



**COUNTY OF EL DORADO, CALIFORNIA  
CHIEF ADMINISTRATIVE OFFICE  
FACILITIES DIVISION**

**CONTRACT DOCUMENTS**

INCLUDING

**NOTICE TO BIDDERS, INSTRUCTIONS TO BIDDERS,  
PROPOSAL, CONTRACT,  
AND CONDITIONS OF THE CONTRACT**

FOR

**COUNTY OF EL DORADO  
JOB ORDER CONTRACTING (JOC)  
CLASS B – GENERAL BUILDING CONTRACTOR**

**BID #24-968-036**

**BIDS MUST BE RECEIVED BY:  
3:00 P.M. ON March 6, 2024  
PROCUREMENT & CONTRACTS  
330 Fair Lane, Placerville, CA 95667**

**COUNTY OF EL DORADO, STATE OF CALIFORNIA  
CHIEF ADMINISTRATIVE OFFICE  
FACILITIES DIVISION**

**COUNTY OF EL DORADO  
JOB ORDER CONTRACTING (JOC)  
CLASS B – GENERAL BUILDING CONTRACTOR**

**BID #24-968-036**

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**COUNTY OF EL DORADO, CALIFORNIA  
CHIEF ADMINISTRATIVE OFFICE  
FACILITIES DIVISION  
NOTICE TO BIDDERS**

**NOTICE IS HEREBY GIVEN** by the County of El Dorado, State of California that sealed bids for work in accordance with the Contract Documents, Construction Task Catalog®, and Technical Specifications designated:

**COUNTY OF EL DORADO  
JOB ORDER CONTRACTING (JOC)  
CLASS B – GENERAL BUILDING CONTRACTOR  
BID #24-968-036**

must be received by the Chief Administrative Office, Procurement & Contracts Division, located at **330 FAIR LANE, PLACERVILLE, CALIFORNIA, NO LATER THAN 3:00 P.M. ON MARCH 6, 2024, at which time they will be publicly opened and read aloud. The time stamp clock located in the office of the Chief Administrative Office will serve as the official time clock.** Bids will be opened publicly and read by the Chief Administrative Office, Procurement & Contracts Division.

All bids must be clearly marked on the envelope:

**“BID FOR JOB ORDER CONTRACTING”  
BID #24-968-036**

**LOCATION/DESCRIPTION OF THE WORK:** A Job Order Contract is an indefinite quantity contract pursuant to which the Contractor may perform an ongoing series of individual projects involving repair, remodel, or other repetitive work for any County department on existing County property at different locations throughout the County. The work shall not include new construction, design, or contract drawings. The bid documents include a 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 Contractor will bid **FOUR (4)** sets of adjustment factors to be applied to the unit prices. One set of Adjustment Factors for West Slope general facilities/property, one set of Adjustment Factors for West Slope secured facilities/property, one set of Adjustment Factors for non-secured facilities/property located in the Tahoe Basin and one set of Adjustment Factors for secured facilities/property located in the Tahoe Basin. Each set of Adjustment Factors will include an Adjustment Factor for performing work during Normal Working Hours (6:00 am to 6:00 pm Monday through Friday) and an Adjustment Factor for performing work during Other Than Normal Working Hours (6:00 pm to 6:00 am Monday through Friday and all day Saturday, Sunday and Holidays). All Adjustment Factors apply to every task in the Construction Task Catalog®.

All Unit Prices listed in the Construction Task Catalog® are priced at a net value of 1.0000. The Adjustment Factors shall be an increase or decrease to all the Unit Prices listed in the Construction Task Catalog®. For example, 1.1000 would be a 10% increase to the Unit Prices and 0.9500 would be a 5% decrease to the Unit Prices. Bidders who submit separate Adjustment Factors for separate Unit Prices will be considered non-responsive and their bid will be rejected.

Thereafter, as projects are identified the Contractor will jointly scope the work with the Project Manager. The Project Manager will prepare a Detailed Scope of Work and issue a Request for Proposal to the Contractor. The Contractor will then prepare a Proposal for the project including a Job Order Price Proposal, Schedule, Sketches or Drawings, a list of subcontractors, and other requested documentation. If the Proposal is found to be reasonable, a Job Order may be issued.

A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time, and the Job Order Price. The Job Order Price is determined by multiplying the preset unit prices by the appropriate quantities and by the appropriate Adjustment Factor. The Job Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate Job Order will be issued for each project. Extra work, credits, and deletions will be contained in additional Job Orders.

The County selected The Gordian Group’s (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian’s proprietary JOC Information Management System (“JOC IMS”), construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by the County. The Contractor shall be required to execute Gordian’s General Terms of Use and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™. The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms of this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors.

A. Minimum and Maximum Contract Values:

There is no Minimum Contract Value.

The Maximum Contract Value is \$2,500,000, with one option to increase the Maximum Contract Value to the amount currently authorized by the California Public Contract Code during the term of the Contract. The Contractor is not guaranteed to receive this volume of Job Orders.

- B. The contract term commences ninety (90) days after contract execution OR upon first Job Order Notice to Proceed, whichever occurs first.
- C. The term of the Job Order Contract will be either for one year or when issued Job Orders totaling the Maximum Contract Value have been completed, whichever occurs first. All Job Orders must be issued but not necessarily completed within one calendar year of the commencement date of the first Job Order. All Job Orders issued during the term of this Contract shall be valid and in effect until work has been completed and accepted by County. All terms and conditions of the Contract apply to each Job Order.
- D. Each Job Order shall set forth the Job Order Completion Time which is the amount of time allotted for the Contractor to complete the Detailed Scope of Work.
- E. The successful Bidder(s) shall be required to furnish both a payment bond the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) and a performance bond in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) on the forms set forth in the Contract Documents. Prior to beginning additional work, Contract holders will be required to re-bond for an additional amount as determined by County for anticipated work for both the payment and performance bonds once the total of completed and outstanding Job Orders reaches \$1,500,000, the amount of the original bond.
- F. A mandatory Pre-Bid Meeting is scheduled for this contract on **February 15, 2024 starting PROMPTLY at 10:00 a.m. in the County of El Dorado's Board of Supervisors Meeting Room located at 330 Fair Lane, Placerville, California. ATTENDANCE AT THE PRE-BID MEETING IS MANDATORY. REPRESENTATIVES SHALL FOLLOW COUNTY COVID 19 POLICY WHILE ON COUNTY PREMISES WHICH MAY INCLUDE THE USE OF FACE COVERINGS. PLEASE REFER TO COUNTY POLICY E-13 AVAILABLE AT: <https://www.edcgov.us/Government/BOS/Documents/Board%20Policy%20E-13.pdf>.** The Bidder's representative will be required to sign an attendance sheet and provide the name of the firm being represented. The County will post on the Quest website such Addenda as the County in its discretion considers necessary in response to questions arising and information presented at the Pre-Bid Meeting. Oral statements shall not be relied upon and will not be binding or legally effective. Addenda issued as a result of the Pre-Bid Meeting shall constitute the sole and exclusive record and statement of the results of the Pre-Bid Meeting.

**PRE-BID COMMUNICATIONS & REQUESTS FOR INFORMATION (RFI):** Questions will be accepted in writing only, through submission to the Quest website under the Quest Project #8866462 "Project Q&A", or by email until **5:00 P.M. on February 21, 2024** Pre-bid communications and RFI are to be submitted to the location shown on the Quest website under the Quest #8866462 "Project Q&A", or emailed to: [tyler.prince@edcgov.us](mailto:tyler.prince@edcgov.us) with BID #24-968-036 – RFI as the subject. If a response does not require an addenda, answers to questions deemed relevant and appropriate will be uploaded to Quest on or about **February 28, 2024**. Oral responses concerning the content of the Plans and Contract Documents shall not be relied upon and will not be binding or legally effective. Addenda will be uploaded in PDF format to Quest's website. To receive notification of addenda, interested bidders must be included on the planholders list.

**OBTAINING OR INSPECTING CONTRACT DOCUMENTS:** The contract documents may be viewed and/or downloaded from the Quest Construction Data Network (Quest) website at <http://www.questcdn.com>. Interested parties may also access the Quest website by clicking on the link located on the Chief Administrative Office, Procurement and Contract's website at <http://edcapps.edcgov.us/contracts/invite.asp> and entering the Quest project #8866462.

Interested parties may view the Contract Documents on the Quest website at no charge. The digital Contract Documents may be downloaded for \$22.00 by inputting the Quest project #8866462 on the websites' Project Search page. Please contact Quest CDN.com at 952.233.1632 or [info@questcdn.com](mailto:info@questcdn.com) for assistance with free membership, registration, downloading, and working with this digital project information. Physical paper copies of the Contract Documents, including Plans, may be examined by appointment at the County of El Dorado, Chief Administrative Office, Procurement and Contracts Division located at 330 Fair Lane, Placerville, California 95667; however, the Chief Administrative Office will no longer issue paper copies of the Contract Documents to bidders. To view the Contract Documents in person, contact Tyler Prince by phone at 530.621.6438 or by email at [tyler.prince@edcgov.us](mailto:tyler.prince@edcgov.us).

By paying for and downloading the digital Contract Documents, interested bidders are automatically included on the Planholders List. The list of planholders will be available on Quest's website under "View Planholders." Those downloading the Contract Documents assume responsibility and risk for completeness of the downloaded Contract Documents. To be eligible to bid, interested parties must be included on the Planholders List.

**ONLY CONTRACT DOCUMENTS, INCLUDING THE PROJECT PLANS, DOWNLOADED FROM QUEST AND SUBMITTED BY A BIDDER INCLUDED ON THE PLANHOLDERS LIST WILL BE CONSIDERED FOR BID SUBMITTAL.**

**CONTRACTORS LICENSE CLASSIFICATION:** Bidders shall be properly licensed to perform the Work pursuant to the Contractors' State License Law (Business and Professions Code section 7000, et seq.) and shall possess a **Class B – General Building Contractor's** license at the time the bid is submitted, and shall maintain a valid license through completion and acceptance of the Work, including the guarantee and acceptance period. Failure of the successful Bidder to obtain proper adequate licensing shall constitute a failure to execute the Contract and shall result in the forfeiture of the Bidder's security, and may result in legal penalties.

**CONTRACTOR REGISTRATION:** No contractor or subcontractor may be listed on a bid proposal for a public works project or awarded a contract for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code sections 1771.1(a), 1725.5. Bids will not be accepted from unregistered contractors except as provided in section 1771.1.

**PREVAILING WAGE REQUIREMENTS:** In accordance with the provisions of Labor Code section 1770, et seq., the general prevailing rate of wages in the county in which the Work is to be done has been determined by the Director of the California Department of Industrial Relations. These wage rates appear in the California Department of Transportation publication entitled General Prevailing Wage Rates. Interested parties can obtain the current wage information by submitting their requests to the Department of Industrial Relations, Division of Labor Statistics and Research, 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.

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 section 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.

**BID SECURITY:** A bid security shall be provided with bid. Bid security shall be in the amount of \$25,000.00 and shall be cash, a certified check or cashier's check drawn to the order of the County of El Dorado or a Bidder's Bond executed by a surety satisfactory to the County of El Dorado on the **form provided in the Proposal section of these Contract Documents.**

**SECURITIES SUBSTITUTION:** Pursuant to Public Contract Code section 22300, and at the request and expense of the Contractor to whom the Contract is awarded, securities in a form approved by the County shall be permitted in substitution for money withheld by the County to ensure performance under the Contract.

