

ORIGINAL

County of El Dorado, State of California

AGREEMENT #559-C1499

BID #14-968-047

COUNTY OF EL DORADO JOB ORDER CONTRACTING

THIS AGREEMENT ("Agreement") approved by the County of El Dorado Purchasing Agent, this 22nd day of April, in the year of 2014, 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 **FREGOSO BUILDERS, INC.**, a California Corporation, party of the second part hereinafter called "Contractor."

RECITALS

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

WHEREAS, Contractor has duly submitted a bid response for the captioned contract 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:

COUNTY OF EL DORADO JOB ORDER CONTRACTING

This Contract is an indefinite quantity contract pursuant to which the Contractor will perform an ongoing series of individual projects involving minor construction, renovation, repair, alteration, rehabilitation, maintenance, or other repetitive work on existing County facilities at different locations throughout El Dorado County. The work of this Contract will be set forth in the Detailed Scope of Work referenced in the individual Job Orders issued under this Contract. The Contractor is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

This Contract is for construction work and related services to be performed at any location within El Dorado County.

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 Listings, 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 as revised and attached hereto as Exhibit "A"; Job Orders, Construction Task Catalog®, the Technical Specifications; all Addenda incorporated in those documents before their execution, 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. If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: The Contract; Job Orders; Supplemental Job Orders; Supplemental or Special Conditions; the General Conditions; the Specifications; the Plans. 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

The Minimum Contract Value for this Contract is \$50,000.00. The Contractor is guaranteed the opportunity to price Job Orders totaling at least \$50,000.00 during the one (1) year Contract term unless Contract is terminated by County for cause. The Maximum Contract Value is \$2,000,000.00 with one option to increase the Maximum Contract Value to the amount currently authorized by the California Public Code during the term of the contract. At no time may the sum of the outstanding Job Orders exceed the amount of the Payment Bond and Performance Bond. A Job Order is outstanding until the County has accepted the Project described in the Job Order by execution of a Notice of Completion. The Contractor may be issued Job Orders totaling the Maximum Contract Value during the term of the Contract. The Contractor is not guaranteed to receive this volume of Job Orders. It is merely an estimate. The Owner has no obligation to issue Job Orders in excess of the Minimum Contract Value.

Article 4. COMMENCEMENT AND COMPLETION

The Work to be performed under this Contract shall commence on the date specified in the Job Order issued by County. The work shall be diligently prosecuted to completion within the time specified on the Notice to Proceed for each individual Job Order.

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 Section 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 and one half percent (1.5%) of the Job Order Price with a minimum sum of \$250.00 and a maximum sum of \$2,500.00, 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. The County may increase this sum based on an urgency factor established at the time of the issuance of the Request for Proposal for an individual Job Order.

Article 5. 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 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 Job Order Completion Time and for a period of one (1) year after Job Order 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 Job Order Completion Time and for a period of one (1) year after Job Order Acceptance.

If a warranty or guarantee exceeding one (1) year is provided by the supplier or manufacturer of any equipment or materials used in a Job Order, 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. 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:

Fregoso Builders, Inc.
9795 Business Park Dr., Suite D
Sacramento, CA 95827

Attn.: Arturo Maxwell Fregoso
President

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

Article 8. VENUE

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

Article 9. 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 10. 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 11. TERMINATION BY COUNTY FOR CONVENIENCE

County reserves the right to terminate the Contract, a Job Order or any portion of a Job Order 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 12. 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, including the JOC System License Fee and Agreement, 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.

Contractor shall be paid for all Work performed prior to the effective date of termination. If the sums under the Job Order Price are insufficient for completion, Contractor or Surety shall pay to County within five (5) days after the completion, all costs in excess of the Job Order 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 13. 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 14. REPORTING ACCIDENTS

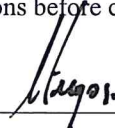
Contractor shall prepare and submit (within 24 hours of such incidents) reports of accidents at the site and anywhere else the work is in progress in which bodily injury is sustained or property loss in excess of Five Hundred Dollars (\$500.00) occurs.

Article 15. 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 4-24-14

Article 16. WARRANTY

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 17. 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 18. 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. 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 19. AUDIT BY CALIFORNIA STATE AUDITOR

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

Article 20. TAXES

Contractor certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Contractor to County. Contractor agrees that it shall not default on any obligations to County during the term of this Agreement.

Article 21. CHILD SUPPORT COMPLIANCE ACT

For any Agreement in excess of \$100,000, the Contractor acknowledges in accordance with Public Contract Code 7110, that:

- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

Article 22. 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 23. CONTRACT ADMINISTRATOR

The County Officer or employee with responsibility for administering this Agreement is Russ Fackrell, Facilities Manager, 3000 Fairlane Court, Suite One, Placerville, CA, Chief Administrative Office, or successor.

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.

Article 25. PARTIAL INVALIDITY

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

Article 26. ENTIRE AGREEMENT

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

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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 Board of Supervisors, on its behalf, and the said Contractor has signed this Agreement the day and year written below.

COUNTY OF EL DORADO

By: *Norma Santiago* Dated: 4-22-14
Chair
Board of Supervisors
County of El Dorado
Norma Santiago

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

By: *Joseph Tyler* Dated: 4-22-14
Deputy Clerk

FREGOSO BUILDERS, INC.

By: *Arturo* Dated: 4-24-14
Arturo Maxwell Fregoso
President

By: *Kelly Fregoso* Dated: 4-24-14
Kelly Fregoso
Treasurer

License No.: 801995 Federal Employer Identification No. 68-048116

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: 9795 BUSINESS PARK^{2A} STE D

Business Address: SAME

City, Zip: SACRAMENTO CA 95827

Phone: 916.275.5372 Fax: 916.363.7633

* END OF AGREEMENT *

JOC System License and Fee Agreement

This Agreement is made this 22nd day of April, 2014 by and between **Fregoso Builders, Inc.**, whose address is **9795 Business Park Drive, Suite D, Sacramento, California 95827** ("Contractor"), and **The Gordian Group, Inc.**, whose address is **140 Bridges Road, Suite E, Mauldin, South Carolina 29662** ("Gordian").

WHEREAS, **County of El Dorado** ("Owner") has awarded Contract No. **559-C1499** ("Contract") to the Contractor.

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and Owner ("Owner Contract"), Gordian has agreed to provide Contractor with a license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, the parties agree to the terms and conditions of the following JOC System License and Contractor License Fee ("Agreement"):

Gordian hereby grants to Contractor, and Contractor hereby accepts from Gordian for the term of the Contract, or the term of the Owner Contract, whichever is shorter, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Contractor's responsibilities under the Contract ("Limited Purpose"). Contractor hereby agrees that the Proprietary Information shall include, but is not limited to, Gordian's PROGEN[®] and/or eGordian[®] JOC information management applications and support documentation, Construction Task Catalog[®], training materials, and any other proprietary materials provided to Contractor by Gordian. In the event the Contract expires or terminates, or the Owner Contract expires or terminates, this JOC System License shall terminate and Contractor shall return all Proprietary Information in its possession to Gordian.

Contractor acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Contractor shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

In accordance with the terms of the Contract, Contractor hereby agrees to pay Gordian a license fee ("Contractor License Fee") equal to one percent (1%) of the value of each Job Order, Purchase Order or other similar purchasing document issued to Contractor by Owner pursuant to the Contract. Contractor further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Contractor's receipt of each Job Order, Purchase Order or other similar purchasing document from the Owner. Contractor shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 751959, Charlotte, NC 28275-1959. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month. In the event a modification to an issued Job Order results in a reduction of the value of the Job Order, Gordian shall issue a credit to Contractor only when the applicable license fee credit is greater than or equal to \$25.00.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Contractor acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Contractor, subject to federal, state and local laws related to public disclosure. Contractor further acknowledges that a breach of any of the terms of this Agreement by Contractor will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes

necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Contract, the Owner Contract, or any Job Order, Purchase Order or similar purchasing document issued to Contractor by Owner, this Agreement shall take precedence.

Fregoso Builders, Inc.

The Gordian Group, Inc.

Signature: [Handwritten Signature]

Signature: [Handwritten Signature]

Name: ARTURO M FREGOSO

Name: Ammon T. Leshner

Title: PRESIDENT

Title: Vice President of Legal Affairs

ACKNOWLEDGMENT OF [Contractor]

STATE OF California

COUNTY OF Sacramento

I, the undersigned Notary Public, do hereby certify that the foregoing instrument was acknowledged before me this 25th day of April, 2014 and the document was executed by the above named Arturo Fregoso, President of his/her own free will.

Witness my hand and seal this 25th day of April, 2014.

[Handwritten Signature]
Signature of Notary Public



Place Notary Seal Above

* END OF JOC CONTRACT *

CONTRACTOR'S GUARANTEE
COUNTY OF EL DORADO JOB ORDER CONTRACTING
AGREEMENT #559-C1499
BID #14-968-047

As Contractor for the above referenced project, we hereby agree to 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 the County of El Dorado, ordinary wear and tear and unusual abuse or neglect excepted, during the term of the contract and provide the manufacturer one (1) year warranty period from the date of final acceptance of the work.

We further agree to repair or replace any and all adjacent areas which have been damaged or displaced due to our work performed under this contract at no expense to the County of El Dorado during the term of this contract for a period of one (1) year from the date of final acceptance of the work.

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. We expressly agrees to act as co-guarantor of such equipment and materials, and we 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.

We agree that this guarantee and the rights and obligations accruing there from shall be in addition 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 our failure to comply with the above mentioned conditions with (ten) 10 days after being notified in writing by the County of El Dorado, we hereby authorize the County of El Dorado to proceed to have said defects repaired and made good at our expense and we will honor and pay all costs and charges therefore upon written demand.

EXECUTED on this 24th day of April, 2014.

