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**County of El Dorado, State of California  
Community Development Agency  
Transportation Division**

**CONTRACT NO. PW 13-30674  
CIP NO. 95170**

for the construction of  
**MONTGOMERY ESTATES AREA 2 EROSION CONTROL PROJECT**

**THIS AGREEMENT** ("Agreement") approved by the Board of Supervisors this 30th day of July, 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 Community Development Agency, Transportation Division thereof, the party of the first part hereinafter called "County," and GREG C. HERBACK, dba HERBACK GENERAL ENGINEERING, the 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 the Contract is an improvement over which County shall exercise general supervision. County, therefore, shall have the right, but not the duty, to assume full and direct control over the Contract whenever County, at its sole discretion, shall determine that its responsibility is so required.

Contractor shall complete, in accordance with the Contract Documents, the Work as specified or indicated under the Bid Schedule(s) of County's Contract Documents entitled:

**Montgomery Estates Area 2 Erosion Control Project, dated June 2013**

The Project area is located in eastern El Dorado County, in the Tahoe Basin, south of Pioneer Trail, east of Trout Creek, and west of Cold Creek. The Work to be done is shown on the Plans, and generally consists of, but is not limited to the construction of erosion control improvements including culverts, rock-lined channels, blanket-lined channels, curb and gutter, drainage inlets, sediment traps, basins, and slope stabilization. Other items or details not mentioned above, that are required by the Plans, Standard Specifications, or these Special Provisions, shall be performed, constructed, or installed.

**Article 2. CONTRACT DOCUMENTS**

The Contract Documents consist of: the Notice to Bidders; the bid forms which include the accepted Proposal, Bid Price Schedule and Total Bid, Subcontractors Listing, Equal Employment Opportunity Certification, Section 10285.1 Statement, Section 10162 Questionnaire, Section 10232 Statement, Noncollusion Affidavit, Debarment and Suspension Certification, Small Business Status, Non-Lobbying Certification for Federal-Aid Contracts, Disclosure of Lobbying Activities (Standard Form LLL), the Contract which includes this Agreement with all Exhibits thereto, the Performance Bond; and Payment Bond, the drawings listed and identified as the Project Plans; the Special Provisions which incorporate by reference the Caltrans Standard Plans, dated May 2006, and Standard Specifications, dated May 2006, Amendments to the May 2006 Standard Specifications; and standard drawings from the Design and Improvement Standards Manual of County of El Dorado, revised March 8, 1994 including Resolutions 199-91 and 58-94 to adopt

changes to the Design and Improvement Standards Manual; all Addenda incorporated in those documents before their execution; and all Contract Change Orders 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 California Department of Transportation 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 thereof. 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. COVENANTS AND CONTRACT PRICE**

County hereby promises and agrees with Contractor to employ, and does hereby employ, said Contractor to provide the material and to do the Work according to the terms and conditions of the Contract Documents duplicitous herein contained and referred to, for the prices hereinafter set forth, and hereby contracts to pay the same at the time, in the manner and upon the conditions herein set forth; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained. County shall pay Contractor for the completion of the Work in accordance with the Contract Documents in current funds the Contract Prices named in Contractor's Bid and Bid Schedule, a copy of which is attached hereto as Exhibit A.

### **Article 4. COMMENCEMENT AND COMPLETION**

The Work to be performed under the Contract shall commence on the date specified in the Notice to Proceed by County. The Work shall be fully completed within the time specified in the Notice to Proceed pursuant to Section 4 of the Special Provisions.

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 Section 4 of the Special Provisions annexed hereto, plus any extensions thereof allowed in accordance with Section 4 of the Special Provisions. 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 **Two Thousand Four Hundred dollars (\$2,400.00) per day**, as liquidated damages and not as penalty, for each and every calendar day's delay in finishing the Work in excess of the number of days prescribed herein.