**BUY AMERICA:** This Project is subject to the "Buy America" provisions of the Surface Transportation Assistance Act of 1982, as amended by the Intermodal Surface Transportation Efficiency Act of 1991, and the Moving Ahead for Progress in the 21st Century Act (MAP-21). Contractor agrees that it will comply with all of the applicable "Buy America" provisions and will hold County harmless, pursuant to the Indemnity provisions set forth herein, for any violations of these laws.

**INSTRUCTIONS TO BIDDERS:** All bidders should carefully review the Instructions to Bidders for more detailed information before submitting a Bid Proposal.

**BY ORDER OF** the Board of Supervisors, County of El Dorado, State of California.

Authorized by the Board of Supervisors on January 30, 2024 at Placerville, California.

Dated: \_\_\_\_\_

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

Chair, Board of Supervisors

ATTEST:

Kim Dawson  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_

**\* END OF DOCUMENT \***

**THESE INSTRUCTIONS SUPPLEMENT THE NOTICE TO BIDDERS, PROPOSAL,  
DRAFT CONTRACT, AND CONDITIONS OF THE CONTRACT**

**COUNTY OF EL DORADO  
JOB ORDER CONTRACTING (JOC)  
CLASS B – GENERAL BUILDING CONTRACTOR**

**BID #24-968-036**

**INSTRUCTIONS TO BIDDERS**

1. The County of El Dorado will receive sealed bids from Bidders as stipulated in the Notice to Bidders.
2. The County may award up to three (3) individual Contracts. Award will be made to the lowest responsive and responsible Bidders.
3. Bidders must submit bids only on forms provided in the Contract Documents downloaded from the Quest website and shall be accompanied by all documents and information required to be submitted by these Instructions to Bidders, the Notice to Bidders, and by law. Bids not submitted on the required forms provided in the Contract Documents downloaded from Quest website will be deemed nonresponsive and will be disqualified.
4. Bidders must complete and submit the Proposal, Proposal Bid Price Schedule, Award Criteria Figure Formula, Public Contract Code section 10285.1 Statement, Public Contract Code section 10162 Questionnaire, Non-Collusion Affidavit, Iran Contracting Act Verification Form, California Levine Act Statement, and page P-12, along with Bidder's Bond and Acknowledgment forms, as applicable. Bids submitted without the required documentation will be deemed nonresponsive and will not be considered.
5. Bidders must supply all information required by Contract Documents and specifications. Bids must be complete. Late bids, unsealed bids, unlabeled bids, incomplete bids, or bids otherwise not in compliance with these bid documents will be rejected. The County reserves the right at its sole discretion to reject any bid as nonresponsive as a result of any error or omission in the bid.
6. Bidders may not modify Proposal Document or qualify their bids.
7. Submission of a bid signifies that the Bidder has done a careful examination of the Contract Documents and has a complete understanding of the nature, extent and location of Work to be performed. Bidder must complete the tasks listed below in subsections "a - c" as a condition to bidding, and submission of bid shall constitute the Bidder's express representation to the County that Bidder has fully completed the following:
  - a. Bidder has downloaded all documents related to the project from the Quest website and takes responsibility for their completeness;
  - b. Bidder has attended the mandatory pre-bid meeting and has examined thoroughly and understands the nature and extent of the Contract Documents, Work, locality, all local conditions and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto;
  - c. Bidder has given the County representative during the bid period prompt written notice of all conflicts, errors, ambiguities or discrepancies that it has discovered in or among the Contract Documents and the written resolution thereof by County is acceptable to Bidder.
8. The following represents the schedule for this Bid and is subject to change. All times listed are Pacific Time:

Bid Issuance	February 5, 2024
Pre-Bid Meeting (Mandatory)	February 15, 2024 - 10:00 A.M.
Deadline for Final Questions	February 21, 2024 - 5:00 P.M.
Bid Submission Deadline	March 6, 2024 - 3:00 P.M.

9. No Bid may be withdrawn after the time established for receiving bids or before the award and execution of the Contract, unless the award is delayed for a period exceeding sixty (60) calendar days.
10. Bids must be executed in accordance with the instructions given and on the forms provided in the Contract Documents furnished by the County of El Dorado, Chief Administrative Office, Procurement & Contracts Division through Quest Construction Data Network (Quest).
11. **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. The Bidder to whom an award is made 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.
12. **REQUIRED LISTING OF PROPOSED SUBCONTRACTORS:** No subcontractors will be listed with the bid. Each individual Job Order under the Contract shall have listed therein the name and address of each subcontractor, to whom the Bidder proposes to subcontract portions of the work in an amount in excess of 1/2 of one percent of its total Job Order Price Proposal in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with section 4100 of the Public Contract Code. The Bidder shall also describe in the Subcontractor Listing the work to be performed by each subcontractor listed. The work to be performed by the subcontractor shall be shown by listing the description of the work, and portion of the work to be performed by the subcontractor in the form of a percentage calculated by dividing the work to be performed by the subcontractor by the lump sum bid price. At the time the Job Order Price Proposal is submitted all listed subcontractors shall be properly licensed to perform their designated portion of the work. The Bidder's attention is invited to other provisions of the Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized subcontractors or by making unauthorized substitutions.

Pursuant Labor Code sections 1725.5 and 1771.1, no contractor or subcontractor may be listed on a bid proposal for public works project or awarded a contract for a public works project unless registered with the Department of Industrial Relations.

13. **EMISSIONS REDUCTION:** Successful bidder shall comply with emission reduction regulations mandated by the California Air Resources Board, sign the certification of knowledge in the Agreement, and provide County a Certificate of Reported Compliance when road legal diesel vehicles with a gross vehicle weight over 14,000 pounds are included in their fleet. Contractor must require all sub-contractors to comply with such regulations and provide County a Certificate of Reported Compliance for each subcontractor with road legal diesel vehicles over 14,000 pound gross vehicle weight.

Successful bidder and its subcontractors shall at all times have valid Certificates of Reported Compliance as described in 13 California Code of Regulations section 2449(n) for fleets of vehicles subject to 13 CCR section 2449 which may be used in performance of the resulting contract. No such vehicle is permitted onsite unless and until the successful bidder provides County with a valid Certificate of Reported compliance.

14. **NONDISCRIMINATION:** Attention is directed to the following Notice that is required by Government Code section 12990, et seq., which shall also be included in any subcontract agreements:

**NOTICE OF REQUIREMENT FOR NONDISCRIMINATION PROGRAM  
(GOVERNMENT CODE SECTION 12990)**



Your attention is called to the Nondiscrimination Clause set forth or referred to herein, which is applicable to all nonexempt state construction contracts and subcontracts and to the Standard California Nondiscrimination Construction Contract Specifications set forth herein. The specifications are applicable to all nonexempt state construction contracts and subcontracts of \$5,000 or more.

(2 California Code of Regulations section 11119.)

#### **NONDISCRIMINATION CLAUSE**

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.) and the applicable regulations promulgated thereunder (2 California Code of Regulations section 11000, et seq.). The applicable regulations of the Fair Employment and Housing Council implementing Government Code section 12990, set forth in Subchapter 5 of Division 4.1 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

2. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

(2 California Code of Regulations section 11105.)

#### **STANDARD CALIFORNIA NONDISCRIMINATION CONSTRUCTION CONTRACT SPECIFICATIONS (GOVERNMENT CODE SECTION 12990)**

These specifications are applicable to all state contractors and subcontractors having a construction contract or subcontract of \$5,000 or more.

1. As used in the specifications:

- a. "Act" means the Fair Employment and Housing Act.
- b. "Administrator" means Administrator, Office of Compliance Programs, California Department of Fair Employment and Housing, or any person to whom the Administrator delegates authority;

2. Whenever the contractor or any subcontractor subcontracts a portion of the work, it shall include in each subcontract of \$5,000 or more the nondiscrimination clause in this contract directly or through incorporation by reference. Any subcontract for work involving a construction trade shall also include the Standard California Construction Contract Specifications, either directly or through incorporation by reference.

3. The contractor shall implement the specific nondiscrimination standards provided in paragraphs 6(a) through (e) of these specifications.

4. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer members of any group protected by the Act shall excuse the contractor's obligations under these specifications, Government Code section 12990, or the regulations promulgated pursuant thereto.

5. In order for the nonworking training hours of apprentices and trainees to be counted, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor or the California Department of Industrial Relations.

6. The contractor shall take specific actions to implement its nondiscrimination program. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor must be able to demonstrate fully its efforts under steps a. through e. below:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and at all facilities at which the contractor's employees are assigned to work. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligations to maintain such a working environment.

b. Provide written notification within seven days to the director of the DFEH when the referral process of the union or unions with which the contractor has a collective bargaining agreement has impeded the contractor's efforts to meet its obligations.

c. Disseminate the contractor's equal employment opportunity policy by providing notice of the policy to unions and training, recruitment and outreach programs and requesting their cooperation in assisting the contractor to meet its obligations; and by posting the company policy on bulletin boards accessible to all employees at each location where construction work is performed.

d. Ensure all personnel making management and employment decisions regarding hiring, assignment, layoff, termination, conditions of work, training, rates of pay or other employment decisions, including all supervisory personnel, superintendents, general foremen, on-site foremen, etc., are aware of the contractor's equal employment opportunity policy and obligations, and discharge their responsibilities accordingly.

e. Ensure that seniority practices, job classifications, work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the contractor's obligations under these specifications are being carried out.

7. Contractors are encouraged to participate in voluntary associations that assist in fulfilling their equal employment opportunity obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on equal employment opportunity in the industry, ensures that the concrete benefits of the program are reflected in the contractor's workforce participation, and can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's.

8. The contractor is required to provide equal employment opportunity for all persons. Consequently, the contractor may be in violation of the Fair Employment and Housing Act (Government Code section 12990, et seq.) if a particular group is employed in a substantially disparate manner.

9. The contractor shall not use the nondiscrimination standards to discriminate against any person because race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

10. The contractor shall not enter into any subcontract with any person or firm decertified from state contracts pursuant to Government Code section 12990.

11. The contractor shall carry out such sanctions and penalties for violation of these specifications and the nondiscrimination clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Government Code section 12990 and its implementing regulations by the awarding agency. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Government Code section 12990.

12. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by OCP and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, status, (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(2 California Code of Regulations section 11122.)

15. **AWARD OF CONTRACT:** The County may at its sole discretion, award up to three (3) individual Contracts, each with a maximum amount of \$2,500,000. Award will be made to the lowest responsive and responsible bidders.

The County of El Dorado reserves the right after opening bids to reject any or all bids, to waive any irregularity in a bid, or to make award to the lowest responsive, responsible Bidder(s) and reject all other bids, as it may best serve the interests of the County. No Bidder is to be awarded more than one Job Order Contract under this solicitation. The Purchasing Agent will recommend the bids for award by the Board of Supervisors.

As a condition of award, the successful Bidder(s) will be required to submit bonds and evidence of insurance prior to execution of the Agreement by the County. Failure to meet this requirement shall constitute abandonment of the Bid by the Bidder and forfeiture of the Bidder's security. Award will then be made to the next lowest responsive Bidder.

16. **BIDDERS PROTEST PROCEDURES:** The Chief Administrative Office, Procurement & Contracts Division, will notify all bidders in writing of its recommendation for award or rejection of bids, and the date and time on which the recommendation for award will be considered and acted upon by the Board of Supervisors ("Notice of Intent to Award"). All bidders may attend the Board of Supervisors meeting, address the Board, and be heard.