CONTRACTOR

By [Signature]

Title PRESIDENT

By [Signature]

Title Treasurer

*** END OF CONTRACTOR'S GUARANTEE ***

EXHIBIT "A"
REVISED CONDITIONS OF THE CONTRACT

ARTICLE 1

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

- 1.1.1 **County:** The County of El Dorado, a political subdivision of the State of California.
- 1.1.2 **Owner:** The County of El Dorado is the Owner and is identified as the Owner in the Contract and these Contract Conditions. The term Owner, and pronouns in place of the same shall mean the County of El Dorado acting by and through its duly authorized representative.
- 1.1.3 **Owner's Representative:** The Chief Administrative Office, Facilities Manager, or designated representative.
- 1.1.4 **Architect:** The person holding a valid California State Architect's license, whose firm has been designated within the Contract Documents as the Architect to provide services on the Project. When the Architect is referred to within the Contract Documents and no Architect has in fact been designated, then the matter shall be referred to the County and shall be interpreted as Owner's Representative.
- 1.1.5 **Project Manager:** Project Manager or such other designated representative of the Owner. The Project Manager has such duties and authority as may be set forth in the Contract Documents.
- 1.1.6 **Contractor:** The person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The term Contractor refers to the Contractor or the Contractor's authorized representative.
- 1.1.7 **Inspector:** The individual designated by the Owner as the Inspector as set forth in Section 2.1.2.
- 1.1.8 **Subcontractor:** Those contractors, of whatever tier, furnishing labor or material, or both, for the Work under the Contract with the Contractor.
- 1.1.9 **Substantial Completion:** The stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.
- 1.1.10 **Final Acceptance:** Conditions upon which the County will accept Work as satisfactorily completed in accordance with the Contract Documents. Requirements include, but are not limited to;
1. All Systems having been tested and accepted as having met requirements of the Contract Documents.
 2. All as-built drawings and 2 copies of the manufacturer's product data and installation instructions having been submitted by the Contractor, reviewed by the Architect, and accepted by the Owner.
 3. All punch list work, as directed by the Owner, having been completed by the Contractor.
 4. Acceptance of the Work by the Purchasing Agent.
- 1.1.11 **Final Payment:** The Final Payment shall be the only Payment made to Contractor and shall not be considered to be the payment of any or all of the retention.
- 1.1.12 **Architect's Supplemental Instructions/Instruction Bulletins:** A written order of the Architect and reviewed by the Owner's Representative directing the Contractor to provide supplemental instructions,

interpretations, or conduct minor changes in work involving neither extra cost nor extra time and being consistent with the scope and functioning of the project.

- 1.1.13 **Construction Change Directive:** A written order issued by the Architect and signed by the Owner directing a change in the Work and stating a proposed basis for adjustment, if any, of Contract Time or Sum. The Owner may by Change Directive, without invalidating the Contract and without Contractor's agreement, order changes in the Work. This procedure will be used in the absence of agreement between Owner and Contractor, for subsequent inclusion in a Supplemental Job Order.
- 1.1.14 **Supplemental Job Order:** All changed, deleted, omitted, or extra work shall be contained in a Supplemental Job Order the value of which shall be calculated according to the procedures for developing and pricing all Job Orders.
- 1.1.15 **Contract Documents:** The Contract Documents shall include the documents described in Article 2 of the Contract, including Job Orders, Supplemental Job Orders, Architect's Supplemental Instructions, and Construction Change Directives.
- 1.1.16 **Work:** The construction and services required by the Contract Documents, including all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.
- 1.1.17 **Project:** The total construction of the Work performed under the Contract Documents.
- 1.1.18 **Plans:** The graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams., Plans may be included with each individual Job Order and are a part of the Contract Documents.
- 1.1.19 **Technical Specifications:** That portion of the Contract Documents consisting of the technical written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- 1.1.20 **Claim:** A demand or assertion by the Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. Claims must be made by written notice and shall include a demand for the Owner's decision. The responsibility to substantiate claims and to resolve the claims of subcontractors of whatever tier shall rest with the Contractor.
- 1.1.21 **Work Not Included:** Except for such auxiliary work as shown or specified, or is necessary as part of the construction, the following is NOT included in this contract: Any work shown but marked "Not in Contract" (NIC) or otherwise designated to be done under another contract or by Owner.
- 1.1.22 **Furnish (material):** To supply and deliver to the project ready for installation and in operating condition.
- 1.1.23 **Install (service or labor):** To place in final position, complete, anchored, connected, and in operable condition with respect to required codes and/or governing agency requirements.
- 1.1.24 **Provide:** To furnish and install complete. When "Furnish", "Install", or "Provide" is stated, "Provide" is implied.
- 1.1.25 **Construct:** To "Furnish" materials to "Install" in final position, complete, anchored, and connected with respect to required codes, requirements, Contract Documents, and details.
- 1.1.26 **Day(s):** All references to "day" or "days" in these Contract Documents shall be defined as calendar-day or calendar-days.
- 1.1.27 **Adjustment Factor:** A competitively bid adjustment to be applied to the unit prices listed in the Construction Task Catalog®.

- 1.1.28 Detailed Scope of Work: A document setting forth the work the Contractor is obligated to complete for a particular Job Order.
- 1.1.29 Job Order: A written order requiring the Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price.
- 1.1.30 Job Order Price: The amount a Contractor will be paid for completing a Job Order.
- 1.1.31 Job Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
- 1.1.32 Joint Scope Meeting: A site meeting to discuss the work before the Detailed Scope of Work is finalized.
- 1.1.33 Minimum Contract Value: The minimum value of Job Orders that the Contractor is guaranteed to receive the opportunity to price under this Contract.
- 1.1.34 Maximum Contract Value: An estimate of the value of Job Orders that could be issued to the Contractor during the term of the contract.
- 1.1.35 NonPrepriced Task: An item of work required by the Detailed Scope of Work but not included in the Construction Task Catalog®.
- 1.1.36 Prepriced Task: An item of work included in the Construction Task Catalog® for which a unit price is given.
- 1.1.37 Job Order Price Proposal: A price proposal prepared by the Contractor that includes the Prepriced Tasks, NonPrepriced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
- 1.1.38 Proposal: A set of documents including at least: (1) a Job Order Price Proposal; (2) a proposed project schedule; (3) a list of proposed subcontractors.
- 1.1.39 Request for Proposal: A written request to the Contractor to prepare a Proposal for the Detailed Scope of Work referenced therein.

1.2 CONTRACT DOCUMENTS

- 1.2.1 One Document: The Contract Documents are one document and any work shown or mentioned shall be performed or furnished. The Contractor admits and agrees that the Contract Documents exhibit the intent and purpose of the Owner in regard to the Work, and that they are not complete in every detail and are to be considered as showing the purpose and intent only; and he further agrees to furnish all labor or material for any detail that is necessary to carry out the intent and purpose of the Specifications without extra charge.
- 1.2.2 Misuse of Words or Punctuation: The misplacement, addition, or omission of any word, letter, or punctuation mark will not in any way change the intent or meaning of the Contract Documents. Any part of the Work, or any article pertaining thereto which is not specifically set forth in these Contract Documents, but which is necessary for the proper completion of the Work, is to be supplied and set in place at the Contractor's expense, the same as if it had been mentioned in these Contract Documents. The Contractor shall furnish all things necessary to make a good and workmanlike job in accordance with the intent and purpose of the Contract Documents.

1.3 WAIVER OF "COMMON PRACTICE"

- 1.3.1 The Contractor shall waive "common practice" and "common usage" as construction criteria wherever the Contract Documents details, plans, technical specifications, governing codes, or ordinances require greater quantity or better quality than common practice or common usage would require.

1.4 EXCESSIVE COSTS

- 1.4.1 Failure to Comply with Contract: If Contractor fails to comply with any Contract requirements, including any required coordination with other contractors, and that failure results in additional costs to Owner, then Contractor shall be liable for such additional costs.
- 1.4.2 Construction Methods: If Contractor's construction methods and techniques result in additional costs to Owner, after notice, such Contractor shall be responsible for cost attributable to his methods and techniques.

ARTICLE 2

OWNER

2.1 OWNER'S REPRESENTATIVE

- 2.1.1 Owner Representative: The Owner will be represented by the Owner's Representative who shall oversee the performance of the Contract on behalf of the Owner.
- 2.1.2 Owner May Appoint Inspector: Owner shall be entitled to appoint an agent as Inspector who shall see that the performance of the Work is in strict accordance with the Contract Documents on behalf of the Owner.
- 2.1.3 Communication: In order that the Owner may act upon expert advice and upon good procedure, all communications from the Contractor shall be in writing and will be through said Owner's Representative or Inspector, as the Owner may direct, and all communications and instructions from the Owner to the Contractor will be so routed. The Owner reserves the right to alter this procedure without the consent of the Contractor. All communications not in compliance herewith, shall be considered non-binding on the Owner.

2.2 RIGHTS OF OWNER

- 2.2.1 Right to Clean Up: Subject to the strict prohibition against maintaining a nuisance, if a dispute arises between the Contractor, Subcontractors, or separate contractors as to the responsibility under their respective Contracts for maintaining the premises and surrounding area free from waste materials and rubbish the Owner may, but need not, clean up and allocate the cost among those responsible as the Inspector determines to be just.
- 2.2.2 Right to Accept Imperfect Work: If any part or portion of the Work completed under this Contract is defective and not in accordance with the Plans or Contract Documents, and if the imperfection is judged by Owner to be not of sufficient magnitude or importance so as to make the Work unacceptable, then Owner shall have the right and authority to retain such Work but will make such deductions in Contract Price as may be equitable and reasonable. However, Owner does not by this section; waive any other rights provided for herein.
- 2.2.3 Right to do Adjacent Work: The Owner reserves the right to perform construction or operations on the site of the Work. In doing this Owner may use its own forces or award separate contracts in connection with other construction or operations on the site but not covered by the Contract Documents. Contractor shall defend, indemnify, and hold Owner harmless for costs incurred by Owner that are payable to a separate contractor because of delays, improperly timed activities, or defective construction by the Contractor, unless such costs are incurred due to the sole or active negligence of Owner.
- 2.2.4 Right to Finish Contractor's Work: If the Contractor defaults or neglects to carry out all or any part of the Work in accordance with the Contract Documents, the Owner has the right, exercisable solely at Owner's discretion, to commence and continue completion of the Work with diligence and promptness. In such an event, if the Owner's cost to complete to Work exceeds the remaining balance of the Contract with the Contractor, Contractor shall reimburse the Owner for such excess costs.