### **Article 5. INDEMNITY**

To the fullest extent allowed by law, Contractor shall defend, indemnify, and hold County, agencies of the federal government, and the State of California (State), the Tahoe Regional Planning Agency (TRPA), and the California Tahoe Conservancy (CTC) and each of its members, officers, agents, directors, and employees harmless against and from any and all claims, suits, losses, demands, 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, federal government agency, State, TRPA, or CTC 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 County, agencies of the federal government, State, TRPA, CTC, Contractor, subcontractors or employees of any of these, except active or sole negligence of County, agencies of the federal government, State, TRPA, CTC, and each of its members, officers, agents, directors, and employees, or where expressly prescribed by statute.

In those instances where County has entered or will enter into agreements with adjacent property owners or has obtained easements from private property owners upon whose property it will be necessary for Contractor to enter to perform the Work to be done under the Contract, Contractor shall indemnify such

property owners in the same manner and to the same extent as County is indemnified herein.

The duty to indemnify and hold harmless as set forth above, specifically includes the duties to defend set forth in Section 2778 of the Civil Code.

The insurance obligations of 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 6. 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 from acceptance of the Contract.

Contractor shall be required to repair or replace any and all adjacent facilities or areas which have been damaged or displaced due to Contractor's work performed under this Agreement at no expense to County during the term of this Agreement and for a period of one (1) year from acceptance of the Contract.

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 7. VENUE**

Any litigation arising out of this Contract shall be brought in County of El Dorado and governed by California law.

## **Article 8. 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 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 4450-4554, 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 4450-4554 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 9. 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 10. 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 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 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 11. 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 8/1/13

#### **Article 12. WARRANTY**

Contractor warrants to County that materials and equipment furnished for the Work will be 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 therein. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

#### **Article 13. RETAINAGE**

The retainage from payment is set forth in "Payments" of the Special Provisions. 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 14. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 7 CFR Part 3016 in the award and administration of this United States Forest Service assisted Contract. The applicable requirements of 7 CFR Part 3016 is as follows:

- (a) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.*
- (1) Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
  - (2) Affirmative steps shall include:
    - (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    - (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
    - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
    - (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
    - (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
    - (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a)(2) (i) through (v) of this Article.

Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as County deems appropriate. Contractor shall include this assurance in every subcontract entered into as a result of this Agreement.

## **Article 15. PROMPT PAYMENT OF SUBCONTRACTORS**

### Prompt Progress Payment to Subcontractors

Attention is directed to Section 7108.5 of the Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment unless otherwise agreed to in writing. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

### Prompt Payment of Withheld Funds to Subcontractors

The County shall hold retainage from the prime Contractor, as determined by the County, of the contract work and pay retainage to the prime Contractor in accordance with "Payments" and "Payment of Withheld Funds" of these special provisions. The prime Contractor or subcontractor shall return all monies withheld in retention from the subcontractor within 30 days after receiving payment of withheld funds from the County or prime contractor as applicable. Any violation of this provision shall subject the violating Contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair and contractual,

administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or non payment by the prime contractor, deficient subcontract or performance, and/or noncompliance by a subcontractor.

#### **Article 16. PREVAILING WAGE REQUIREMENTS**

In accordance with the provisions of California Labor Code sections 1770, et seq., including but not limited to 1773, 1773.1, 1773.2, 1773.6 and 1773.7, the general prevailing rate of wages in 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 County in which the Work is to be done are also on file at the Community Development Agency, Transportation Division's principal office, and shall be made available upon request, and in the case of projects involving federal funds, federal wage requirements as predetermined by the United States Secretary of Labor have been included in the Contract Documents. Addenda to modify the federal minimum wage rates, if necessary, will be issued as described in the Project Administration section of this Notice to Bidders.

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.