**Within 5 working days** from the date of the Notice of Intent to Award, the Bidder protesting the recommendation for award must submit a formal written protest to the Procurement & Contracts Division, stating in detail the basis and reason for the protest. The Bidder must provide facts to support the protest including any evidence Bidder wishes to be considered together with the law, rule, regulation, or criteria on which the protest is based. The Bidder may attend the Board of Supervisors meeting at which the recommendation and bid protest will be considered. If the Bidder is not in attendance at that time, the bid protest may be dismissed by the Board of Supervisors without further consideration of the merits and the decision of the Board of Supervisors on the bid protest shall be final.

17. **PAYMENTS:** Attention is directed to Article 6.2 - APPLICATIONS FOR PAYMENT of the Conditions of the Contract.

18. **RETAINAGE FROM PAYMENTS:** Attention is directed to Article 6.4 – WITHOLDING FROM PAYMENTS of the Conditions of the Contract and Article 24 – RETAINAGE of the Contract.

19. **PROJECT ADMINISTRATION:** All communications relative to the Contract Documents and Plans shall be directed to Michele Weimer, Purchasing Agent, County of El Dorado Chief Administrative Office, Procurement and Contracts Division, 330 Fair Lane, Placerville, CA 95667, telephone: (530) 621-5670. No oral responses to any questions concerning the content of the Contract Documents, Construction Task Catalog®, and Technical Specifications will be given. All responses will be in the form of written addenda to the Contract Documents and/or Construction Task Catalog® and/or Technical Specifications.
20. The following documents are to be executed and submitted by the apparent low Bidder after bids have been opened and duly inspected, and the County transmits the Notice of Award package to the successful Bidder. Failure to properly and timely submit these documents entitles the County to determine that the Bidder has abandoned the contract and the bidder's security shall be forfeited to County.

Submit the following documents to Tyler Prince, Chief Administrative Office, Procurement and Contracts Division, 330 Fair Lane, Placerville, California 95667 by 5:00 p.m. of the **TENTH** working day following the date of the NOTICE OF AWARD OF CONTRACT letter. Execution of Contracts by the County depends upon approval of Insurance Certificates and Bonds, and associated contract documents.

- i. Contracts: The successful Bidder shall execute and submit the Agreements for the work associated with the Proposal Adjustment Factors. Submit two (2) originals of Agreement, each bearing an original signature.
- ii. County of El Dorado Performance Bond: To be executed by successful Bidder and surety each with notary acknowledgement. Successful Bidder shall furnish County with original copies of the Performance Bond and notary acknowledgment.
- iii. County of El Dorado Payment Bond: To be executed by successful Bidder and surety each with notary acknowledgement. Successful Bidder shall furnish County with original copies of the Payment Bond and notary acknowledgment.
- iv. Insurance certificates required by Conditions of the Contract, Article 8.
- v. California Form 590 – Withholding Exemption and County Payee Data Record Form.
- vi. Certificate of Reported Compliance for road legal diesel vehicles over 14,000 pounds, if applicable.
- vii. The successful bidder shall provide copies of valid Certificates of Reported Compliance as described in 13 California Code of Regulations section 2449(n) for your fleet, and fleets of any listed subcontractors, of vehicles subject to 13 CCR section 2449 which may be used in performance of the resulting contract.

**\*END OF DOCUMENT\***

**THE USE OF PENCIL OR CORRECTION FLUID OR TAPE IS NOT ACCEPTABLE.  
BID DOCUMENTS COMPLETED IN PENCIL OR CONTAINING THE USE OF CORRECTION FLUID OR TAPE  
WILL BE REJECTED.**

**ALL CHANGES MUST BE LINED OUT AND CORRECTIONS INSERTED ADJACENT TO THE CHANGE AND  
INITIALED BY THE BIDDER'S AUTHORIZED REPRESENTATIVE**

## **PROPOSAL**

**TO: CHIEF ADMINISTRATIVE OFFICE, PROCUREMENT & CONTRACTS DIVISION  
COUNTY OF EL DORADO, STATE OF CALIFORNIA**

for

**COUNTY OF EL DORADO  
JOB ORDER CONTRACTING (JOC)  
CLASS B – GENERAL BUILDING CONTRACTOR**

**One (1) bid package may be used to respond to the Bid:**

**BID #24-968-036**

NAME OF BIDDER: \_\_\_\_\_

BUSINESS MAILING ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

BUSINESS STREET ADDRESS: \_\_\_\_\_

*(Please include even if P.O. Box used)*

CITY, STATE, ZIP: \_\_\_\_\_

TELEPHONE NO:        AREA CODE (        ) \_\_\_\_\_

FAX NO:                AREA CODE (        ) \_\_\_\_\_

The work for which this Proposal is submitted is for all work required, necessary, proper for or incidental to completing the Detailed Scope of Work called for in each individual Job Order issued pursuant to this Contract for the Unit Prices set forth in the Construction Task Catalog® and the Adjustment Factors, and in accordance with the General Prevailing Wage rates. The Contract Documents for the work to be done are entitled:

## COUNTY OF EL DORADO JOB ORDER CONTRACTING

### **BID #24-968-036**

The Bidder shall perform all work required, necessary, proper for or incidental to completing the Detailed Scope of Work called for in each individual Job Order issued pursuant to this Contract for the Unit Prices set forth in the Construction Task Catalog® and the Adjustment Factors. Failure to submit Adjustment Factors for all categories will result in the bid being deemed non-responsive.

The Bidder shall set forth Adjustment Factors for the Bid, in clearly legible figures in the respective space provided for this purpose.

If the Adjustment Factors are unreadable or otherwise unclear, or is omitted, the bid may be deemed irregular.

Commas and dollar signs will be ignored and have no mathematical significance in establishing Adjustment Factors. The written Adjustment Factors in numbers will be interpreted according to the number of digits and, decimal placement. The Adjustment Factor must be stated in numerals.

The foregoing provisions for the resolution of specific irregularities cannot be so comprehensive as to cover every omission, inconsistency, error or other irregularity which may occur in a bid. Any situation not specifically provided for will be determined in the discretion of the County of El Dorado, and that discretion will be exercised in the manner deemed by the County of El Dorado to best protect the public interest in the prompt and economical completion of the work. The decision of the County of El Dorado respecting the amount of a bid, or the existence or treatment of any irregularity in a bid, shall be final.

If this Proposal is accepted and the undersigned Bidder shall fail to enter into the Contract and furnish the two bonds in the sums required by the State Contract Act, with surety satisfaction to the County of El Dorado in accordance with the Special Provisions within ten (10) days, not including Saturdays, Sundays, and legal holidays, of the date of the letter notice from the County of El Dorado that the Contract has been awarded, the County of El Dorado may, at its option, determine that the Bidder has abandoned the Contract, and thereupon this Proposal and the acceptance thereof shall be null and void and the forfeiture of such security accompanying this Proposal shall operate and the same shall be the property of the County of El Dorado.

**Attention!** The undersigned Bidder acknowledges that a bid security must be submitted in amount of \$25,000.

The undersigned, as Bidder, declares under penalty of perjury under the laws of the State of California that the only persons or parties interested in this Proposal, as principals, are those named herein; that this Proposal is made without collusion with any other person, firm, or corporation; that it has carefully examined the location of the proposed work, the annexed proposed form of Contract, and the Plans therein referred to; and that it proposes, and agrees if this Proposal is accepted, that it will contract with the County of El Dorado, in the form of the copy of the Draft Agreement annexed hereto, to provide all necessary machinery, tools, apparatus, and other means of construction, and to do all the work and furnish all the materials specified in the Contract, in the manner and time therein prescribed, and that it will take in full payment therefore the following item prices, to wit:

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INITIALED BY THE BIDDER'S AUTHORIZED REPRESENTATIVE**

**PROPOSAL BID PRICE SCHEDULE  
COUNTY OF EL DORADO  
JOB ORDER CONTRACTING  
CLASS B – GENERAL BUILDING CONTRACTOR  
BID #24-968-036**

**Note: The undersigned Bidder acknowledges that no Bidder may be awarded more than one (1) JOC contract. Award will be made to the lowest responsive and responsible bidders based on the Award Criteria Figure (Page P-4, Line 17). \_\_\_\_\_ Bidders Initials**

**Adjustment Factors**

- A. West Slope General Facilities/Properties Normal Working Hours 6:00 a.m. to 6:00 p.m. Monday to Friday.
- B. West Slope General Facilities/Properties Other Than Normal Working Hours 6:00 p.m. to 6:00 a.m. Monday to Friday, and all day Saturday, Sunday, and Holidays.
- C. West Slope Secure Facilities/Properties Normal Working Hours 6:00 a.m. to 6:00 p.m. Monday to Friday.
- D. West Slope Secure Facilities/Properties Other Than Normal Working Hours 6:00 p.m. to 6:00 a.m. Monday to Friday, and all day Saturday, Sunday, and Holidays.
- E. Tahoe Basin Facilities/Properties Normal Working Hours 6:00 a.m. to 6:00 p.m. Monday to Friday.
- F. Tahoe Basin Facilities/Properties Other Than Normal Working Hours 6:00 p.m. to 6:00 a.m. Monday to Friday, and all day Saturday, Sunday, and Holidays.
- G. Tahoe Basin Secure Facilities/Properties Normal Working Hours 6:00 a.m. to 6:00 p.m. Monday to Friday.
- H. Tahoe Basin Secure Facilities/Properties Other Than Normal Working Hours 6:00 p.m. to 6:00 a.m. Monday to Friday, and all day Saturday, Sunday, and Holidays.

Bids will be rejected, as non-responsive if the 'Other Than Normal Working Hours' Adjustment Factors are not equal to or greater than the 'Normal Working Hours' Adjustment Factors.

**NOTE: SECURED FACILITIES ARE AS FOLLOWS:**

- Jail Facilities in Placerville and South Lake Tahoe
- Juvenile Treatment Center in South Lake Tahoe
- Psychiatric Health Facility (PHF) in Placerville

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### Award Criteria Figure Formula

Line 1.	General Facilities/Properties Normal Working Hours Adjustment Factor	1.	
Line 2.	Multiply Line 1 by 30%		2.
Line 3.	General Facilities/Properties Other Than Normal Working Hours Adjustment Factor	3.	
Line 4.	Multiply Line 3 by 15%		4.
Line 5.	Secure Facilities/Properties Normal Working Hours Adjustment Factor	5.	
Line 6.	Multiply Line 5 by 20%		6.
Line 7.	Secure Facilities/Properties Other Than Normal Working Hours Adjustment Factor	7.	
Line 8.	Multiply Line 7 by 5%		8.
Line 9.	Tahoe Basin Facilities/Properties Normal Working Hours Adjustment Factor	9.	
Line 10.	Multiply Line 9 by 10%		10.
Line 11.	Tahoe Basin Facilities/Properties Other Than Normal Working Hours Adjustment Factor	11.	
Line 12.	Multiply Line 11 by 5%		12.
Line 13.	Tahoe Basin Secured Facilities/Properties Normal Working Hours Adjustment Factor	13.	
Line 14.	Multiply Line 13 by 10%		14.
Line 15.	Tahoe Basin Secure Facilities/Properties Other Than Normal Working Hours Adjustment Factor	15.	
Line 16.	Multiply Line 15 by 5%		16.
Line 17.	Add Lines 2, 4, 6, 8, 10, 12, 14 and 16 (This is the Award Criteria Figure)		

**Notes to Bidder:**

- Specify lines 1 through 17 to four (4) decimal places. Use conventional rounding methodology (i.e., if the number in the 5th decimal place is 0-4, the number in the 4th decimal remains unchanged; if the number in the 5th decimal place is 5-9, the number in the 4th decimal is rounded upward).