2.2.5 **Right of Partial Use of Project:** The Owner may occupy or use any completed or partially completed portion of the Work at any stage, upon agreement of Owner and Contractor.

1. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents.
2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.
3. Immediately prior to such partial occupancy or use, the Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
4. Unless otherwise agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of work not complying with the requirements of the Contract Documents.
5. No claim for acceleration, delay, or hindrance, may be made by Contractor on his own behalf or that of any of his subcontractors, for any delays, accelerations, or hindrances that may arise out of Owner's partial occupancy of the Project.

2.2.6 **Right to Audit:** Contractor shall maintain and make available to the County, State Auditor, or to any of their duly authorized representatives all books, papers, job cost records, detailed cost estimates, claims, and accounts, including payment, property, payroll, personnel, subcontractor records, and financial records related to or which arise out of the Work or under terms of this Contract. Contractor shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and in accordance with these Contract Conditions and federal and state requirements. These books, papers, records, claims, and accounts shall be made available for examination during normal business hours and shall be readily available and accessible at Contractor's principal place of business in California, for audit during normal business hours at such place of business. Contractor shall provide office space, photocopies and other assistance to enable audit or inspection representatives to conduct such audits or inspections. This right to audit books and records directly related to this Contract shall also extend to any first-tier subcontractors employed under this Contract. Contractor shall incorporate this provision in any subcontract entered into as a result of this Contract and shall require its subcontractors to agree to cooperate with the above-listed agencies by making all appropriate and relevant Project records available to those agencies for audit and copying.

All of Contractor's books, papers, job cost records, detailed cost estimates, claims, and accounts, including payment, property, payroll, personnel, subcontractor records, and financial records related to or which arise out of the work or under terms of this Contract shall be retained for access, inspection and/or audit by the County, the State Auditor, or their duly authorized representatives for at least three (3) after County's final payment to Contractor and/or the final resolution of any claims under this Contract. Contractor shall incorporate this provision in any subcontract entered into as a result of this Contract.

2.3 RESPONSIBILITIES OF OWNER

2.3.1 **Removal, Relocation, or Protection of Underground Infrastructure:** If the Contractor while performing the contract discovers utility facilities not identified by the Owner in the contract plans or specifications, Contractor shall immediately notify the Owner in writing. Owner shall have the sole discretion to perform the repairs or relocation work itself, or to permit the Contractor to do such repairs or relocation work at a reasonable price. In the event that the Owner authorizes the Contractor to perform the work, the parties shall proceed with a written Change Order as set forth in Article 5 herein. Compensation to the Contractor for said costs shall be in accordance with Section 4215 of the Government Code.

Nothing herein shall be construed to require the Owner to locate the presence of any existing services not expressly included in Government Code Section 4215, nor to limit the Owner's rights or remedies set forth therein.

In accordance with the provisions of Section 4215 of the California Government Code, Contractor shall not be assessed liquidated damages for delay in completion of the project, when such delay was caused by the failure of the Owner or owner of the utility to provide for the removal or relocation of such utility facilities.

ARTICLE 3

CONTRACTOR'S RESPONSIBILITIES

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS

3.1.1 Reporting Errors in Contract Documents: The Contractor shall carefully study and compare the Contract Documents with each other and shall at once report to the Inspector errors, inconsistencies, or omissions discovered. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Owner, the Contractor shall assume responsibility for such performance and shall bear all costs for correction.

3.1.2 Reporting Errors in Field Conditions: The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Owner at once.

3.1.3 No Implied Warranty: No warranty is to be implied nor shall any warranty arise by operation of law, or by interpretation of this Contract, that the Plans and Contract Documents are adequate and sufficient to construct the Project.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 Supervision of Work: The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

The Contractor shall assign a full-time person as its representative for this Contract. This person shall be acceptable to the Owner and shall have a cell phone at which he or she can be reached at all times.

The Contractor shall also have at all times an Office Manager and a Superintendent assigned to this Contract. Additional staff will be provided depending on the volume of work. For each Job order issued, the Contractor shall identify the Superintendent responsible for that Job Order. The Superintendent shall be reachable 24 hours a day, seven (7) days a week. If the named Superintendent is not available because of illness or vacation or the like, the Contractor shall notify the Owner of a substitute Superintendent. At all times, the Contractor shall provide at least one Superintendent for every four Job Orders. Whenever, in the sole discretion of the Owner, the Contractor is not providing a sufficient level of supervision, the Owner may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the Owner. In the event the Owner's personnel are required to provide direction or supervision of the work in the field because the Contractor has not provided sufficient supervision, the Contractor shall reimburse the Owner \$145.00 per hour for such effort.

3.2.2 Acts of Employees and Agents: The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

3.2.3 Acts Do Not Waive Contractor's Obligation: The Contractor shall not be relieved of obligations to perform the Work in strict accordance with the Contract Documents either by activities or duties of the Owner's Representative or the Inspector in the administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

3.3 PROSECUTION OF WORK

3.3.1 A Job Order Contract is an indefinite quantity contract pursuant to which the Contractor will perform an ongoing series of individual projects at different locations throughout El Dorado County. The Contract Documents include the Construction Task Catalog® containing construction tasks with preset unit prices. All unit prices are based on local labor, material and equipment prices and are for the direct cost of construction. The Adjustment Factors apply to every task in the Construction Task Catalog® and consist of:

A. General Facilities Normal Working Hours 6:00 a.m. to 6:00 p.m. Monday to Friday:

1.0700 (one point zero seven zero zero)

B. General Facilities Other Than Normal Working Hours 6:00 p.m. to 6:00 a.m. Monday to Friday, and all day Saturday, Sunday, and Holidays:

1.0850 (one point zero eight five zero)

C. Secure Facilities Normal Working Hours 6:00 a.m. to 6:00 p.m. Monday to Friday:

1.0900 (one point zero nine zero zero)

D. Secure Facilities Other Than Normal Working Hours 6:00 p.m. to 6:00 a.m. Monday to Friday, and all day Saturday, Sunday, and Holidays:

1.1200 (one point one two zero zero)

E. Tahoe Basin Facilities Normal Working Hours 6:00 a.m. to 6:00 p.m. Monday to Friday:

1.0900 (one point zero nine zero zero)

F. Tahoe Basin Facilities Other Than Normal Working Hours 6:00 p.m. to 6:00 a.m. Monday to Friday, and all day Saturday, Sunday and Holidays:

1.1600 (one point one six zero zero)

G. Tahoe Basin Secure Facilities Normal Working Hours 6:00 a.m. to 6:00 p.m. Monday to Friday:

1.0800 (one point zero eight zero zero)

H. Tahoe Basin Secure Facilities Other Than Normal Working Hours 6:00 p.m. to 6:00 a.m. Monday to Friday, and all day Saturday, Sunday and Holidays:

1.1100 (one point one one zero zero)

I. With an Award Criteria Figure based on the formula below:

1.0880 (one point zero eight eight zero)

3.3.2 Work or performance shall be made only as authorized by Job Orders issued in accordance with the provisions of this Section 3.3. The work of this Contract will be set forth in the Detailed Scopes of Work referenced in the individual Job Orders. The Contractor is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

3.3.3 This contract is for construction work and related services to be performed throughout El Dorado County. The Minimum Contract Value is \$50,000 and the Maximum Contract Value is \$2,000,000 with one option to increase the Maximum Contract Value to the amount currently authorized by California Public Contract Code within the term of the contract.

3.3.4 The term of this contract is one (1) year.

3.3.5 Procedure for Developing a Job Order

A. Initiation of a Job Order.

As the need exists, the Owner will notify the Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting.

The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:

- a. the general scope of the work;
- b. alternatives for performing the work and value engineering;
- c. access to the site and protocol for admission;
- d. hours of operation;
- e. staging area;
- f. requirements for catalog cuts, technical data, samples and shop drawings;
- g. requirements for professional services, sketches, drawings, and specifications;
- h. construction duration;
- i. liquidated damages;
- j. the presence of hazardous materials;
- k. date on which Proposal is due.

Upon completion of the joint scoping process, the Owner will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The Contractor shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the Owner will issue a Request for Proposal that will require the Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the Owner, will be the basis on which the Contractor will develop its Job Order Package and the Owner will evaluate the same. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

B. Preparation of the Job Order Proposal.

The Contractor will prepare Job Order Proposals in accordance with the following:

1. Prepriced Tasks: A Prepriced Task is a task described and for which a unit price is set forth in the Construction Task Catalog[®]. For Prepriced Tasks the Contractor shall identify the task and quantities required from the Construction Task Catalog[®].
2. Non-Prepriced Tasks: Non-Prepriced Tasks shall be separately identified and submitted in the Job Order Price Proposal. Information submitted in support of Non-Prepriced Tasks shall include, but not be limited to, the following:
 - a. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.
 - b. If the Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use pre-priced labor and equipment from the Construction Task Catalog[®]. If the work is to be subcontracted, the Contractor must submit three independent bids from subcontractors. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The Owner may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable.
 - c. The final price submitted for Non-Prepriced Tasks shall be according to the following formula:

A = Direct Labor Rate without fringes (for Trades not in the Construction Task Catalog[®])

B = Direct Material Costs (supported by three quotes)

C = Direct Equipment Costs (for Equipment not in the Construction Task Catalog[®])

D = Subcontractor Costs (supported by three quotes)

E = Allowable Over Head on Labor = A x 35%

F = Allowable Overhead and Profit = (A + B + C) x 10%

G = Subcontractor Allowance = D x 10%

Total Cost of Non Pre-Priced Task = A + B + C + D + E + F + G
 - d. After a Non-Prepriced Task is used on three separate Job Orders, the unit price for such task will be established, following approval by the Owner, and fixed as a permanent Prepriced Task which will no longer require price justification.
 - e. The Owner's determination as to whether an item is a Prepriced Task or a Non-Prepriced Task shall be final, binding and conclusive as to the Contractor.
 - f. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The cost of expediting services or equipment use fees are not reimbursable.
 - g. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.

