge thereof.

**CERTIFICATE OF KNOWLEDGE - LABOR CODE SECTION 3700**

I am aware of the provisions of Section 3700 of the 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 work of this Contract.

Signed: \_\_\_\_\_

Date August 8, 2013

**Article 18. WARRANTY**

August 8, 2013

Contractor warrants to County that materials and equipment furnished for the Work will be of good quality and new, unless otherwise required or permitted under the Contract Documents, 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 herein. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

**Article 19. RETAINAGE**

The retainage from payments is set forth in Section 6.4 "WITHHOLDINGS FROM PAYMENTS" of the Conditions of the Contract. Contractor may elect to receive one hundred percent (100%) of payments due as set forth in the Contract Documents, without retention, by depositing securities of equivalent value with County, in accordance with, and as set forth in Section 22300 of the Public Contract Code. Securities eligible for deposit hereunder shall be limited to those listed in Section 16430 of the Government Code, or bank or savings and loan certificates of deposit.

**Article 20. PREVAILING WAGE REQUIREMENTS**

In accordance with the provisions of California Labor Code Sections 1770 et seq., the general prevailing rate of wages in the county in which the Work is to be done has been determined by the Director of the California Department of Industrial Relations. These wage rates appear in the California Department of Transportation publication entitled General Prevailing Wage Rates. Interested parties can obtain the current wage information by submitting their requests to the Department of Industrial Relations, Division of Labor Statistics and Research, PO Box 420603, San Francisco CA 94142-0603, Telephone (415) 703-4708 or by referring to the website at <http://www.dir.ca.gov/dlsr/PWD>. The rates at the time of the bid advertisement date of a project will remain in effect for the life of the project in accordance with the California Code of Regulations, as modified and effective January 27, 1997.

Copies of the general prevailing rate of wages in the county in which the Work is to be done are also on file at the Chief Administrative Office, Facilities Division, and are available upon request.

In accordance with the provisions of Labor Code 1810, eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and Contractor and any subcontractor employed under this Contract shall conform to and be bound by the provisions of Labor Code Sections 1810 through 1815.

**Article 21. BUSINESS LICENSE**


The County Business License Ordinance provides that 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 Ordinance Code Section 5.08.070. Contractor warrants and represents that it shall comply with all of the requirements of the County Business License Ordinance, where applicable, prior to beginning work under this Contract and at all times during the term of this Contract.



IN WITNESS WHEREOF, the said Chief Administration Office, Facilities Division of the County of El Dorado, State of California, has caused this Agreement to be executed by County's Purchasing Agent, on its behalf, and the said Contractor has signed this Agreement the day and year written below.

COUNTY OF EL DORADO

Dated: 8/27/13

  
Chair  
Board of Supervisors  
County of El Dorado

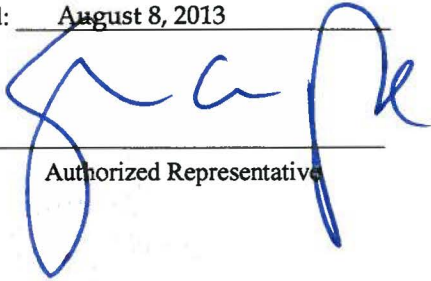
ATTEST: James S. Mitrison  
Clerk of the Board of Supervisors

CONTRACTOR

By Marcie MacFarland  
Marcie MacFarland, Deputy Clerk

Dated: August 8, 2013

PNP Construction, Inc.  
Name of Company

By:   
Authorized Representative

806848                      68-0483670  
License No.                      Federal Employer Identification No.

NOTE: If Contractor is a corporation, the legal name of the corporation shall be set forth above together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation; if Contractor is a co-partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the co-partnership; and if Contractor is an individual, his/her signature shall be placed above. Contractor executing this document on behalf of a corporation or partnership shall be prepared to demonstrate by resolution, article, or otherwise that it is appropriately authorized to act in these regards. For such corporation or partnership, such authority shall be demonstrated to the satisfaction of County. If signature is by an agent, other than officer of a corporation or a member of a partnership, an appropriate Power of Attorney shall be on file with the Department prior to signing this document.

Mailing Address: 281 Nevada Street

Business Address: 281 Nevada Street

City, Zip: Auburn, 95603

Phone: 530-885-9360

Fax: 530-885-9365

END OF CONTRACT



**APPLICATION AND CERTIFICATE FOR PAYMENT - EXHIBIT A**

TO OWNER:  
 El Dorado County  
 360 Fair Lane  
 Placerville, CA 95667  
 FROM CONTRACTOR:

PROJECT:

APPLICATION #: 1  
 PERIOD TO:  
 PROJECT NOS:  
 CONTRACT DATE:

Distribution to:

<input type="checkbox"/>	County
<input type="checkbox"/>	Cont Adm
<input type="checkbox"/>	Contractor
<input type="checkbox"/>	

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract.  
 Continuation Sheet is attached.

1. ORIGINAL CONTRACT SUM-----	\$	<input type="text"/>
2. Net change by Change Orders-----	\$	<input type="text"/>
3. CONTRACT SUM TO DATE (Line 1 +/- 2)	\$	<input type="text"/>
4. TOTAL COMPLETED & STORED TO DATE-\$ (Column G on Continuation Sheet)		<input type="text"/>
<b>5. RETAINAGE:</b>		
a. _____ of Completed Work (Columns D+E on Continuation Sheet)	\$	<input type="text"/>
b. _____ of Stored Material (Column F on Continuation Sheet)	\$	<input type="text"/>
Total Retainage (Line 5a + 5b or Total in Column 1 of Continuation Sheet-----	\$	<input type="text"/>
6. TOTAL EARNED LESS RETAINAGE----- (Line 4 less Line 5 Total)	\$	<input type="text"/>
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)-----	\$	<input type="text"/>
8. CURRENT PAYMENT DUE-----	\$	<input type="text"/>
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	<input type="text"/>

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR:

By: \_\_\_\_\_ Date: \_\_\_\_\_

State of: California  
 County of: El Dorado

**CERTIFICATE FOR PAYMENT**

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Contract Administrator certifies to El Dorado County that to the best of the Contract Administrator's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED ----- \$ \_\_\_\_\_

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

CONTRACT ADMINISTRATOR

By: \_\_\_\_\_ Date: \_\_\_\_\_

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Contract Administrator		
Total approved this Month		
<b>TOTALS</b>		
<b>NET CHANGES by Change Order</b>		