2. The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the County of El Dorado that Work will be ordered under the Contract in a distribution consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the Bid.
3. When submitting Job Order Price Proposals related to specific Job Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

NOTICE: Bidder's failure to execute the questionnaire and statements contained in this Bid as required by applicable laws and regulations, or the determinations by El Dorado County based upon those questionnaires and statements, may prohibit award of the subject Contract to the Bidder.

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**PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT**

In accordance with Public Contract Code section 10285.1 (Chapter 376, Stats. 1985), the Bidder hereby declares under penalty of perjury under the laws of the State of California that the Bidder has \_\_\_\_\_, has not \_\_\_\_\_ been convicted within the preceding three years of any offenses referred to in that Section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code section 1101, with any public entity, as defined in Public Contract Code section 1100. The term "Bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

**NOTE:** The Bidder must place a check mark after "has" or "has not" in one of the blank spaces provided.

The above Statement is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

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BID DOCUMENTS COMPLETED IN PENCIL OR CONTAINING THE USE OF CORRECTION FLUID OR  
TAPE WILL BE REJECTED.**

**ALL CHANGES MUST BE LINED OUT AND CORRECTIONS INSERTED ADJACENT TO THE CHANGE  
AND INITIALED BY THE BIDDER'S AUTHORIZED REPRESENTATIVE**

**PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE**

In accordance with Public Contract Code section 10162, the Bidder shall complete, under penalty of perjury under the laws of the State of California, the following questionnaire:

Has the Bidder, any officer of the Bidder, or any employee of the Bidder who has a proprietary interest in the Bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

**Yes:** \_\_\_\_\_

**No:** \_\_\_\_\_

If the answer is yes, explain the circumstances in the following space:

**PUBLIC CONTRACT CODE SECTION 10232 STATEMENT**

In accordance with Public Contract Code section 10232, the Bidder hereby states under penalty of perjury under the laws of the State of California, that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against the Bidder within the immediate preceding two year period because of the Bidder's failure to comply with an order of a Federal Court which orders the Bidder to comply with an order of the National Labor Relations Board.

**NOTE:**

The above Questionnaire and Statement are part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Questionnaire and Statement.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

**NONCOLLUSION AFFIDAVIT**  
(Title 23 United States Code section 112 and  
Public Contract Code section 7106)

In accordance with Title 23 United States Code section 112 and Public Contract Code section 7106, the Bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Bidder, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed Contract; that all statements contained in the bid are true; and, further, that the Bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

**NOTE:**

The above Noncollusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Noncollusion Affidavit.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

**(Public Contract Code sections 2202-2208)**

Prior to bidding on, submitting a proposal or executing a contract or renewal for a State of California contract for goods or services of \$1,000,000 or more, a vendor must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d). The DGS list of entities prohibited from contracting with public entities in California per the Iranian Contracting Act, 2010, can be found at:  
[Department of General Services Procurement Division Iran Contracting Act List](http://www.documents.dgs.ca.gov/PD/poliproc/Iran%20Contracting%20Act%20List.pdf)  
(<http://www.documents.dgs.ca.gov/PD/poliproc/Iran%20Contracting%20Act%20List.pdf>)

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete **one** of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

**OPTION #1 - CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Vendor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	<i>Date</i>
<i>Printed Name and Title of Person Signing</i>	

**OPTION #2 – EXEMPTION**

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	<i>Date</i>
<i>Printed Name and Title of Person Signing</i>	

## California Levine Act Statement

### California Levine Act Statement

California Government Code section 84308, commonly referred to as the "Levine Act," prohibits any officer of El Dorado County from participating in any action related to a contract if he or she receives any political contributions totaling more than two hundred and fifty dollars (\$250) within the previous twelve (12) months, and for twelve (12) months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires disclosure of such contribution by a party to be awarded a specific contract. An officer of El Dorado County includes the Board of Supervisors, and any elected official (collectively "Officer"). It is the Contractor's responsibility to confirm the appropriate "officer" and name the individual(s) in their disclosure.

Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to an Officer of the County of El Dorado in the twelve months preceding the date of the submission of your proposals or the anticipated date of any Officer action related to this contract?

\_\_\_\_\_ YES \_\_\_\_\_ NO

If yes, please identify the person(s) by name:

Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$250 to an Officer of the County of El Dorado in the twelve months following any Officer action related to this contract?

\_\_\_\_\_ YES \_\_\_\_\_ NO

If yes, please identify the person(s) by name:

Answering YES to either of the two questions above does not preclude the County of El Dorado from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Officer(s) from participating in any actions related to this contract.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature of authorized individual

\_\_\_\_\_

Type or write name of company

\_\_\_\_\_

Type or write name of authorized individual

Accompanying this proposal is \_\_\_\_\_

(NOTICE: INSERT THE WORDS "CASH (\$ \_\_\_)," "CASHIER'S CHECKS," "CERTIFIED CHECKS," OR "BIDDERS BONDS," AS THE CASE MAY BE)

in amount equal to \$25,000.00

**The names of all persons interested in the forgoing Proposal as principals are as follows:**

**IMPORTANT NOTICE:** If the Bidder or other interested person is a corporation, state legal name of corporation and place of incorporation, also names of the president, secretary, treasurer, and executive officer thereof; if a partnership, state name of partnership, also names of all individual partners; if Bidder or other interested person is an individual, state first and last names in full.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Licensed in accordance with an act providing for the registration of Contractors,

License No. \_\_\_\_\_ Classification(s) \_\_\_\_\_

**A copy of the afore-referenced license must be attached hereto.**

**ADDENDA:** This Proposal is submitted with respect to the changes to the Contract included in addenda number(s)

\_\_\_\_\_

(Fill in addenda numbers if addenda have been received and insert, in this Proposal, any Proposal Pay Items and Bid Price Schedules that were received as part of the addenda)

By my signature on this Proposal I certify, under penalty of perjury under the laws of the State of California, that the foregoing questionnaire and statements of Public Contract Code sections 10162, 10232, and 10285.1 are true and correct and that I have complied with the requirements of section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations). By my signature on this Proposal I further certify, under penalty of perjury under the laws of the State of California and the United States of America that the Noncollusion Affidavit required by Title 23 United States Code section 112 and Public Contract Code section 7106 is true and correct.

The person or persons executing this Proposal on behalf of a corporation or partnership shall be prepared to demonstrate by resolution, article, or otherwise, that such person is or that such persons are appropriately authorized to act in these regards for such corporation or partnership. Such authority shall be demonstrated to the satisfaction of the County of El Dorado.

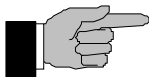
If the signature is by an agent other than an officer of a corporation or a member of a partnership, a power of attorney authorizing said act by the agent on behalf of his principal shall be submitted with the bid forms; otherwise, the bid may be disregarded as irregular and unauthorized.

The Bidder's execution on the signature portion of this Proposal shall constitute an endorsement and execution of those affidavits, declarations and certifications which are part of this Proposal.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

at \_\_\_\_\_ County, State of \_\_\_\_\_

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



**SIGN HERE** \_\_\_\_\_

Name and Title of Bidder \_\_\_\_\_

Name of Firm \_\_\_\_\_

**\* END OF PROPOSAL \***



**COUNTY OF EL DORADO**

**BIDDER'S BOND**

**this form MUST be used**

**KNOW ALL PEOPLE BY THESE PRESENTS, THAT WE** \_\_\_\_\_  
\_\_\_\_\_, as **PRINCIPAL**, and

\_\_\_\_\_ as Surety are held and firmly bound unto the County of El Dorado (Obligee), in the penal sum of \$25,000.00 of the Principal above named, submitted by said Principal to the Obligee for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made to the Obligee, we the Principal and Surety bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. In no case shall the liability of the Surety hereunder exceed the sum of

**\$25,000.00**

**THE CONDITION OF THIS OBLIGATION IS SUCH, THAT:**

**WHEREAS**, the Principal has submitted the above-mentioned Bid to the Obligee, as aforesaid, for certain construction specifically described as follows, for which bids are to be opened at Placerville, El Dorado County, California, for the

**COUNTY OF EL DORADO**  
**JOB ORDER CONTRACTING (JOC**  
**CLASS B – GENERAL BUILDING CONTRACTOR**  
**BID #24-968-036**

**NOW, THEREFORE**, if the aforesaid Principal is awarded the Contract and, within the time and manner required under the Contract Documents, after the prescribed forms are presented to it for signature, enters into a written contract, in the prescribed form, in accordance with the Bid, and files two bonds with the County of El Dorado, one to guarantee faithful performance and the other to guarantee payment for labor and materials, as required by law, then this obligation shall be null and void; otherwise, it shall remain in full force and virtue.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the Court.

**IN WITNESS WHEREOF**, we have set our hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

(seal) \_\_\_\_\_  
Principal

(seal) \_\_\_\_\_  
Surety

Address: \_\_\_\_\_  
\_\_\_\_\_

(NOTE: Signature of those executing for the Surety shall be properly acknowledged, and accompanied by a Certificate of Acknowledgment.)

**PRINCIPAL**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

**ACKNOWLEDGMENT**

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

# SURETY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

## ACKNOWLEDGMENT

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

# County of El Dorado

BID #24-968-036

**COUNTY OF EL DORADO**  
**JOB ORDER CONTRACTING (JOC)**  
**CLASS B – GENERAL BUILDING CONTRACTOR**

**THIS AGREEMENT** (“Agreement”) approved by the County of El Dorado Board of Supervisors, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of \_\_\_\_\_, 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 **(CONTRACTOR)** 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 (JOC)**  
**CLASS B – GENERAL BUILDING CONTRACTOR**

This Contract is an indefinite quantity contract pursuant to which the Contractor will perform an ongoing series of individual projects involving, repair, remodeling, or other repetitive work for any County department on existing County facilities or properties at different locations throughout El Dorado County. The Work shall not include new construction, design, or contract drawings. 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 County-owned or operated location within El Dorado County.

**Article 2. CONTRACT DOCUMENTS**

The Contract Documents consist of: the Notice to Bidders; Instructions 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, Iran Contracting Act Verification Form, California Levine Act Statement; the Contract which includes this Agreement with all Exhibits thereto, the Performance Bond and Payment Bond; Conditions of the Contract; 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 Construction Task Catalog®, the Technical Specifications. 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**

3.1 There is no Minimum Contract Value. The Maximum Contract Value is \$2,500,000 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 County has no obligation to issue Job Orders up to the Maximum Contract Value.

3.2 The Contractor shall perform all work required, necessary, proper for or incidental to completing the Detailed Scope of Work called for in each individual Job Order issued pursuant to this Contract for the Unit Prices set forth in the Construction Task Catalog® and the following Adjustment Factors:

A. West Slope General Facilities/Properties Normal Working Hours 6:00 a.m. to 6:00 p.m. Monday to Friday.  
\_\_\_\_\_

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

C. West Slope Secure Facilities/Properties Normal Working Hours 6:00 a.m. to 6:00 p.m. Monday to Friday.  
\_\_\_\_\_

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

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

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

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

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

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3.3 For satisfactory completion of the Work and acceptance of the Work by County, County agrees to pay Contractor within forty-five (45) days following County's receipt and approval of itemized invoices identifying the Work performed.