The Contractor's Job Order Proposal shall include, at a minimum:

- a. Job Order Price Proposal;
- b. Required drawings or sketches;

- c. Catalog cuts, technical data or samples;
- d. List of anticipated Subcontractors and Materialmen and anticipated price;
- e. Construction schedule;
- f. Sample warranties or guarantees for materials, equipment or systems proposed.

The Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Proposal. All incomplete Job Order Packages shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven (7) and fourteen (14) days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.

In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Proposal or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.

- C. Review of the Proposal and Issuance of Job Order. The Owner will evaluate the entire Job Order Proposal and compare these with the Owner's cost estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.

The Owner reserves the right to reject a Job Order Proposal or cancel a project for any reason. The Owner also reserves the right not to issue a Job Order if it is determined to be in the best interests of the Owner. The Owner may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the Owner.

By submitting a Job Order Price Proposal to the Owner, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Job Order Price Proposal prior to delivering it to the Owner.

Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, signed by the Owner and delivered to the Contractor constitutes the Owner's acceptance of the Contractor's Proposal. A signed copy of the Job Order will be provided to the Contractor.

In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by the Owner. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. The Contractor shall be compensated in accordance with the Construction Task Catalog® and Non-Prepriced Tasks as if the work had been ordered under the standard procedures.

All Job Orders issued during the term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after such period has expired. All terms and conditions of the Contract apply to each Job Order.

- 3.3.6 **Time of the Essence:** It is expressly understood and agreed that the time of beginning, rate of progress, and time of completion of the Work are of the essence. The time for completion of this contract shall be set forth in the individual Job Order.

Owner and Contractor recognize that time is of the essence of the Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified, plus any extensions thereof. They also recognize the delays, expense, and difficulties involved with proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner the sum identified in the individual Job Order, as liquidated damages and not as a penalty, for each and every calendar days delay in finishing the Work in excess of the contract time prescribed in the individual Job Order.

3.3.7 Work During Operational Hours: A project site may be operational during the Work. The Contractor shall not interfere or hinder County operations. The Contractor shall keep all equipment and materials within designated work areas and out of hallways and doorways. Emergency exit routes shall be maintained at all times.

3.3.8 Construction Schedule: The Contractor shall coordinate the final critical path method (CPM) construction schedule with the Owner. The CPM schedule is required to be submitted within five (5) days of issuance of the Job Order's Notice to Proceed. The CPM schedule will be for Owner's information only. Silence or inaction with regard to Contractor's schedule shall not be construed as acquiescence or acceptance of the schedule as being binding on Owner. Contractor's schedule shall provide for the completion date not to exceed nor shall it provide for the completion date earlier than the time limits for completion set forth in the individual Job Order. Float, whether for the entire Project or for specific tasks therein, shall be deemed to be for the benefit of the Owner. The Contractor shall keep the construction schedule current, and shall submit weekly updates to the Owner's Representative and Inspector, if any. The Contractor shall further prepare and keep current a schedule of submittals which is coordinated with the construction schedule, and which allows the Owner reasonable time to review the submittals.

3.4 COMPUTER REQUIREMENTS

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

3.5 SUBMITTALS

3.5.1 Use of Listed Manufacturers; Review of "Or Equals": Contractor shall utilize only the manufacturer designated in the Detailed Scope of Work for major equipment items listed therein. In accordance with the provisions of Section 3400 of the California Public Contract Code, but subject to Subsection (b) thereof, Contractor shall within two (2) business days following the submitting of the Price Proposal submit any substitution requests and shall submit data substantiating a request for a substitution of an "or equal" item. Failure to submit such substitution requests and substantiating data within two (2) business days following the submitting of the Price Proposal shall constitute submission of a non-responsive Price Proposal.

3.5.2 Excessive Submittal Reviews: The cost of reviewing submittals shall be the Owner's responsibility, except that Contractor shall be responsible for the cost of the third and subsequent review of any one submittal.

3.5.3 Submittal Process: Contractor shall submit all submittal specified herein and as identified in individual Job Orders within five (5) business days of the date of the Notice to Proceed of individual Job Orders.

3.6 STATE AND FEDERAL LABOR REQUIREMENTS

3.6.1 Hours of Work:

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

stipulated that for each and every violation of said last named stipulation, said Contractor shall forfeit, as penalty to the said Owner, \$25.00 for each workman employed in the execution of this Contract, or by any subcontractor under this Contract, for each calendar day during which said workman is required or permitted to labor more than eight (8) hours in any one (1) calendar day or more than forty (40) hours in any one (1) calendar week in violation of the provisions of said Labor Code.

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

3.6.2 Apprentice Employment:

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

3.6.3 Wage Rates:

1. Pursuant to Labor Code Section 1770 et seq., each laborer or mechanic of Contractor or any subcontractor engaged in work on the Project under this Contract shall be paid not less than the hourly wage rate of per diem wages set forth in the prevailing wage rate schedule published by the Director of Industrial Relations regardless of any contractual relationship which may be alleged to exist between Contractor or any subcontractor and such laborers and mechanics.
2. Any laborer or mechanic employed to perform work on the Project under this Contract, which work is not covered by any of the foregoing classifications, shall be paid not less than the prevailing rate of per diem wages specified herein for the classification which most nearly corresponds to the work to be performed by him.
3. The foregoing specified prevailing wage rates are minimum rates only, and the Contractor may pay any wage rate in excess of the applicable rate contained in this Contract.
4. Pursuant to Labor Code Section 1775, the Contractor as a penalty to the Owner shall forfeit \$50.00 for each calendar day, or portion thereof for each worker paid less than prevailing rate established by the Department of Industrial Relations for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which the worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.
5. An error on the part of an awarding body does not relieve the Contractor from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code Sections 1770 - 1775.

6. All Contractors and subcontractors are subject to the provisions of Sections 1810-1814 of the California Labor Code which provide that the maximum hours a worker is to be employed is limited to eight (8) hours a day and forty (40) hours a week and the Contractor or subcontractor shall forfeit, as a penalty, \$25.00 for each worker employed in the execution of the Contract for each calendar day during which a worker is required or permitted to labor more than eight (8) hours in any calendar day or more than forty (40) hours in any calendar week and is not paid overtime.
7. Section 1815 of the California Labor Code requires that notwithstanding the provisions of Sections 1810-1814, employees of Contractors who work in excess of eight (8) hours per day and forty (40) hours per week shall be compensated for all hours worked in excess of eight (8) hours per day at not less than 1-1/2 times the basic rate of pay.
8. 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 part by federal funds. Contractor's attention is directed to 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).
9. 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 Department 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.
10. Interested parties can obtain the current wage information by submitting requests to the Department of Industrial Relations, Division of Labor Statistics and Research, P.O. 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.
11. Copies of the applicable state prevailing wage rates are on file with the County of El Dorado, Chief Administrative Office, Facilities Division, 3000 Fairlane Court, Suite One, Placerville, CA 95667, and they are available to any interested party on request.

3.6.4 **Certified Payroll:** As required under the provisions of Labor Code Section 1776 Contractor and subcontractors shall keep accurate payroll records:

1. The payroll records shall show the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee by him or her in connection with the Project.
2. A certified copy of all payroll records enumerated above shall be available for inspection at all reasonable hours at the principal office of the Contractor as follows:
 - a. Make available or furnish to the employee or his or her authorized representative on request.
 - b. Make available for inspection or furnished upon request to a representative of the Owner, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - c. Make available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the Owner, the Division of

Labor Standards Enforcement, or the Division of Apprenticeship Standards. The requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractor, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the Contractor.

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

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

3.7 TAXES

3.7.1 Contractor Pays Taxes: The Contractor and subcontractors shall pay all local, state, and federal taxes upon labor or materials involved in their branch of the Work, cost of same to be included in the Contract price.

3.8 COMPLIANCE WITH LAW AND LOCAL REQUIREMENTS

3.8.1 Regulations: The Contractor and all subcontractors shall conform to and abide by all city, county, and state laws, ordinances, rules, and regulations, as the same pertain to the Work contemplated by said Plans and Contract Documents.

3.8.2 Permits, Licenses, and Fees: The County shall procure and pay for all permits and inspection fees that may be required to commence, carry on, and complete the Job Orders issued under this Contract. Contractor shall be responsible for all applicable license fees.

The Contractor shall be responsible for following the provisions of the permit.

3.8.3 Patent Rights, Copyrights, Trade Names, and Royalties: The Contractor shall indemnify and save harmless the Owner and all persons acting under him for all liability on account of any patent rights, copyrights, or trade names which may affect the articles or materials or their application under the Contract Documents. The Contractor shall pay all royalties, or other charges that may arise, due to methods, types of construction, processes, materials or use of equipment, and shall hold the Owner harmless from any charges whatsoever which may arise, and shall furnish written assurance, satisfactory to the Owner, that such charges have been paid.