In the case of federally funded projects, where federal and state prevailing wage requirements apply, compliance with both is required. This project is funded in whole or in part by federal funds. Contractor's attention is directed to Section 14 of these Specifications and the requirements of, and compliance with, the Copeland Act (18 U.S.C. 874 and 29 CFR Part 3), the Davis-Bacon Act (40 U.S.C. 276a to 276a-7 and 29 CFR Part 5), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330 and 29 CFR Part 5).

If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, Contractor and subcontractors shall pay not less than the higher wage rate. The County will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by Contractor and subcontractors, Contractor and subcontractors shall pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question.

#### **Article 17. NONDISCRIMINATION**

Attention is directed to the following Notice that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations.

#### **NOTICE OF REQUIREMENT FOR NONDISCRIMINATION PROGRAM (GOV. CODE, SECTION 12990)**

Attention is directed to the "Nondiscrimination Clause," set forth in Section 7-1.01A(4), "Labor Nondiscrimination," of the Standard Specifications, which is applicable to all nonexempt State contracts and subcontracts, and to the "Standard California Nondiscrimination Construction Contract Specifications" set forth therein. The specifications are applicable to all nonexempt State construction contracts and subcontracts of \$5,000 or more.

This Contract is subject to federal and state contract nondiscrimination and compliance requirements including Government Code, Section 12990, and shall be construed and interpreted in compliance with said provisions.

During the performance of this contract, Contractor agrees as follows:

- (1) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of



7 CFR Part 3016 in the award and administration of USDA assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as County deems appropriate. Each subcontract signed by the bidder must include this assurance.

#### **Article 18. CONTRACTOR ASSURANCES**

By executing this Contract, Contractor certifies that it:

- a. Will abide by all administrative, contractual or legal remedies in instances where Contractor violates or breaches contract terms, and will comply with sanctions and penalties as the Contract Administrator deems appropriate.
- b. Will comply with the termination for cause and termination for convenience provisions of the Contract including the manner by which such termination may be effected and the basis for settlement afforded by those provisions.
- c. Will comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
- d. Will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
- e. Will comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor regulations (29 CFR part 3).
- f. Will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
- g. Will comply with County, State of California, and federal requirements and regulations pertaining to: (a) reporting; (b) patent rights with respect to any discovery or invention which arises or is developed in the course of or under this Contract; and (c) copyrights and rights in data.
- h. Will comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 [h]), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- i. Will comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.: 94-163, 89 Stat. 871).
- j. Will comply with: (i) Section 504 of the Rehabilitation Act of 1973 (Rehabilitation Act) which prohibits discrimination on the basis of disability in federally assisted programs; (ii) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (iii) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

Any subcontract entered into as a result of this Contract shall contain all of the provisions of this Article.

#### **Article 19. 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.

#### **Article 20. CONTRACT ADMINISTRATOR**

The County Officer or employee with responsibility for administering this Agreement is Steve Kooyman, P.E., Acting Deputy Director of Engineering, Transportation Planning and Land Development, Community Development Agency, Transportation Division, or successor.

#### **Article 21. RETENTION AND ACCESS TO RECORDS**

All accounting records and other supporting papers of Contractor's connected with performance under this Agreement shall be maintained for a minimum of four (4) years from the date of final payment by County or when all other pending matters are closed and shall be held open to inspection and audit by representatives of County, United States Forest Service (USFS), California Tahoe Conservancy (CTC), Comptroller General of the United States, or any duly authorized representative of the Federal Government and copies thereof shall be furnished upon request.

Contractor and its subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including but not limited to, the costs of administering the various contracts. All of the above-referenced parties shall make such materials available at their respective offices at all reasonable times during the contract period and for four (4) years from the date of final payment by County or all other pending matters are closed. Representatives of County, USFS, CTC, Comptroller General of the United States, or any duly authorized representative of the Federal Government shall have access to any books, documents, papers, and records that are pertinent to the contract for audit, examination, excerpts, transactions, and copies thereof shall be furnished upon request.