3.4 Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces. Contractor shall attach copies of any progress reports required under the Article entitled Progress Reports, herein, that relate to the Work being billed, as backup documentation to any invoices submitted for payment under the terms of this Agreement. Copies of documentation attached to invoices shall reflect Contractor's charges for the specific Work billed on those invoices.

3.5 Invoices shall be mailed to County at the following address:

County of El Dorado  
Community Development Services  
2850 Fairlane Court  
Placerville, California 95667  
Attn.: Contract Administrator's Name  
Contract Administrator's Title

or to such other location as County directs.

3.6 In the event that Contractor fails to deliver, in the format specified, the deliverables and progress reports required by this Agreement, County at its sole option may delay the payment for the period of time of the delay, cease all payments until such time as the required deliverables or progress reports are received, or proceed as set forth herein in the Article entitled Default, Termination, and Cancellation.

3.7 Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by Contractor after the expiration or other termination of this Agreement. Should Contractor receive any such payment, it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after the expiration/termination of this Agreement shall not constitute a waiver of County's right to recover such payment from Contractor. This provision shall survive the expiration of this Agreement.

3.8 Unless otherwise specifically provided for in this Agreement, County shall not pay Contractor for any overtime premiums, travel expenses, meals, lodging, holidays, vacation, sick leave, per diem, or miscellaneous expenses.

3.9 Pursuant to Public Contract Code section 9203, Progress payments will not exceed 95% of the actual work completed, plus a like percentage of the value of material delivered on the ground or stored and subject to, or under the control of, the County, and unused.

3.10 County shall promptly pay Contractor in accordance with Public Contract Code section 20104.50.

**Article 4. COMMENCEMENT AND COMPLETION**

The Work to be performed under this Contract shall commence ninety (90) days after contract execution OR upon first Notice to Proceed, whichever occurs first. 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 Article 4.3.5 of the Conditions of the Contract. They also recognize the delays, expense, and difficulties involved with proving in a legal proceeding the actual loss suffered by County if the Work is not completed on time. Accordingly, instead of requiring any such proof, County and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay County the sum identified in the Conditions of the Contract as liquidated damages and not as a penalty, for each and every calendar day's delay in submitting the Job Order Proposal or 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. SAFETY**

Contractor shall maintain safe conditions at the jobsite for the duration of the Work for the public, County staff, and all persons performing the Work. Contractor shall comply fully with all laws, orders, citations, rules, regulations, standards, and statutes with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices. Contractor shall be solely responsible for providing a safe place to work for its employees and for employees of its subcontractors and suppliers or material and equipment, for adequacy of and required use of all safety equipment, and for full compliance with aforesaid laws, orders, citations, rules, regulations, standards, and statutes.

Other safety measures shall include, but not be limited to the following:

- A. Providing safe accessibility to all building entrances, keeping all sidewalks, active doors, corridors or other walkways, driveways, or any emergency vehicle access clear for the duration of the project.
- B. Keeping flammable rags, if applicable, in a sealed container and removing them from the site at the end of each work day.

**Article 6. PROTECTION OF FACILITIES**

6.1 Contractor shall exercise care to prevent damage to the existing building, grounds, and property while performing the Work. Any damage caused as a result of Contractor's operations shall be repaired back to its original condition by Contractor at no additional cost to County.

6.2 Contractor shall provide for continuous County occupancy and operation of the facility for the duration of the project.

6.3 Contractor shall provide for public use and shall limit access to the facility as directed by County's Contract Administrator.

6.4 Contractor shall provide for work by other contractors and County.

6.5 Contractor shall coordinate the use of the premises, including the storage of materials, tools, and equipment with County's Contract Administrator.

**Article 7. INDEMNITY**

To the fullest extent allowed by law, Contractor shall defend, indemnify, and hold 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 acts or omissions of Contractor or its officers, agents, or employees in rendering the services, operations, or performance hereunder,, regardless of the existence or degree of fault or negligence on the part of County, Contractor, subcontractors or employees of any of these, except for the active negligence, sole negligence, or wilful misconduct of County, its officers, directors, and employees, or where expressly prescribed by statute.

The duty to indemnify and hold harmless County specifically includes the duties to defend set forth in Civil Code section 2778. 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.

Nothing herein shall be construed to seek indemnity in excess of that permitted by Civil Code section 2782, et seq. In the event any portion of this Article is found invalid, the Parties agree that this Article shall survive and be interpreted consistent with the provisions of Civil Code section 2782, et seq.

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

Contractor shall repair or replace any or all work provided hereunder which is defective due to faulty materials, poor workmanship, or defective equipment at no expense to County, ordinary wear or tear and unusual abuse or neglect excepted, during the 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 9. NOTICE**

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



To County:

County of El Dorado  
Chief Administrative Office  
Facilities Division  
3000 Fairlane Court, Suite One  
Placerville, California 95667

Attn.: Charles Harrell  
Facilities Division Manager

With a copy to:

County of El Dorado  
Chief Administrative Office  
Procurement and Contracts Division  
330 Fair Lane  
Placerville, California 95667

Attn.: Michele Weimer  
Procurement and Contracts Manager

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

Contractor's Business Name  
Street Address  
City, State Zip

Attn.: Name of Notices Recipient  
Title of Notices Recipient

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

#### **Article 10. CALIFORNIA FORUM AND LAW**

Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

#### **Article 11. PERFORMANCE BOND**

As a part of the execution of this Contract, Contractor shall furnish a bond of a surety company authorized to do business in the State of California, conditioned upon the faithful performance of all covenants and stipulations under this Contract. The amount of this bond shall be **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000)** and shall be executed upon the form provided by County. Once the total of completed and outstanding Job Orders reaches \$1,500,000, the amount of the original bond, and prior to beginning additional work, Contractor shall re-bond for an additional amount as determined by County for anticipated work. At no time shall the sum of the outstanding and completed Job Orders exceed the amount of the Performance Bond.

#### **Article 12. PAYMENT BOND**

As a part of the execution of this Contract, Contractor shall furnish a bond of a surety company authorized to do business in the State of California, conditioned upon the payment in full of all claims for labor and materials in accordance with the provisions of the law of the State of California. The amount of this bond shall be **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000)** and shall be executed upon the form provided by County. Once the total of completed and outstanding Job Orders reaches \$1,500,000, the amount of the original bond, and prior to beginning additional work, Contractor shall re-bond for an additional amount as determined by County for anticipated work. At no time shall the sum of the outstanding and completed Job Orders exceed the amount of the Payment Bond.

#### **Article 13. 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 14. 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 15. TERMINATION BY COUNTY FOR CONVENIENCE**

County reserves the right to terminate the Contract, a Job Order or any portion of a Job Order upon thirty (30) calendar days written Notice of Termination. 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 16. 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 17. 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 18. SHORING PLAN**

Excavation for any trench five (5) feet or more in depth shall not begin until Contractor has received approval, from the Contract Administrator, of Contractor's detailed shoring plan for worker protection from the hazards of caving ground during the excavation of that trench, and any design calculations used in the preparation of the detailed plan. The detailed plan shall show the details of the design of shoring, bracing, sloping or other provisions to be made for worker protection during the excavation. No plan shall allow the use of shoring, sloping or a protective system less effective than that required by the Construction Safety Orders of the California Division of Occupational Safety and Health. If the plan complies with the shoring system standards established by the Construction Safety Orders, the plan shall be submitted at least five (5) days before Contractor intends to begin excavation for the trench. If the plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California, and the plan and design calculations shall be submitted at least three (3) weeks before Contractor intends to begin excavation for the trench. Nothing in this Article shall be deemed to allow the use of a shoring, sloping or protective system less effective than that required by the Construction Safety Orders. Contractor's bid must include an item for shoring. (Labor Code sections 6705 and 6707.)

#### **Article 19. 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 20. EMISSIONS REDUCTION**

Contractor and its subcontractors shall at all times have valid Certificates of Reported Compliance as described in 13 California Code of Regulations section 2449(n) for fleets of vehicles subject to 13 CCR section 2449 which may be used in performance of the contract. No such vehicle is permitted onsite unless and until Contractor provides County with a valid Certificate of Reported compliance.

Contractor and its subcontractors shall comply with emission reduction regulations mandated by the California Air Resources Board, and sign a certification of knowledge thereof:

**CERTIFICATE OF KNOWLEDGE – EMISSIONS REDUCTION REGULATIONS**

I am aware of the emissions reduction regulations being mandated by the California Air Resources Board (CARB). I will comply with such regulations before commencing the performance of the Work and maintain compliance throughout the duration of this Contract.

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

Contractor shall indemnify County against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules, and regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

**Article 21. WORKERS’ COMPENSATION CERTIFICATION**

Contractor shall comply with Labor Code section 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 \_\_\_\_\_

**Article 22. 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 23. APPRENTICES**

- 23.1 For purposes of this Article 23, the term Subcontractor shall not include suppliers, manufacturers, and distributors.
- 23.2 Only apprentices, as defined in the State of California Labor Code section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4, Division 3, of the State of California Labor Code, are eligible to be employed by Contractor and Subcontractors as apprentices. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and written apprentice agreements under which the apprentice is training and in accordance with prevailing wage law pursuant to the Labor Code, including but not limited to Section 1777.5. The Contractor bears responsibility for compliance with this section for all apprenticeable occupations.
- 23.3 Every apprentice shall be paid the standard wage to apprentices, under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the Work in the craft or trade to which the apprentice is indentured.

23.4 When Contractor or Subcontractors employ workers in any apprenticeship craft or trade on the Work, Contractor or Subcontractors shall 1) send contract award information to the applicable joint apprenticeship committee that can supply apprentices to the site of the public work and 2) apply to the joint apprenticeship committee, which administers the apprenticeship standards of the craft or trade in the area of the Project site, for a certificate approving Contractor or Subcontractors under the apprenticeship standards for the employment and training of apprentices in the area of the Project site. The committee will issue a certificate fixing the number of apprentices or the ratio of apprentices to journeypersons who shall be employed in the craft or trade on the Work. The ratio will not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates; but in no case shall the ratio be less than 1 hour of **apprentice** work for every 5 hours of journeyperson work, except as permitted by law. Contractor or Subcontractors shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices or the ratio of apprentices to journeypersons fixed in the certificate issued by the joint apprenticeship committee or present an exemption certificate issued by the Division of Apprenticeship Standards.

23.5 "Apprenticeship craft or trade," as used in this Article 23, shall mean a craft or trade determined as an apprenticeship occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

23.6 If Contractor or Subcontractors employ journeyworkers or apprentices in any apprenticeship craft or trade in the area of the Project site, and there exists a fund for assisting to allay the cost of the apprenticeship program in the trade or craft, to which fund or funds other contractors in the area of the Project site are contributing, Contractor and Subcontractors shall contribute to the fund or funds in each craft or trade in which they employ journeyworkers or apprentices on the Work in the same amount or upon the same basis and in the same manner done by the other contractors. Contractor may include the amount of such contributions in computing its bid for the Contract; but if Contractor fails to do so, it shall not be entitled to any additional compensation therefor from County.

23.7 In the event Contractor willfully fails to comply with this Article 23, it will be considered in violation of the requirements of the Contract.