3.9 GUARANTEE

3.9.1 Final Guarantee: The Contractor shall guarantee all materials and equipment furnished and work performed for a period of one (1) year. Contractor warrants and guarantees for a period of one (1) year from the date of the Job Order Notice of Acceptance that the Work is free from all defects due to faulty materials or workmanship and Contractor shall promptly make such corrections as may be necessary, including repairs of any damage to other parts of the Work resulting from such defects. Owner will give notice of observed defects with reasonable promptness. In the event that Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects within ten (10) calendar days after being notified in writing by Owner, Owner may do so and charge Contractor the cost thereby incurred.

3.9.2 Extended Guarantees: If a guaranty exceeding one (1) year is provided by the supplier or manufacturer of any equipment used in this Project, then the guarantee for such materials shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials, and Contractor shall supply Owner with all warranty and guaranty documents relative to equipment and materials incorporated in the job and guaranteed by their suppliers or manufacturers.

3.10 WARRANTY

3.10.1 Contract Warranty: The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract, that the Work will be free from defects or flaws and is of the highest quality of workmanship and that the Work will conform with the requirements of the Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

3.11 INDEMNIFICATION

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

3.11.2 Owner Not Liable for Debts: Indebtedness incurred for any cause in connection with this Work must be paid by the Contractor, and the Owner is hereby relieved at all times from any indebtedness or claim other than the Contract price.

3.11.3 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 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.

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

1. Including all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of hazardous materials in any location by Contractor; and
2. Including, without limitation, the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following filing of the Notice of Acceptance to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of hazardous materials by any person on the Project prior to filing of the Notice of Acceptance. Contractor's obligations pursuant to the foregoing indemnity shall survive the filing of the Notice of Acceptance of the Project.

3. This agreement as to indemnity and reimbursement as above set forth to be undertaken by the Contractor shall survive the performance of the remainder of said Contract and shall remain in full force and effect notwithstanding such performance.
4. The foregoing duties of indemnity shall not apply to loss, damage, expense, or liability caused solely by the active negligence of the Owner or the Owner's agents, servants or independent contractors.

3.12 WORK REQUIREMENTS

3.12.1 Conduct of Work: The Contractor shall confine the storage of his equipment and materials to limits as designated. He shall at all times exercise due caution and provide all necessary barricades and other safety equipment around the Work to protect the general public from injury to person and property during the entire time of performance of the Work. The Contractor shall not create excessive dust or noise.

3.12.2 Maintenance of Site: Strict prohibition against committing nuisances in or about the Work shall be maintained, and the Contractor shall not in any way obstruct or interfere with movements of traffic on any public right of way without first obtaining the necessary approval of the proper public agency.

3.12.3 Clean Up of Site: The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.12.4 Cutting and Patching:

1. The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.
2. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.13 SUBCONTRACTORS

3.13.1 Contractor Responsible for Subcontractor's Acts: Contractor shall be fully responsible to Owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

3.13.2 Contractor's Subcontract: Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind subcontractors to Contractor by the terms of the Contract Documents insofar as applicable to the Work of subcontractors and to give Contractor the same power as regards terminating any subcontract that Owner may exercise over Contractor under any provisions of the Contract Documents. The percentage of retention withheld from any subcontractor by the Contractor shall not exceed the percentage of retention withheld from the Contractor as provided herein.

3.14 SUPERINTENDENT

3.14.1 Work Superintendent: The Contractor will employ and maintain on the worksite a qualified supervisor or Superintendent who shall have been designated in writing by the Contractor as the Contractor's representative at the sites. The Superintendent shall have full authority to act on behalf of the Contractor, and all communications given to the Superintendent shall be as binding as if given to the Contractor. The

Superintendent shall be present on the site at all times as required to perform adequate supervision and coordination of the Work.

3.15 LABOR AND MATERIALS

3.15.1 Skilled Labor: All labor must be especially skilled for each kind of work, and must be thorough and first class in all respects. Any person whom the Inspector or Owner may deem incompetent or disorderly shall be promptly discharged from the Project and not re-employed.

3.15.2 Quality of Materials: All materials used on this Contract shall be new and the best market quality, unless specified or shown otherwise. All Work executed under this Contract shall be done in the best, most thorough, substantial and workmanlike manner and without flaws. All materials and labor shall be subject to the approval of the Inspector as to its quality and fitness, and shall be immediately removed if it does not meet with his approval. The Inspector may refuse to issue the Certificate for Payment until all defective materials or work have been removed and other material of proper quality substituted therefore. All removal and replacement with same shall be done at the Contractor's expense. Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned as directed by the manufacturer.

ARTICLE 4

ADMINISTRATION OF CONTRACT

4.1 ADMINISTRATION OF CONTRACT

4.1.1 Contract Communications: Unless otherwise provided in the Contract or when direct communications have specifically been authorized, all parties shall communicate through the Owner's Representative or the Inspector if the Owner so directs. Communications by and with the subcontractors and material suppliers shall be through the Contractor. Communications by Contractor to separate contractors, architect, or Project Manager shall be through the Owner's Representative.

4.1.2 Control of Work: The Owner's Representative or the Inspector will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Owner's Representative or the Inspector will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner's Representative or the Inspector will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.1.3 Recommendation for Payments: Based on his or her observations and evaluations of the Contractor's Applications for Payment, the Owner's Representative will review amounts due the Contractor and will recommend to Owner, payments to Contractor as set forth in the section entitled CERTIFICATION FOR PAYMENTS.

4.1.4 Inspector's Authority: The Inspector will have the authority to stop work whenever necessary to ensure a proper execution of the Work. The Inspector will also have authority to reject Work which does not conform to the Contract Documents. Whenever the Inspector considers it necessary or advisable for implementation of the intent of the Contract Documents, the Inspector will have authority to require additional inspection or testing of the Work in accordance with the following section whether or not such Work is fabricated, installed, or completed. However, neither this authority of the Inspector nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Inspector to the Contractor, subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work. In the event an Inspector is not appointed by the Owner, the Owner's Representative shall have the authority set forth herein.

4.2 INSPECTION AND TESTING

- 4.2.1 Advance Notice: Contractor shall provide Owner's Representative seventy-two (72) hours' notice prior to beginning work at a specific location and for a specific department. Contractor shall notify Owner's Representative and Inspector twenty four (24) hours prior to any day in which Contractor will 1) require an inspection of any portion of the Work, and 2) work in excess of eight (8) hours or any time Contractor intends to work weekends. Any work not performed subject to inspection will not be accepted and will be rejected and/ or ordered removed by Owner, or Inspector.
- 4.2.2 Access to Work: The Owner's Representative, the Architect, the Project Manager, and the Inspector will at all times have access to the Work. In addition, authorized representatives and agents of any participating Federal or State Agency shall be permitted to inspect all Work, materials, payrolls, and records on personnel, invoices of materials, and other relevant data and records. The Contractor will provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof.
- 4.2.3 Costs of Tests: The Owner shall bear all costs related to testing for conformance of the Work to the Contract requirements. However, if the Contractor has called for any testing, and that test fails, subsequent tests, and all related costs, shall be borne by the Contractor.
- 4.2.4 Preparation of Change Directives: The Owner's Representative or the Inspector, if one is appointed, will prepare Construction Change Directives, and may authorize minor changes in the Work as provided in the section entitled CHANGES IN WORK.

4.3 CLAIMS

- 4.3.1 Concealed or Unforeseen Conditions: It is understood by both parties that Contractor has made a pre-contract investigation of the site. All concealed, unforeseen, or materially differing conditions are the responsibility of the Contractor in the absence of an actual material, intentional misrepresentation by the Owner as to the conditions on the site. Contractor shall give written notice of any conditions encountered at the site which are unforeseen, concealed, or materially different from those set forth in the Plans or Contract Documents, or ordinarily encountered and generally recognized as inherent in the Work. Such written notice shall be given within five (5) days of his discovery of any such facts.
- 4.3.2 Notice of Discovery of Hazardous Waste or Unusual Conditions:
1. The Contractor shall promptly, and before the following conditions are disturbed, notify the Owner in writing, in the event the Contractor encounters any of the following:
 - a. Material that the Contractor believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - b. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the contract.
 2. The Owner shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work shall issue a Supplemental Job Order under the procedures described herein.
 3. In the event a dispute arises between the Owner and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for in the individual Job Order, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Contractor and the Owner.

4.3.3 Time Limits on Claims: Claims by Contractor must be made within ten (10) calendar-days after occurrence of the event giving rise to such Claim, except that claims made due to delay or hindrances which Contractor claims was caused by Owner shall be made within five (5) calendar-days after occurrence of the event giving rise to such Claim. Claims must be made by written notice. Failure to make such claim in writing in the time set forth herein shall bar Contractor from recourse for such claim. All claims must be filed on or before the payment date of Final Payment.

4.3.4 Claims for Additional Costs:

1. If Contractor wishes to make a Claim for an increase in the Job Order Price, he shall give the Owner written notice thereof within the time set forth in Section 4.3.3. This notice shall be given by the Contractor before proceeding to execute the work, except in an emergency endangering life or property in which case the Contractor shall, as soon as possible, advise Owner of his intent to do the Work.
2. Increases in Contract Price due to Claims shall be calculated based on the Cost Reimbursement method detailed in Section 5.4.1.
3. Under no circumstances shall Contractor recover any administrative overhead costs or recover on the basis of any "Home Office" damages formula, "Total Cost" recovery formula, or any other such formula.

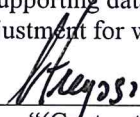
4.3.5 Claims for Additional Time:

1. If the Contractor wishes to make Claim for an increase in the Job Order Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate probable effect of delay on progress of the Work.
2. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.
3. The Owner shall not be liable for any damages on account of any reasonable delay or hindrance of the Owner. However, Contractor shall be entitled to an extension of time for any delay or hindrance caused by the Owner. Any delay or hindrance by Owner which is unreasonable and not within the contemplation of the parties may subject Owner to a claim for damages. Contractor shall make any claims in writing within the time set forth in Section 4.3.3., for any unreasonable delay or hindrance caused by Owner, and specifying the cause thereof as required in paragraph "Submittal of Claims".