In order to monitor the progress of projects funded in whole or in part by federal funds, federal agencies rely heavily on inspection data. Inspections shall be performed on a regular basis and data compiled in report form, as necessary, in conformance with 7 CFR 3016.40(c). Information to be supplied by Contractor shall be reported to County on an as requested basis.

#### **Article 22. BUY AMERICA REQUIREMENTS**

Attention is directed to the "Buy America" requirements of the Surface Transportation Assistance Act of 1982 (Section 165) and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Sections 1041(a) and 1048(a), and the regulations adopted pursuant thereto. In conformance with the law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this project shall occur in the United States with the exception that pig iron and processed, pelletized, and reduced iron ore manufactured outside the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of such steel or iron materials shall be considered a manufacturing process subject to the "Buy America" requirements.

A Certificate of Compliance, conforming to the provisions in Section 6-1.07, "Certificates of Compliance," of the Standard Specifications, shall be furnished for steel and iron materials. The certificates, in addition to certifying that the materials comply with the specifications, shall also specifically certify that all manufacturing processes for the materials occurred in the United States, except for the above exceptions.

The requirements imposed by the law and regulations do not prevent a minimal use of foreign steel and iron materials if the total combined cost of the materials used does not exceed one-tenth of one percent (0.1%) of the total contract cost, or \$2,500, whichever is greater. Contractor shall furnish the Engineer acceptable documentation of the quantity and value of any foreign steel and iron prior to incorporating such materials into the work.

In accordance with Section 502 of the Energy and Water Development Appropriations Act, 2002, Public Law 107-66, it is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.

#### **Article 23. ELIGIBLE WORKERS**

Contractor shall ensure that all employees complete an I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). Contractor shall comply with regulations regarding certification and retention of completed forms. Subcontractors shall also comply with these requirements.

**Article 24. AUTHORIZED SIGNATURES**

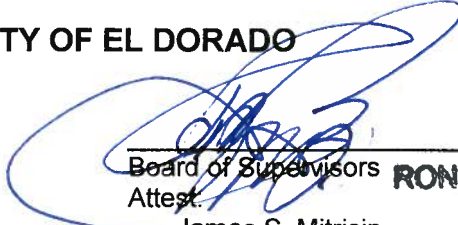
The parties hereto represent that the undersigned individuals executing this Agreement on their behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

IN WITNESS WHEREOF, the said Community Development Agency, Transportation Division of the County of El Dorado, State of California, has caused this Agreement to be executed by County's Board of Supervisors, on its behalf, and the said Contractor has signed this Agreement the day and year written below.

**COUNTY OF EL DORADO**

Dated: 8-15-13

Board Date: 7-30-13

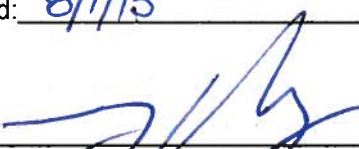
  
Board of Supervisors **RON BRIGGS**  
Attest:  
James S. Mitrisin  
Clerk of the Board of Supervisors

Dated: 8-15-13

  
Deputy Clerk

**GREG C. HERBACK, dba HERBACK GENERAL ENGINEERING**

Dated: 8/1/13

By:   
Greg C. Herback, individually and doing  
business as Herback General Engineering

486035 License No. 61-1449376 Federal Employer Identification #

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 in 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 they are 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 County prior to signing this document.

Mailing Address 2351 Nowlin Road

Business Address 2351 Nowlin Road

City, Zip Minden, NV 89423

Phone (775) 267-6800 Fax (775) 267-6801

**EXHIBIT A  
CONTRACTOR'S BID AND BID SCHEDULE  
MONTGOMERY ESTATES AREA 2 EROSION CONTROL PROJECT  
CONTRACT NO. PW 13-30674  
CIP NO. 95170**