23.8 Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Contractor or Subcontractors of journeyworker trainees who may receive on-the-job training to enable them to achieve journeyworker status in any craft or trade under standards other than those set forth for apprentices.

#### **Article 24. 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 25. PREVAILING WAGE REQUIREMENTS**

In accordance with the provisions of California Labor Code section 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 section 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 26. CERTIFIED PAYROLL**

As required under the provisions of Labor Code section 1776, Contractor and any subcontractors shall keep accurate payroll records as follows:

26.1. 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 employed by Contractor or subcontractors in connection with this Project.

26.2 A certified copy of all payroll records enumerated above shall be available for inspection at all reasonable hours at the principal office of 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 County, the State Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State 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 County, the State Division of Labor Standards Enforcement, or the State Division of Apprenticeship Standards. The requesting party shall, prior to being provided the records, reimburse the costs of preparation by 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 Contractor.
- d. All contractors and subcontractors must furnish electronic certified payroll records directly to the Department of Industrial Relations.

## **Article 27. NON-DISCRIMINATION**

27.1. County may require Contractor's services on projects involving funding from various state and/or federal agencies, and as a consequence, Contractor shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Contractor and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Contractor shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.) and applicable regulations promulgated thereunder (2 California Code of Regulations section 11000, et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990, set forth in Subchapter 5 Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Contractor and its employees and representatives shall give written notice of their obligations under this clause as required by law.

27.2. Where applicable, Contractor shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.

27.3. Contractor's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code section 12990 and 2 California Code of Regulations section 11102.

## **Article 28. SUBCONTRACTORS**

### **28.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

28.1.1 Unless otherwise stated in the Contract Documents, Contractor shall submit in writing, prior to entering into subcontract agreements, the names and addresses of all Subcontractors proposed for the Work that were not previously listed in Contractor's Bid. Where subcontractors are used, the provisions of Public Contract Code sections 4100-4114 apply to this Agreement.

28.1.2 Any Subcontractor may be disqualified if County or County's Representative determines that such Subcontractor fails to meet the requirements of the Contract Documents or for any other reason.

28.1.3 In accordance with the Subletting and Subcontracting Fair Practices Act, nothing herein shall be deemed to entitle Contractor, without the approval of County, to substitute other subcontractors for those named in Contractor's List of Subcontractors and List of Changes in Subcontractors Due to Alternates contained in the completed Bid Form; and, except with such approval, no such substitution shall be made.

28.1.4 Except as hereinafter provided, any increase in the cost of the Work resulting from the replacement or substitution of a Subcontractor, as required by County or County's Representative pursuant to Article 28.1.1 shall be borne solely by Contractor and Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time on account of such replacement or substitution.

### **28.2 SUBCONTRACTUAL RELATIONS**

28.2.1 Any part of the Work performed for Contractor by a first-tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract Documents, to assume toward Contractor all the obligations and responsibilities which Contractor assumes towards County by the Contract Documents, and to perform such portion of the Work in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of County under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. Contractor shall cause each such subcontract to expressly include the following requirements:

28.2.1.1 Subcontractor waives all rights that Subcontractor may have against County for damages caused by fire or other perils covered by builder's risk property insurance carried by Contractor or County.

28.2.1.2 County and entities and agencies designated by County will have access to and the right to audit and the right to copy at County's cost all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Subcontractor shall preserve all such records and other items for a period of at least 3 years after Final Completion.

28.2.2 Upon the request of County, Contractor shall promptly furnish to County a true, complete, and executed copy of any subcontract.

## **Article 29. CONTRACTOR REGISTRATION**

In accordance with Labor Code section 1771.1, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the Business and Professions Code or by section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to section 1725.5 at the time the contract is awarded.

The contractor must post job site notices as prescribed by regulation 8 California Code of Regulations section 16451. All contractors and subcontractors must furnish electronic certified payroll records directly to the Department of Industrial Relations (DIR). The work is subject to compliance monitoring and enforcement by the DIR.

**Article 30. AUDIT BY CALIFORNIA STATE AUDITOR**

Audit by California State Auditor: Contractor acknowledges that if total compensation under this agreement is greater than \$10,000, 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 Government Code section 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 31. 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 32. CHILD SUPPORT COMPLIANCE ACT**

For any Agreement in excess of \$100,000, the Contractor acknowledges in accordance with Public Contract Code section 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 33. LICENSES**

Contractor warrants and represents that it holds a valid California license pursuant to the Contractors' State License Law (Business and Professions Code section 7000, et seq.), that its license is in good standing and that it possesses a **Class B – General Building Contractor's License** as required by the categories and type of the Work. Copies of Contractor's State Contractors' license must be provided with this Agreement.

In addition, Contractor hereby represents and warrants that Contractor and any of its subcontractors employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Contractor and its subcontractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Contractor and its subcontractors shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

**Article 34. 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 35. COMPLIANCE WITH BUILD AMERICA, BUY AMERICA ACT**

Contractor shall comply with the “Build America, Buy America Act” (“BABAA”) as added by Section 70911 of the Infrastructure Investment and Jobs Act (135 Stat. 429, 117 P.L. 58). This Project is subject to the BABAA. On April 18, 2022, the United States Office of Management and Budget published OMB Memo M-22-11, which is attached to these bid documents as Exhibit C, that established guidance in the implementation of the BABAA. FEMA has also published guidance on the BABAA that is available at the following website: <https://www.fema.gov/grants/policy-guidance/buy-america>. Contractor is expected review both the OMB Memo M-22-11 and FEMA’s guidance in the implementation of this clause.

The Act establishes a domestic content procurement preference for projects funded by federal financial assistance. This clause implements the BABAA by providing a preference for domestic content procurement. This clause replaces Caltrans Standard Specifications 6-1.04. Contractor shall comply this preference by ensuring that all of the following requirements are met:

1. All iron and steel used in this Project are produced in the United States.
2. The manufactured products used in this Project are produced in the United States.
3. The construction materials used in the Project are produced in the United States.

(BABAA § 70912(2).)

The BABAA defines the phrase “construction materials” in sections 70911(5) and 70917(c), and as further interpreted by OMB Memo M-22-11, to include an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of any of the following:

1. Non-ferrous metals.
2. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables).
3. Glass (including optic glass).
4. Lumber.
5. Drywall.

The BABAA defines the term “produced in the United States” in Section 70912(6) to mean the following:

1. In the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. In the case of manufactured products, that—
  - I. The manufactured product was manufactured in the United States; and
  - II. The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

In the case of construction materials, that all manufacturing processes for the construction material occurred in the United States.

## **Article 36. RESOLUTION OF CLAIMS**

Contractor's attention is directed to California Public Contract Code section 9204, which describes procedures for the resolution of claims on public works projects. Among other things, section 9204 requires the claimant to furnish reasonable documentation to support a claim, requires the public entity to respond to the claim within forty-five (45) days of receipt of the claim, and allows for the claimant to demand an informal meet and confer conference for settlement of the issues in dispute. For any portion of a claim that remains in dispute, section 9204 requires submission of the claim to nonbinding mediation. Additionally, section 9204 requires the public entity to make any payment due on an undisputed portion of the claim within sixty (60) days of the public entity’s written response and to pay interest at the rate of seven percent (7%) per annum on any amounts not paid in a timely manner. The provisions of sections 20104, et seq. also apply to the resolution of claims under this Contract to the extent those sections are not in conflict with section 9204.

**Article 37. CONFLICT OF INTEREST**

The parties to this Agreement have read and are aware of the provisions of Government Code section 1090, et seq. and the Political Reform Act of 1974 (section 87100, et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Contractor and performing work for County and who are considered to be consultant within the meaning of 2 California Code of Regulations section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County’s Conflict of Interest Code. County’s Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and County’s Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Contractor covenants that during the term of this Agreement neither it, nor any officer or employee of the Contractor, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Contractor becomes aware of a conflict of interest related to this Agreement, Contractor shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in Article 16.

Pursuant to Government Code section 84308 (SB 1439, the Levine Act), Contractor shall complete and sign the attached Exhibit B, marked “California Levine Act Statement,” incorporated herein and made by reference a part hereof, regarding campaign contributions by Contractor, if any, to any officer of County.

**Article 38. CONTRACT ADMINISTRATOR**

The County Officer or employee with responsibility for administering this Agreement is Charles Harrell, Chief Administrative Office, Facilities Division Manager, or successor.

**Article 39. WAIVER**

No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

**Article 40. FORCE MAJEURE**

Neither party will be liable for any delay, failure to perform, nor omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

- 40.1 Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
- 40.2 Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, “cause that is beyond its control” includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by

carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

**Article 41. DRUG-FREE WORKPLACE**

Contractor shall comply with Government Code section 8355.

**Article 42. CALIFORNIA RESIDENCY (Form 590)**

If Contractor is a California resident, Contractor must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has a permanent place of business in California. Contractor will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Contractor during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

**Article 43. NONRESIDENT WITHHOLDING**

If Contractor is not a California resident, Contractor shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7%) percent of each payment made to the Contractor during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. Contractor shall indemnify and hold County harmless for any action taken by the California Franchise Tax Board.

**Article 44. COUNTY PAYEE DATA RECORD FORM**

All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

**Article 45. CONTRACTOR TO COUNTY**

It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Contractor, and Contractor may perform similar work or services for others. However, Contractor shall not enter into any agreement with any other party or provide any information in any manner to any other party, that would conflict with Contractor's responsibilities or hinder Contractor's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

**Article 46. ASSIGNMENT AND DELEGATION**

Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Neither this Agreement, nor any part thereof, or any monies due or to become due hereunder, may be assigned by Contractor without the written approval of the County, nor without the consent of the Surety unless the Surety has waived its right to notice of assignment in writing .

Contractor shall not subcontract, delegate, or assign the Work to be performed, in whole or in part, to any other person or entitle without prior written consent of County.

Contractor covenants that if there is a change or transfer in ownership of Contractor's business prior to the completion of this Agreement, the new owner(s) shall be required under the terms of sale or other transfer document to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County. Contractor further covenants that the terms of sale or other transfer document shall require notice be given to County of the change or transfer in ownership of Contractor's business within thirty (30) days of the effective date of the transfer. In the event of a sale or transfer of

Contractor's business prior to the completion of this Agreement, County retains the right to terminate or cancel the contract as provided for herein, or to renegotiate the terms of the agreement, or to amend the existing Agreement.

#### **Article 47. COMPLIANCE WITH APPLICABLE LAW**

In the performance of this Contract, Contractor shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference.

To the extent applicable, all Work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshal, safety orders of the Division of Industrial Safety, California Electrical Code, California Building Code, California Plumbing Code, and any and all other applicable laws and regulations. Nothing in this Agreement, including but not limited to, any directions, plans or specifications provided to Contractor, is to be construed to permit Work not conforming to these codes.

The Contractor shall indemnify, defend, and hold harmless the County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, to defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Article shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.

#### **Article 48. COMPLIANCE WITH FAIR EMPLOYMENT PRACTICES LAWS**

County may require Contractor's services on projects involving funding from various state and/or federal agencies, and as a consequence, Contractor shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Contractor and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Contractor shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, sections 12900 et seq.) and applicable regulations promulgated thereunder (2 CCR, sections 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 of Title 2 of the CCR incorporated into this Agreement by reference and made a part hereof as if set forth in full; the Federal Fair Labor Standards Act, as stated in 29 USC section 203, et. seq., and as updated from time to time; and Title VI of the Civil Rights Act of 1964, as amended. Contractor and its employees and representatives shall give written notice of their obligations under this clause as required by law.