4.3.6 Submittal of Claims: Any disputes relating to this Contract, or its breach, which is not disposed of by agreement shall be promptly submitted as a claim to the Owner's Representative who shall issue a written response on the dispute. Claims shall be submitted by the Contractor to the Owner's Representative with adequate supporting data and include a demand for the Owner's Representative's decision. Adequate supporting data shall include, but is not limited to, a statement of the reasons for the asserted entitlement, the certified payroll, invoice for material and equipment rental, and an itemized breakdown of any adjustment sought.

4.3.7 Submission Under Penalty of Perjury: The Contractor shall certify, at the time of submission of a claim, as follows:

"I certify under penalty of perjury under the laws of the State of California, that the claim is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the contract adjustment for which the Owner is liable.

By:  _____
" (Contractor's signature)"

4.4 DISPUTES RESOLUTION

4.4.1 Continue Work During Dispute: In the event of any dispute between the Owner and the Contractor, the Contractor will not stop Work but will prosecute the work diligently to completion in the manner directed by the Owner, and the dispute shall be resolved as set forth herein after completion of the Work. However, all disputes must be submitted by Contractor in accordance with the subsequent provisions of this section.

4.4.2 Requirements for Filing a Claim: For any claim subject to this Article, the following requirements apply: the claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment of the individual Job Order. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by this contract for the filing of claims.

1. For claims of less than fifty thousand dollars (\$50,000.00), the Owner shall respond in writing to any written claim within forty five (45) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claims or relating to defenses or claims the Owner may have against the Contractor, any additional documentation supporting the claim or relating to defenses to the claim the Owner may have against the Contractor.

If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the Owner and the Contractor.

The Owner's written response to the claim, as further documented, shall be submitted to the Contractor within fifteen (15) days after receipt of the further documentation or within a period of time not greater than that taken by the Contractor in producing the additional information, whichever is greater.

2. For claims of over fifty thousand dollars (\$50,000.00) and less than or equal to three hundred seventy-five thousand dollars (\$375,000.00), the Owner shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to the defenses or claims the Owner may have against the Contractor.

If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the Owner and the Contractor.

The Owner's written response to the claim, as further documented, shall be submitted to the Contractor within thirty (30) days of receipt of the further documentation, or a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

3. If the Contractor disputes the Owner's written response, or the Owner fails to respond within the time prescribed, the Contractor may so notify the Owner, in writing, either within fifteen (15) days of receipt of the Owner's written response or within fifteen (15) days of Owner's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the Owner shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.
4. If following the meet and confer conference the claim or any portion remains in dispute, the Contractor may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code, and in accordance with Section 20104.2 of the Public Contract Code.

4.4.3 Owner's Review of Claim: The Owner's Representative shall review the facts pertinent to the claim, secure assistance from legal and other advisors, coordinate with the contract administrators, and promptly provide a written response. The response shall be furnished to the Contractor by certified mail, return receipt requested, or any other method that provides evidence of receipt. The Owner's Representatives' response shall be final and conclusive except as is otherwise provided herein.

4.4.4 Claims Exempt from Review: The procedures and remedies provided in this Section 4.4 do not apply to:

1. Any claims by the Owner.
2. Any claim for or respecting personal injury or death or reimbursement or other compensation arising out of or resulting from liability for personal injury or death.
3. Any claim or dispute relating to stop payment requests or stop notices.
4. Any claim related to the approval, refusal to approve, or substitution of subcontractors, regardless of tier, and suppliers.

4.4.5 Suit in El Dorado County Only: Any litigation arising out of this Contract shall be brought in El Dorado County. The Owner and the Contractor shall follow procedures established for all civil actions filed to resolve claims pursuant to Public Contract Code Section 20104 et seq., including but not limited to Section 20104.4.

4.4.6 Payment of Undisputed Portion of Claim: Payment by Owner of undisputed portion of claim; interest on arbitration award or judgment.

1. Owner shall pay Contractor such portion of a claim which is undisputed except as otherwise provided in the contract.
2. In any suit filed pursuant to Public Contract Code Section 20104.4, the provisions of Section 20104.6 shall apply.
3. The rate of interest payable on unpaid and undisputed claims shall be 6 percent per annum. Interest shall begin to accrue sixty-one (61) days after the Contractor submits to the Owner information in sufficient detail to enable the Owner to accept the claim statement.
4. The rate of interest payable on any judgment or award in arbitration shall not exceed 6% per annum in accordance with Civil Code Section 3287 et seq.

4.4.7 Job Order Contracting Software

1. The County of El Dorado selected The Gordian Group's (Consultant) Job Order Contracting ("JOC") Solution (Gordian JOC Solution) for their JOC program. The Gordian JOC Solution includes Consultant's proprietary eGordian® JOC applications (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be used by the Contractor to prepare and submit Price Proposals, subcontractor lists, and other requirements specified by the County of El Dorado. The Contractor shall be required to execute Consultant's JOC System License and Fee Agreement, and pay a JOC System License fee to obtain access to Consultant's JOC Solution. The Contractor's use, in whole or in part, of the Consultant's JOC Applications, Construction Task Catalog® and other proprietary materials provided by the Consultant for any purpose other than to execute work under this Contract for the County of El Dorado is strictly prohibited unless otherwise approved in writing by the Consultant. The Contractor hereby agrees to abide by the terms of the following JOC System License.

4.4.8 JOC System License

1. The Consultant hereby grants to the Contractor, and the Contractor hereby accepts from the Consultant for the term of this Contract or Consultant's Contract with County of El Dorado, whichever is shorter, a non-exclusive right, privilege, and license to Consultant's proprietary JOC System and related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing Contractor's responsibilities to County of El Dorado under this Contract. The Contractor hereby agrees that Proprietary Information shall include, but is not limited to, Consultant's JOC Applications and support documentation, Construction Task Catalog®, training materials and other Consultant provided proprietary materials. In the event this Contract expires or terminates as provided herein, or the Consultant's Contract with County of El Dorado expires or terminates, or **the Contractor fails to pay the**

JOC System License Fee specified in this Contract this JOC System License shall terminate and the Contractor shall return all Proprietary Information in its possession to the Consultant.

2. The Contractor acknowledges that disclosure of Proprietary Information will result in irreparable harm to the Consultant for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of the Consultant. The Contractor further acknowledges and agrees to respect the copyrights, registrations, trade secrets, and other proprietary rights of the Consultant in the Proprietary Information during and after the term of this Contract and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to the Contractor.

In the event of a conflict in terms and conditions between this JOC System License and any other terms and conditions of this Contract or any Job Order, Purchase Order or similar purchasing document issued to the Contractor by County of El Dorado, this JOC System License shall take precedence.

3. Contractor License Fee

In consideration for a non-exclusive, non-transferable, license to the Gordian JOC Solution, the Contractor shall pay Consultant a license fee ("Contractor License Fee") equal to one percent (1%) of the value of each Job Order, Purchase Order or other similar purchasing document ("Purchase Order") issued to the Contractor by the Owner. The Contractor License Fee shall be included in the Contractor's overhead costs, shall not be included as an additional line item cost in Price Proposals, and shall be payable to Gordian within ten (10) days of Contractor's receipt of each Purchase Order issued to the Contractor by the Owner. Consultant is hereby declared to be an intended third-party beneficiary of this Agreement. In the event any court action is brought to enforce payment of the Contractor License Fee by any party or third-party beneficiary of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and collection costs.

Make Checks Payable to: The Gordian Group, Inc.
Mail Checks to: P.O. Box 751959
 Charlotte, NC 28275-1959

4. Consultant may terminate this License Agreement in the event of: (1) any breach of a material term of this Agreement JOC System License by the Contractor which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.
5. In the event of a conflict in terms and conditions between this JOC System License and any other terms and conditions of this Contract or any Job Order, Purchase Order or similar purchasing document issued to the Contractor by the Owner, this JOC System License shall take precedence.

ARTICLE 5

CHANGES IN WORK

5.1 WAIVER

5.1.1 Waivers of Contract Provisions: It is expressly understood and agreed that no waiver granted by the Inspector or the Owner of any term, provision, or covenant of this Contract shall constitute a precedent for breach of the same or any other terms, provisions, or covenants of this Contract.

5.2 CHANGES

5.2.1 Owner May Order Changes in Work: The Contractor agrees that the Owner, without invalidating the Contract, may order changes in Work by altering, adding to, or deducting from the Work, the Job Order Amount and Time being adjusted according to the provisions of Section 5.4 and Section 5.5. Contractor agrees to enter into a Supplemental Job Order for such changes.

- 5.2.2 **Cost Proposals:** Upon request of the Owner for a quotation on the change to the Work, the Contractor shall promptly submit to Owner's Representative, and the Inspector, if one is appointed, in writing a detailed breakdown of the work and of the amount of deduction or addition claimed. In no case shall Cost Proposals be provided later than ten (10) calendar days from the date requested. The Owner's request for quotations on alterations to the Work shall not be considered authorization to proceed with the work prior to issuance of a Supplemental Job Order, nor shall such request justify any delay in existing work. If Contractor fails to provide Cost Proposals within ten (10) calendar days, Owner may prepare a Price Proposal based on the Construction Task Catalog®. This proposal, prepared by Owner, shall be binding on the Contractor, will become the basis for a Supplemental Job Order and shall not be subject to dispute or claim.
- 5.2.3 **Job Order Change Instrument:** Changes in work involving a change in Job Order Price or Job Order Time shall be done only pursuant to an Architect's Supplemental Instructions or Construction Change Directive as set forth below in this article.
- 5.2.4 **Changes Shall Conform to Contract:** Changes in work shall be performed in conformance with applicable provisions of the Contract Documents, and the Contractor shall proceed promptly unless otherwise provided in the Architect's Supplemental Instructions, Supplemental Job Order, or Change Directive.