ITEM NO.	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE (in Figures)		ITEM TOTAL (in Figures)	
1	Mobilization	1	LS	18,785	00	18,785	00
2	Traffic Control	1	LS	14,425	00	14,425	00
3	Sweeping	35	DAY	275	00	9,625	00
4	Trench and Excavation Safety	1	LS	1,450	00	1,450	00
5	Humus For Topsoil Mix	19	CY	165	00	3,135	00
6	Mulch and Mulch Application	60	CY	180	00	10,800	00
7	Tackifier and Tackifier Application	18540	SF	0	25	4,635	00
8	Install & Maintain Tire Wash Area (Off Pavement)	2	EA	2,000	00	4,000	00
9	Install & Maintain Concrete Wash Area	1	EA	440	00	440	00
10	Install & Maintain Weighted Fiber Rolls or Gravel-Filled Rolls	25	EA	75	00	1,875	00
11	Install & Maintain Filter Fence	37	LF	16	00	592	00
12	Install & Maintain Visqueen with Gravel Bags or Gravel-Filled Rolls	1073	LF	6	50	6,974	50
13	Install and Maintain Drain Inlet Protection	21	EA	244	00	5,124	00
14	Install and Maintain Wooden Tree Trunk Protection	9	EA	165	00	1,485	00
15	Install & Maintain Tree Protection & Construction Limit Fence	2130	LF	4	48	9,542	40
16	Tree Removal	3	EA	615	00	1,845	00
17	Remove existing Drainage Inlet	7	EA	1,074	00	7,518	00
18	Drainage Inlet	6	EA	4,225	00	25,350	00

ITEM NO.	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE (in Figures)		ITEM TOTAL (in Figures)	
19	Drainage Inlet - No Hood	1	EA	3,400	00	3,400	00
20	36" Sediment Trap	6	EA	3,886	00	23,316	00
21	48" Sediment Trap	7	EA	4,205	00	29,435	00
22	Rolled Curb and Gutter with Tie-In Pavement	51	LF	130	00	6,630	00
23	Remove Existing Pipe	10	LF	48	00	480	00
24	12" HDPE (In Pavement)	25	LF	145	00	3,625	00
25	12" HDPE (Out of Pavement)	21	LF	77	00	1,617	00
26	15" HDPE (In Pavement)	22	LF	155	00	3,410	00
27	15" HDPE (Out of Pavement)	27	LF	120	00	3,240	00
28	18" HDPE (Out of Pavement)	165	LF	115	00	18,975	00
29	18" HDPE Perforated Pipe	66	LF	139	00	9,174	00
30	12" FES	1	EA	400	00	400	00
31	15" FES	1	EA	450	00	450	00
32	18" FES	2	EA	500	00	1,000	00
33	No. 1 Backing	330	SF	25	00	8,250	00
34	Top Rock	1474	LF	18	00	26,532	00
35	Rock Breast Wall	220	LF	40	00	8,800	00
36	Rock-Lined Channel	137	LF	97	00	13,289	00
37	Blanket-Lined Channel	267	LF	45	00	12,015	00
38	Basin Spillway with Concrete Cutoff Wall	2	EA	1,587	00	3,174	00
39	Miscellaneous Paving	209	SF	18	00	3,762	00

ITEM NO.	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE (in Figures)		ITEM TOTAL (in Figures)	
40	New Pipe Connection To SDMH	2	EA	1,450	00	2,900	00
41	Pipe Plug	6	EA	225	00	1,350	00
42	Mid Columbine Basin	1	LS	3,600	00	3,600	00
43	Upper Columbine Basin	1	LS	12,500	00	12,500	00
44	Lower Columbine Basin	1	LS	8,500	00	8,500	00
45	Marshall Basin	1	LS	5,500	00	5,500	00
46	Toiyabe Basin	1	LS	2,025	00	2,025	00
47	Overexcavate and Remove Unsuitable Material	50	CY	72	00	3,600	00
48	Rock Fracturing and Removal	10	CY	200	00	2,000	00
<b>TOTAL BID</b>						<b>350,549</b>	<b>90</b>

(LS) Denotes Lump Sum