Where applicable, Contractor shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.

Contractor shall permit access to the records of employment, employment advertisements, application forms and other pertinent data and records by County, the State of California, the California Fair Employment and Housing Commission, or any other agency of the State of California designated by the state for purposes of investigation to ascertain compliance with this Article.

Contractor's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code section 12990 and 2 CCR, section 11102.

The Contractor shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor's employees for which the County may be found jointly or solely liable.

County may determine a willful violation of this Article to have occurred upon receipt of a final judgment to that effect from a court in an action to which Contractor was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that Contractor has violated the Fair Employment Practices Act and had issued an order under Labor Code section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

For willful violation of this Article, County shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by County in securing the goods or services thereunder shall be borne and paid for by Contractor and by the surety under the performance bond, if any, and County may deduct from any moneys due or thereafter may become due to Contractor the difference between the price named in the Agreement and the actual cost thereof to County to cure Contractor's breach of this Agreement.

**Article 49. COMPLIANCE WITH DISABILITY ACTS**

Contractor shall comply with: (a) section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (b) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (c) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

**Article 50. EMPLOYMENT ELIGIBILITY VERIFICATION**

The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Contractor shall obtain from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by law.

The Contractor shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

**Article 51. DEVIATION FROM PLANS AND SPECIFICATIONS**

No deviation shall be made from the plans and/or the specifications, if any, without the prior written approve of the County.

**Article 52. UNITY OF PLANS AND SPECIFICATIONS**

The plans and specifications, if any, are one document, and any work shown or mentioned, in one and not in the other, or vice versa, shall be furnished or performed as though mentioned or shown in both.

**Article 53. ADDITIONAL WORK**

County reserves the right to make such alterations, deviations, additions to, or deletions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of work or to delete any items or portion of work,

as may be deemed by the Contract Administrator or Project Manager to be necessary or advisable, and to require such additional work to be required for the proper completion of the whole Work contemplated.

Any such changes will be set forth in a written Contract Change Order (Change Order) which will specify the additional work, adjustment of performance time, if any, and basis for additional compensation, if any. Any Change Order shall not become effective until approved by the Facilities Division Manager , or where required, by the Board of Supervisors.

**Article 54. ACCESS TO THE WORK**

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

**Article 55. NO THIRD PARTY BENEFICIARIES**

Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

**Article 56. RECYCLED BOND PAPER**

Contractor agrees to use recycle-content paper to the maximum extent possible on this Agreement.

**Article 57. 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 58. 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 59. 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.

**LIST OF EXHIBITS:**

- **Exhibit A – Application and Certificate for Payment**
- **Exhibit B – California Levine Act Statement**
- **Exhibit C – Build America Buy America Act**

**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: \_\_\_\_\_ Dated: \_\_\_\_\_  
\_\_\_\_\_, Chair  
Board of Supervisors  
County of El Dorado

ATTEST:  
Kim Dawson, Clerk  
Of the Board of Supervisors

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Deputy Clerk

**CONTRACTOR**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
President

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Secretary

License No.: \_\_\_\_\_ Federal Employer Identification No. \_\_\_\_\_

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

Mailing Address: \_\_\_\_\_

Business Address: \_\_\_\_\_

City, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**\* END OF CONTRACT \***

# Contractor's Name

## Exhibit B

### California Levine Act Statement

#### California Levine Act Statement

California Government Code Section 84308, commonly referred to as the "Levine Act," prohibits any Officer(s) of El Dorado County from participating in any action related to a contract if he or she receives any political contributions totaling more than two hundred and fifty dollars (\$250) within the previous twelve (12) months, and for twelve (12) months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires disclosure of such contribution by a party to be awarded a specific contract. An Officer of El Dorado County includes the Board of Supervisors and any elected official (an "Officer"). It is the Contractor's responsibility to confirm the appropriate Officer and name the individual(s) in their disclosure.

Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to an Officer of the County of El Dorado in the twelve (12) months preceding the date of the submission of your proposals or the anticipated date of any Board action related to this contract?

\_\_\_\_\_ YES \_\_\_\_\_ NO

If yes, please identify the Officer(s) by name:

Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$250 to an Officer of the County of El Dorado in the twelve (12) months following any Board action related to this contract?

\_\_\_\_\_ YES \_\_\_\_\_ NO

If yes, please identify the Officer(s) by name:

Answering YES to either of the two questions above does not preclude the County of El Dorado from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Officer(s) from participating in any actions related to this contract.

---

Date

---

Signature of authorized individual

---

Type or write name of company

---

Type or write name of authorized individual



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

TO OWNER:  
 El Dorado County  
 3000 Fairlane Court, Suite One  
 Placerville, CA 95667

PROJECT: Bid #24-968-036  
 Job Order Contracting

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

Distribution to:

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

FROM CONTRACTOR:

**CONTRACTOR'S APPLICATION FOR PAYMENT**

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

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

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

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

CONTRACTOR:

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

State of: California  
 County of: El Dorado

**CERTIFICATE FOR PAYMENT**

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

**AMOUNT CERTIFIED** ----- \$ \_\_\_\_\_  
 (Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

CONTRACT ADMINISTRATOR

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

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

**CONTINUATION SHEET**

ATTACHMENT TO PAY APPLICATION

APPLICATION NUMBER: 1

PROJECT: Bid #24-968-036  
Job Order Contracting

APPLICATION DATE:

PERIOD TO:

CONTRACTOR'S PROJECT NO:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not In D or E)	G		H Balance To Finish (C - G)	I Retainage
			D From Previous Application (D + E)	E This Period		Total Completed And Stored To Date (D + E + F)	% (G/C)		
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SUBTOTALS PAGE 2									

Company Name

Exhibit C



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

April 18, 2022

M-22-11

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Shalanda D. Young  
Director

A handwritten signature in black ink that reads "Shalanda D. Young".

SUBJECT: Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52. The Act strengthens Made in America Laws<sup>1</sup> and will bolster America’s industrial base, protect national security, and support high-paying jobs. The Act requires that no later than May 14, 2022—180 days after the enactment of the IIJA—the head of each covered Federal agency<sup>2</sup> shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”<sup>3</sup>

The Act affirms, consistent with Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America’s Workers* (“the Executive Order”), this Administration’s priority to “use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States.”<sup>4</sup>

The Act provides statutory authorities for the Made in America Office (“MIAO”) in the Office of Management and Budget (“OMB”) to maximize and enforce compliance with Made in

<sup>1</sup> “Made in America Laws” means all statutes, regulations, rules, and Executive Orders relating to Federal financial assistance awards or Federal procurement, including those that refer to “Buy America” or “Buy American,” that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States. Made in America Laws include laws requiring domestic preference for maritime transport, including the Merchant Marine Act of 1920 (Pub. L. No. 66-261), also known as the Jones Act. Exec. Order No. 14,005, 86 Fed. Reg. 7475, § 2(b) (Jan. 28, 2021), available at <https://www.federalregister.gov/documents/2021/01/28/2021-02038/ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers>. Made in America Laws also include laws that give preference to Indian-owned and -controlled businesses, such as the Buy Indian Act (25 U.S.C. 47), that produce items in the United States.

<sup>2</sup> For the purposes of this guidance, the terms “Federal agency” and “agency” mean any authority of the United States that is an “agency” (as defined in section 3502 of title 44, United States Code), other than an independent regulatory agency (as defined in that section). IIJA, § 70912(3).

<sup>3</sup> IIJA, § 70914(a).

<sup>4</sup> Exec. Order No. 14,005 (see footnote 1).

America Laws.<sup>5</sup> MIAO aims to increase reliance on domestic supply chains and reduce the need for waivers through a strategic process aimed at: achieving consistency across agencies; gathering data to support decision-making to make U.S. supply chains more resilient; bringing increased transparency to waivers in order to send clear demand signals to domestic producers; and concentrating efforts on changes that will have the greatest impact.<sup>6</sup>

This memorandum provides implementation guidance to Federal agencies on the application of: (1) a “Buy America” preference<sup>7</sup> to Federal financial assistance programs for infrastructure; and (2) a transparent process to waive such a preference, when necessary. A Federal financial assistance program for infrastructure is any program under which an award may be issued for an infrastructure project, regardless of whether infrastructure is the primary purpose of the award. The term “project” means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States.<sup>8</sup>

Agencies should determine how this guidance is best applied to their infrastructure programs and processes, and consult with OMB, as needed, on establishing criteria, processes, and procedures for applying a Buy America preference and issuing waivers. OMB may update or provide additional guidance, as appropriate, to further assist agencies in the implementation of a Buy America preference.

## **I. Application of a Buy America Preference**

By May 14, 2022, agencies must ensure that all applicable programs comply with section 70914 of the Act, including by the incorporation of a Buy America preference in the terms and conditions of each award with an infrastructure project.<sup>9</sup> The Act requires the following Buy America preference:

- (1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

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<sup>5</sup> IJA, § 70923(a) & (b)(1).

<sup>6</sup> OMB Memorandum M-21-26, Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws available at: <https://www.whitehouse.gov/wp-content/uploads/2020/11/M-21-06.pdf>

<sup>7</sup> For the purposes of this guidance, a “Buy America” preference is a domestic content procurement preference as defined in IJA, § 70912(2).

<sup>8</sup> IJA, § 70912 (5) & (7).

<sup>9</sup> See Appendix I: Example of Award Term - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials.

- (3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.<sup>10, 11</sup>

## **II. Applicability to Federal Financial Assistance Programs**

This guidance applies to all Federal financial assistance as defined in section 200.1 of title 2, Code of Federal Regulations<sup>12</sup>—whether or not funded through IIJA—where funds are appropriated or otherwise made available and used for a project for infrastructure. Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, cooperative agreements, non-cash contributions or donations of property, direct assistance, loans, loan guarantees, and other types of financial assistance. The term “non-Federal entity” includes States, local governments, territories, Indian tribes, Institutions of Higher Education (IHE), and nonprofit organizations.<sup>13</sup>

For purposes of this guidance, for-profit organizations are not considered non-Federal entities. However, this guidance does not alter independent statutory authorities that agencies may have to include domestic content requirements in awards of Federal financial assistance issued to for-profit organizations.

Federal agencies are encouraged to consult with OMB if they are uncertain about the applicability of this guidance to any particular infrastructure program.

Before applying a Buy America preference to a covered program that will affect Tribal communities, Federal agencies should follow the consultation policies established through Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, and consistent with policies set forth in the Presidential Memorandum of January 26, 2021, on Tribal Consultation and Strengthening Nation-Nation Relationships. Federal agencies should commence consultation promptly.

This guidance does not apply to “expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.”<sup>14</sup> “[P]re and post disaster or emergency response expenditures” consist of expenditures for financial assistance that are (1) authorized by statutes other than the Stafford Act, 42 U.S.C. §§ 5121 et seq., and (2) made in anticipation of or response to an event or events that qualify as an “emergency” or “major disaster” within the meaning of the Stafford Act, *id.* § 5122(1), (2). Awards made to support the construction or improvement of infrastructure to mitigate the damage that may be caused by a non-imminent future emergency or disaster, such as awards

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<sup>10</sup> IIJA, § 70912 (2) & (6)(B)(ii).

<sup>11</sup> See Section VIII. of this guidance for more information on construction materials.

<sup>12</sup> IIJA § 70912(4)(A)

<sup>13</sup> See 2 C.F.R. § 200.1.