5.3 CONTRACT CHANGE INSTRUMENTS

- 5.3.1 **Architect's Supplemental Instructions (ASI):** The Owner's Representative or the Architect may order minor changes in work by use of an Architect's Supplemental Instruction. These minor changes will involve neither changes in the Job Order Price or Job Order Time. If the Contractor disagrees that the change does not involve a change in cost or time, then a Supplemental Job Order or Change Directive shall be used.
- 5.3.2 **Construction Change Directive (CCD):** In the event that the Owner and Contractor do not agree on the proposed change in work, and/or the proposed adjustment of Job Order Price and Time, or in the event it is essential that the Contractor proceed expeditiously and without delay, then Owner may, by issuance of a Construction Change Directive, order changes in work, and the Contractor shall promptly proceed with the change in work involved.
1. **Acceptance of Change Directive:** If Contractor agrees with the Change Directive, the Contractor shall by his signature thereon, indicate his acceptance of the terms of the Directive, including adjustments to price and time, and the Change Directive shall then be followed by a Supplemental Job Order.
 2. **Non-Acceptance of Change Directive:** If the Contractor disagrees with the method of computing an increase in Job Order Price, then the amount of adjustment shall be computed by the Cost Reimbursement method detailed in Basis for Adjustment. Disagreements with amounts or credits, under the Cost Reimbursement method, or time, shall be considered a dispute, and processed in accordance with Section 4.4.

5.4 BASIS OF ADJUSTMENT

- 5.4.1 **Methods of Adjustment:** The amount of adjustments to Job Order Price, whether a credit or payment, shall be made by issuing a Supplemental Job Order. All changed, deleted, omitted, or extra work shall be contained in a Supplemental Job Order the value of which shall be calculated according to the procedures for developing and pricing Job Orders. Credit Job Orders and Tasks shall be calculated at the pre-set unit prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Price Proposal.

5.5 EXTENSION OF TIME FOR COMPLETION

- 5.5.1 Contractor Delayed or Hindered: Should the Contractor be delayed or hindered in the completion of the Work by the neglect of the Owner, or by fire, by strikes, lockouts, embargoes or earthquakes, and any other causes the Inspector approves as not having been reasonably foreseeable at the time of execution of the Contract Documents, then the time allowance herein fixed for the completion of the Work shall be extended for a period equivalent to the time lost by reason of any or all of the causes aforesaid. Time extensions must be requested in accordance with Section 4.3.5.
- 5.5.2 Agreement on Time Extension: In addition, the Contractor and the Owner reserve the right to mutually agree in writing upon an extension of time for completion for causes other than enumerated above.
- 5.5.3 Time Extension Not Waiver: The granting of an extension of time by the Owner for performance by the Contractor shall not operate as a waiver or stop the Owner from claiming damages due to any other delays, prior or subsequent, which were not approved by the Owner as provided herein.

ARTICLE 6

PAYMENTS AND COMPLETION

6.1 GENERAL

- 6.1.1 Contract Price: The Job Order Price stated in the Job Order Notice to Proceed is the total amount payable by the Owner to the Contractor for performance of the Detailed Scope of Work under the Contract Documents.
- 6.1.2 Waiver: Neither the acceptance of the Work by the Owner nor the payment of any part or all of the sum due the Contractor hereunder shall constitute a waiver by the Owner of any claim which the Owner may have against the Contractor or Surety under this Contract or otherwise.
- 6.1.3 Manner of Paying Warrants: Payment becomes due under the terms of this Contract in the manner prescribed by law. The Auditor shall cause a warrant for the Certified amount to be drawn upon the proper fund of the Treasurer of the Owner, which warrant shall be approved and issued to Contractor within that period of time customarily required to process said warrants in the ordinary course of Owner's business.

6.2 APPLICATIONS FOR PAYMENT

- 6.2.1 Submittal of Applications: The Contractor shall submit to the Owner or Owner's Representative, an Application for Payment form which will be provided by the Owner. Such application shall be supported by such data substantiating the Contractor's right to payment as the Owner may require, such as copies of requisitions from subcontractors and material suppliers.
- 6.2.2 Basis for Payment: The Payment shall be based upon the Job Order Lump Sum price and upon completion of the Work and issuance of the Notice of Acceptance for the individual Job Order.
- 6.2.3 The County will make one payment for all Job Orders that have a Job Order Completion Time of thirty (30) days or less, or a Job order Price of \$10,000.00 or less. For all other Job Orders, the County may make partial, monthly payments based on a percentage of the work completed.
- 6.2.4 Before submitting an Application for Payment (Final or Partial) the Contractor shall reach an agreement with the Project Manager concerning the percentage complete of the Detailed Scope of Work and the dollar value for which the Application for Payment may be submitted.
- 6.2.5 Work Free of Liens: The Contractor warrants that upon submittal of an Application for Payment, all work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests, or encumbrances against Contractor by

subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment in relation to the Work.

6.3 CERTIFICATION FOR PAYMENT

6.3.1 The Owner shall pay or cause to be paid to Contractor, an amount equal to ninety five percent (95%) as noted in Section 6.4.3 of the amount set forth in the approved Certificate for Payment within forty-five (45) days of receipt of an Application for Payment approved by the Owner's representative as provided for in Section 6.2.1 above, and shall retain the remaining five percent (5%) as noted in Section 6.4.3 until the time provided for in Section 6.6.4. The Owner shall withhold amounts pursuant to stop notices received in addition to the retainage. Failure of Owner to make payments provided herein in a timely manner shall not constitute a default by the Owner of the Contract, but may entitle the Contractor to interest as provided by law.

6.4 WITHHOLDING FROM PAYMENTS

6.4.1 Reasons for Withholding: The Owner, upon recommendation of the Inspector, may withhold payments, or on account of subsequently discovered evidence nullify the whole or a part of any progress or retention payments to such extent as may be necessary to protect the Owner from loss on account of:

1. Defective work or material not remedied or replaced.
2. The filing of claims or Stop Notices to withhold, or reasonable evidence indicating probable filing of such claims or notices.
3. Failure of the Contractor to make payments properly to subcontractors, or for materials or labor.
4. Failure to make payments to any person or entity for financial obligations of the Contractor under terms of this Contract.
5. A reasonable doubt that the Job Order can be completed for the balance then unpaid.
6. Damage to another contractor.
7. Performance of work in violation of the terms of the Contract Documents.
8. Excessive costs to Owner.
9. Failure of Contractor to comply with requirements for timely submittal of specified documentation, including but not limited to construction schedules, cost proposals, and submittals.

6.4.2 Release of Payment: When the above grounds for withholding are removed, payment shall be made for amounts withheld because of them.

6.4.3 Method of Retainage: The Owner will retain 5% of the value of each progress payment from each progress payment. The retained funds shall be retained until thirty-five (35) days after issuance of the Notice of Acceptance on individual Job Orders.

6.5 SUBSTITUTE SECURITIES FOR RETENTION

6.5.1 Substitution of Securities: Bidders are hereby put on notice that the successful bidder may substitute securities for any monies withheld by the County of El Dorado to insure performance of the Contract pursuant to Public Contract Section 22300. This section provides that the Contractor may elect to receive 100 percent of payments due under the Contract Documents from time to time, without retention from any portion of the payment by the County of El Dorado, by depositing eligible securities of equivalent value with the County of El Dorado or qualified escrow agent in accordance with the provisions of Public

Contract Code Section 22300. Eligible securities shall be limited to those listed in Section 16430 of the Government Code, or bank or savings and loan certificates of deposit from a qualified institution. Any such escrow agreement shall follow the form set forth in Public Contract Code Section 22300(f) and provided by the Owner.

6.6 FINAL COMPLETION AND PAYMENT OF RETAINAGE

- 6.6.1 **Affidavit of Payment:** After the date of Substantial Completion of the Work, and before final acceptance of the Work, the Contractor shall file with the Owner his affidavit stating that all workmen and persons employed, all firms supplying materials, and all subcontractors upon the project for either labor or material have been paid in full, except certain items, if any, to be set forth in such affidavit covering disputed claims, including claims for acceleration, disruption, delays, inefficiencies, and hindrance, or items in connection with which Stop Notices have been filed under the provisions of the Statutes of the State of California. The filing of such affidavit by the Contractor shall be one of the prerequisites to the making, by the Owner, of the final retainage payment on the Contract.
- 6.6.2 **Final Inspection:** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of the Application for Payment, the Owner will promptly make such inspection. The Contractor shall complete all punch list items within two (2) days of receipt of the written punch list. When the Owner's Representative finds the work acceptable under the Contract Documents and the Job Order fully performed, the Owner's Representative will promptly recommend to Owner that Owner may consider the Project complete, that the Purchasing Agent may accept the project and that the Notice of Acceptance may be issued.
- 6.6.3 **Payment of Retention:** Thirty-five (35) days after the Notice of Acceptance has been issued and all required documents for the Job Order has been received and approved by Owner, the balance due under the Job Order shall be paid, less any monies held for stop notices. Payment shall not be construed as an absolute acceptance of the work done up to the time of such payment. The Contractor, if requested by the Owner, shall furnish receipts or other vouchers showing his payments for materials and labor. Owner may withhold from payment an amount not to exceed 150 percent of any amount in dispute.
- 6.6.4 **Notice of Acceptance:** The Job Order Work shall be accepted in writing in the form of a Notice of Acceptance when the whole of the work of the Job Order has been completed satisfactorily to the Owner. In judging the Work, no allowance for deviations from the original Contract Documents will be made unless already approved in writing at the proper times and in the manner as called for herein.

ARTICLE 7

PROTECTION OF PERSONS AND PROPERTY

7.1 PROTECTION OF WORK, PROPERTY, AND PERSONS

- 7.1.1 **Responsible for Damage to Owner's Property:** The Contractor shall be entirely responsible for any damage to the property of the Owner due to careless handling of tools and/or materials or other causes attributed to the Contractor's Work in performing this Contract.
- 7.1.2 **Responsible for Safety:** The Contractor will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury, or loss to all employees on the Work and other persons who may be affected thereby, all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
- 7.1.3 **Safety and Convenience:** The Contractor will comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction. The Contractor will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. The Contractor will notify owners of adjacent utilities when prosecution of the Work may affect them.

- 7.1.4 Remedy Damages: The Contractor will remedy all damage, injury, or loss to any property caused, directly or indirectly, in whole or part, by the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or anyone of whose acts any of them would be liable, except damage or loss attributable to the sole or active negligence of the Owner or the Inspector or anyone employed by them and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.

ARTICLE 8

INSURANCE AND BONDS

8.1 INSURANCE

GENERAL INSURANCE REQUIREMENTS

The Contractor shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Management Division and documentation evidencing that the Contractor maintains insurance that meets the following requirements:

1. Full Workers' Compensation and Employers' Liability Insurance covering all employees of the Contractor as required by law in the State of California.
2. Commercial General Liability Insurance of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: Premises, personal injury, operations, products and completed operations, blanket contractual, and independent contractors liability. This insurance can consist of a minimum \$1 Million primary layer of CGL and the balance as an excess/umbrella layer, but only if the County is provided with written confirmation that the excess/umbrella layer "follows the form" of the CGL policy.
3. Automobile Liability Insurance of not less than One Million Dollars (\$1,000,000) is required in the event motor vehicles are used by the Contractor in performance of the contract.
4. In the event Contractor is a licensed professional and is performing professional services under this contract, Professional Liability Insurance is required with a limit of liability of not less than One Million Dollars (\$1,000,000).
5. Explosion, Collapse and Underground coverage is required when the scope of work includes XCU exposures. For the purpose of this contract, XCU coverage is not required.

PROOF OF INSURANCE REQUIREMENTS

1. Contractor shall furnish proof of coverage satisfactory to the County of El Dorado Risk Management Division as evidence that the insurance required herein is being maintained. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
2. The County of El Dorado, its officers, officials, employees, and volunteers shall be included as additional insureds, but only insofar as the operations under this Contract are concerned. This provision shall apply to all general liability and excess liability policies. Proof that the County is named additional insured shall be made by providing the Risk Management Division with a certified copy, or other acceptable evidence, of an endorsement to Contractor's insurance policy naming the County additional insured.
3. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this contract for not less than three (3) years following completion of performance of this Contract.
4. Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the

County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

5. Contractor shall require each of its subcontractors to procure and maintain commercial general liability insurance, automobile liability insurance, and workers compensation insurance of the types and in the amounts specified above, or shall insure the activities of its subcontractors in its own policy in like amounts. Contractor shall also require each of its subcontractors to name Contractor and County of El Dorado as additional insureds.

INSURANCE NOTIFICATION REQUIREMENTS

1. Contractor agrees no cancellation or material change in any policy shall become effective except upon thirty (30) days prior written notice to the County of El Dorado, Chief Administrative Office, Facilities Division, Russell Fackrell at 3000 Fairlane Court, Suite One, Placerville, CA 95667.
2. Contractor agrees that the insurance required herein shall be in effect at all times during the term of this agreement. In the event said insurance coverage expires at any time or times during the term of this Contract, Contractor shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event. New certificates of insurance are subject to the approval of the Risk Management Division.

ADDITIONAL STANDARDS

Certificates shall meet such additional standards as may be determined by the Department either independently or in consultation with the Risk Management Division, as essential for protection of the County.

COMMENCEMENT OF PERFORMANCE

Contractor shall not commence performance of this Contract unless and until compliance with each and every requirement of the insurance provisions is achieved.

MATERIAL BREACH

Failure of Contractor to maintain the insurance required herein, or to comply with any of the requirements of the insurance provisions, shall constitute a material breach of the entire Contract.

REPORTING PROVISIONS

Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.

PRIMARY COVERAGE

The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

PREMIUM PAYMENTS

The insurance companies shall have no recourse against the County of El Dorado its officers, agents, employees, or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

CONTRACTOR'S OBLIGATIONS

Contractor's indemnity and other obligations shall not be limited by the insurance required herein and shall survive the expiration of this Contract.

8.2 BONDS

- 8.2.1 General Requirements for Bonds: Before commencing any Work under the Contract, the Contractor shall provide all bonds to the Owner. These bonds shall be in the amounts and for the purposes specified below. They shall be Surety bonds and shall be issued by corporations duly and legally licensed and qualified to transact business in the State of California. They shall be maintained by him and at his expense during the entire life of the Contract or later as provided.

- 8.2.2 **Performance Bond:** One bond shall be in the amount of 100 percent of the Maximum Contract Value and shall guarantee the faithful performance of the Contract and shall insure the Owner during the life of the Contract and the Guarantee period. The Contractor may provide, subject to approval by the Owner, a separate guarantee bond upon completion of and acceptance of the work.
- 8.2.3 **Payment Bond:** One bond shall be in the amount of 100 percent of the Maximum Contract Value and shall guarantee the payment in full of all claims for labor and materials in accordance with the provisions of the laws of the State of California.
- 8.2.4 **Change of Surety:** If, at any time a Surety on such bonds becomes irresponsible or loses its right to do business in the State of California, the Owner may require another Surety which the Contractor shall furnish within ten (10) calendar days after receipt of written notice to do so.
- 8.2.5 **Authentication of Bonds:** Evidence of authority of an attorney-in-fact acting for the corporate Surety must be provided in the form of a certificate as to his power of attorney and to the effect that it is not terminated and remains in full force and effect on the date of the bonds. The form of the bonds shall be in accordance with those provided in the Draft Agreement.

ARTICLE 9

UNCOVERING AND CORRECTION OF WORK

9.1 DEVIATION FROM CONTRACT DOCUMENTS

- 9.1.1 **Improper Work:** If the Contractor shall vary from the Contract Documents in the form or quality of the Work, or the amount or value of the materials herein provided for, the Owner shall have the right to order such improper work or materials removed, remade, or replaced. In the event that the Work is ordered changed, any other work disturbed or damaged by such alteration shall be made good at the Contractor's expense.

9.2 CORRECTION OF WORK

- 9.2.1 **Covered or Completed Work:** If any work is covered contrary to the written instructions of the Owner's Representative, or the Inspector, if one is appointed, it must, if requested, be uncovered for observation and replaced at the Contractor's expense.
- 9.2.2 **Inspection of Covered Work:** If the Owner's Representative or the Inspector, if one is appointed, considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, upon request, will uncover, expose, or otherwise make available for observation, inspection, or testing as the Inspector may require, that portion of the Work in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such Work is defective, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction; if, however, such Work is not found to be defective, the Contractor will be allowed an increase in the Contract price or an extension of the Contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and construction, and an appropriate Supplemental Job Order shall be issued.
- 9.2.3 **Rejected Work:** The Contractor shall promptly remove from the premises all Work rejected by Owner for failure to comply with the Contract Documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the work either during the term of the Contract or during the warranty period, in accordance with the Contract Documents and without expense to the Owner and shall bear the expense of making good all Work of other contractors destroyed or damaged by such removal or replacement.
- 9.2.4 **Cost of Correction:** All removal and replacement Work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected Work within ten (10) days after receipt of written notice, the Owner may remove such Work and store the materials at the expense of the Contractor. Owner also may perform such Work or repairs itself and charge the expense to the Contractor.

ARTICLE 10

SUSPENSION OF CONTRACT

10.1 SUSPENSION OF WORK

10.1.1 Owner May Suspend: The Owner may suspend the Work or Job Order or any portion thereof, by written notice to the Contractor and the Inspector which shall fix the date on which work shall be resumed.

10.1.2 Resumption of Work: The Contractor shall resume that Work on the dates so fixed. The Contractor shall not be allowed an increase in the Job Order price. The Contractor shall be allowed an increase in the Job Order time.

“END OF CONDITIONS OF THE CONTRACT”



DEPARTMENT OF CONSUMER AFFAIRS

Contractors State License Board

Contractor's License Detail - License # 801995

⚠️ DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

CSLB complaint disclosure is restricted by law (B&P 7124.6) If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.

Per B&P 7071.17 , only construction related civil judgments reported to the CSLB are disclosed.

Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.

Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

License Number	801995	Extract Date 4/4/2014
	FREGOSO BUILDERS INC	
Business Information	Business Phone Number: (916) 363-7600	
	9795 BUSINESS PARK DRIVE STE D SACRAMENTO, CA 95762	
Entity	Corporation	
Issue Date	12/10/2001	
Expire Date	12/31/2015	
License Status	ACTIVE	
	This license is current and active. All information below should be reviewed.	
Classifications	CLASS	DESCRIPTION
	B	<u>GENERAL BUILDING CONTRACTOR</u>
	A	<u>GENERAL ENGINEERING CONTRACTOR</u>
Bonding	CONTRACTOR'S BOND	
	This license filed a Contractor's Bond with <u>AMERICAN CONTRACTORS INDEMNITY COMPANY.</u>	
	Bond Number: SC6322854	
	Bond Amount: \$12,500	
	Effective Date: 03/02/2009	
	<u>Contractor's Bond History</u>	
	BOND OF QUALIFYING INDIVIDUAL	
	1. The Responsible Managing Officer (RMO) FREGOSO ARTURO MAXWELL certified that he/she owns 10 percent or more of the voting stock/equity of the corporation. A bond of qualifying individual is not required.	
	Effective Date: 08/29/2008	
	<u>BQI's Bond History</u>	

WORKERS' COMPENSATION

This license has workers compensation insurance with
EVEREST NATIONAL INSURANCE COMPANY

Workers' Compensation

Policy Number: 7600001644131

Effective Date: 03/27/2013

Expire Date: 03/27/2015

Workers' Compensation History

Personnel List

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