<sup>14</sup> IIJA § 70912(4)(B)

made under FEMA’s Flood Mitigation Assistance program,<sup>15</sup> do not qualify as “pre and post disaster or emergency response expenditures.”

Subawards should conform to the terms and conditions of the Federal award from which they flow.<sup>16</sup>

The IIJA’s definition of “infrastructure” encompasses public infrastructure projects. Thus, the term “infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property.<sup>17</sup> Agencies should treat structures, facilities, and equipment that generate, transport, and distribute energy - including electric vehicle (EV) charging - as infrastructure.

When determining if a program has infrastructure expenditures, Federal agencies should interpret the term “infrastructure” broadly and consider the definition provided above as illustrative and not exhaustive. When determining if a particular construction project of a type not listed in the definition above constitutes “infrastructure,” agencies should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public. Projects with the former qualities have greater indicia of infrastructure, while projects with the latter quality have fewer. Projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute an infrastructure project. Federal agencies are strongly encouraged to consult with OMB when making such determinations.

Agencies should consult with MIAO regarding their readiness to apply the requirements of the Act to covered programs. Agencies with questions regarding the application of a Buy America preference to agency-specific programs, including questions about the possible use of waivers during adjustment periods as agencies work to implement the Act, are advised to reach out to MIAO for technical assistance and advice.

### **III. Consistency with International Agreements**

Pursuant to section 70914(e) of the Act, this guidance must be applied in a manner consistent with the obligations of the United States under international agreements.

### **IV. Avoid Unnecessary Disruption**

The Act makes clear that its preferences apply to a Federal financial assistance program for infrastructure only to the extent that a domestic content procurement preference as described

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<sup>15</sup> See 42 U.S.C. § 4104c.

<sup>16</sup> 2 CFR 200.101 (b) (2)

<sup>17</sup> IIJA, § 70912(5).

in section 70914 of the Act does not already apply to iron, steel, manufactured products, and construction materials.<sup>18</sup> Agencies should consider whether existing domestic content requirements meet the standards in the Act, as described in this memorandum. Agencies must make necessary changes to come into compliance with the Act's requirements, while preserving policies and provisions that already meet or exceed the standards required by the Act. For example, a program in which the standards for iron and steel already meet the standards in the Act may nevertheless be required to adopt new standards for manufactured products and construction materials. Maintaining current policies where appropriate avoids unnecessary disruption to programs, or elements of programs, that already meet or exceed Build America, Buy America requirements.

## **V. Effective Date for Awards**

Agencies must ensure that, starting on May 14, 2022, all Federal financial assistance programs for infrastructure comply with the requirements of section 70914 of the Act. Therefore, new awards made on or after May 14, 2022, must take appropriate steps to ensure financial assistance awards comply with these requirements, which may include appropriate terms and conditions<sup>19</sup> incorporating a Buy America preference. Renewal awards and amendments obligating additional funds to existing awards that are executed on or after May 14, 2022, must also include a Buy America preference. This means that agencies must include a Buy America preference in awards issued on or after May 14, 2022, even if Notices of Funding Opportunities for those awards did not include a Buy America preference. In these cases, agencies may consider whether public interest waivers may be needed to avoid undue increases in the time and cost of a project. Similarly, public interest waivers may be needed for awards and amendments made on or after May 14, 2022, where budgets for purchase of covered materials have already been agreed upon (including if materials have been ordered and construction has begun). Consistent with the guidance provided below, agencies should issue waivers judiciously and clearly communicate to recipients the limitations and conditions of any such waivers.

## **VI. Articles, Materials, and Supplies for Infrastructure**

A Buy America preference, as defined in section I of this guidance, only applies to the iron and steel, manufactured products, and construction materials used for the infrastructure project under an award. If an agency has determined that no funds from a particular award under a covered program will be used for infrastructure, a Buy America preference does not apply to that award. Similarly, for a covered program, a Buy America preference does not apply to non-infrastructure spending under an award that also includes a covered project. A Buy America preference applies to *an entire infrastructure project*, even if it is funded by both Federal and non-Federal funds under one or more awards.

A Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply

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<sup>18</sup> IIA, § 70917(a) &(b).

<sup>19</sup> See Appendix I: Example of Award Term - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials for exemplary language.

to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of or permanently affixed to the structure.

For the purposes of this guidance, an article, material, or supply should only be classified into *one* of the following categories: (1) iron or steel; (2) a manufactured product; or (3) a construction material. For ease of administration, an article, material, or supply should not be considered to fall into multiple categories. Agencies should apply the iron and steel test to items that are predominantly iron or steel, unless another standard applies under law or regulation.

Any waivers from these requirements must be in writing and meet the requirements of section 70914(b).

## **VII. Issuing Buy America Waivers**

Pursuant to Section 70914(c) of the Act, the head of a Federal agency may waive the application of a Buy America preference under an infrastructure program in any case in which the head of the Federal agency finds that—

- (1) applying the domestic content procurement preference would be inconsistent with the public interest (a “public interest waiver”);
- (2) types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”).

Federal agencies are responsible for processing and approving all waivers, including waivers requested by recipients and on behalf of subrecipients. To the greatest extent practicable, waivers should be targeted to specific products and projects.<sup>20</sup>

Before issuing a waiver, the head of the Federal agency must make publicly available on the agency’s website a detailed written explanation for the proposed determination to issue the waiver and provide at least 15 days for public comment on the proposed waiver.<sup>21</sup> General applicability waivers are subject to a minimum 30-day public comment period.<sup>22</sup> By April 29, 2022, agencies should provide the website address where they will be posting proposed waivers for public comment to [MBX.OMB.MadeInAmerica@omb.eop.gov](mailto:MBX.OMB.MadeInAmerica@omb.eop.gov). Pursuant to sections 70914(c) and 70937 of the Act, the waiver must be cross-posted to a centralized waiver transparency website managed by GSA, [BuyAmerican.gov](http://BuyAmerican.gov),<sup>23</sup> no later than November 15, 2022.

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<sup>20</sup> See Section VII of this guidance for information on waiver principles and criteria.

<sup>21</sup> Executive Order, § 4(b)(i)(2); IJA, § 70914(c); IJA, § 70937 (note that “Buy American” as used in this section also refers to Buy America preferences, per IJA, § 70932(1)).

<sup>22</sup> IJA § 70914(d)(2)(A)(ii). See Section VII of this guidance for information on general applicability waivers.

<sup>23</sup> [BuyAmerican.gov](http://BuyAmerican.gov) redirects to [MadeInAmerica.gov](http://MadeInAmerica.gov).



To minimize duplication and promote efficiency, MIAO and GSA will coordinate with agencies on the expansion of the existing website's functionality to display waivers for Federal financial assistance and provide further instructions to agencies as necessary.

Federal agencies are responsible for performing due diligence and approving or rejecting waivers consistent with the Act, this guidance, and any other applicable Buy America laws. Federal agencies should notify MIAO in advance of posting an award- or project-level proposed waiver for public comment. However, Federal agencies must consult with MIAO for proposed waivers with broader applicability (such as a general applicability waiver) before posting them for public comment. The purpose of the consultation is to identify any opportunities to structure the waiver in order to maximize the use of goods, products, and materials produced in the United States to the greatest extent possible consistent with law. Federal agencies should send proposed waivers for review to [MBX.OMB.MIAwaivers@omb.eop.gov](mailto:MBX.OMB.MIAwaivers@omb.eop.gov).

Federal agencies must submit to MIAO a proposed waiver for review after the public comment period has concluded. MIAO will review the proposed waiver to determine if it is consistent with applicable law and policy,<sup>24</sup> and will notify the Federal agency of its determination.

All waiver requests must include a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States<sup>25</sup> and a certification that there was a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers.<sup>26</sup> In addition, at a minimum and to the greatest extent practicable, each proposed waiver submitted to MIAO should include the following information, as applicable:

- Waiver type (nonavailability, unreasonable cost, or public interest)
- Recipient name and Unique Entity Identifier (UEI)
- Federal awarding agency organizational information (e.g., Common Government-wide Accounting Classification (CGAC) Agency Code)
- Financial assistance listing name and number
- Federal financial assistance program name
- Federal Award Identification Number (FAIN) (if available)
- Federal financial assistance funding amount
- Total cost of infrastructure expenditures, including all Federal and non-Federal funds (to the extent known)
- Infrastructure project description and location (to the extent known)
- List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from Buy America requirements, including name, cost, country(ies) of origin (if known), and relevant PSC and NAICS code for each.
- A certification that the Federal official or assistance recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.

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<sup>24</sup> Executive Order, § 4(c).

<sup>25</sup> IIJA, § 70937(c)(2)(A).

<sup>26</sup> IIJA, § 70937(c)(2)(D).

- A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach), by the Federal awarding agency and, and in the case of a project or award specific waiver, by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
- Anticipated impact if no waiver is issued.
- Any relevant comments received through the public comment period.

The purpose of the information is to ensure that the agency has adequate information to perform due diligence, that MIAO has sufficient information to determine whether the proposed waiver is consistent with law and policy, and that sufficient information is available for public review. Information provided for public review should help interested manufacturers gauge the demand for products for which agencies are considering waiving a Buy America preference.

To avoid a need for duplicative waiver requests from entities that receive funding for one infrastructure project through multiple Federal agencies, the Federal agency contributing the greatest amount of Federal funds for the project should be considered the “Cognizant Agency for Made in America” and should take responsibility for coordinating with the other Federal awarding agencies. Such coordination will provide uniform waiver criteria and adjudication processes, minimize duplicative efforts among Federal agencies, and reduce burdens on recipients. The Cognizant Agency for Made in America shall be responsible for consulting with the other Federal awarding agencies, publicizing the proposed joint waiver, and submitting the proposed joint waiver for review to MIAO.

*a. Exceptions for Unforeseen and Exigent Circumstances*

In limited situations where there is an urgent need in an unforeseen and exigent circumstance, agencies have the authority to waive the application of Buy America preferences without submitting the waiver for public comment and MIAO determination.<sup>27</sup> As an exception to the public transparency requirements of the Act, agencies should exercise that authority only when necessary. Further, to ensure MIAO can fulfill its role as a central and transparent source of Made in America waivers, an agency that issues a waiver without first seeking public comment and MIAO approval must, within 30 days of the waiver’s issuance, submit a report to MIAO explaining its reliance upon the “unforeseen and exigent circumstance” exception.<sup>28</sup> MIAO will provide further instructions to agencies on how to submit those reports. Although public posting and MIAO review may be waived in exigent circumstances, agencies remain responsible for performing due diligence appropriate to the circumstances, consistent with the principles and criteria in paragraphs VII(b) and (c) below.

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<sup>27</sup> IIIA, § 70937(b)(2).

<sup>28</sup> This reporting process was established pursuant to Executive Order 14,005, § 4(d) and OMB Guidance on Improving the Transparency of Made in America Waivers available at: <https://www.whitehouse.gov/wp-content/uploads/2021/10/Guidance-Memo-Improving-the-Transparency-of-Made-in-America-Waivers.pdf>.

b. *Waiver Principles and Criteria*

To ensure they are scrupulously monitoring, enforcing, and complying with applicable Buy America Laws and minimizing the use of waivers,<sup>29</sup> agencies must apply standard criteria to determine whether to grant a waiver in a given circumstance. Agencies with existing criteria must review it for consistency with this guidance and update it as appropriate. All other agencies must establish criteria.

Agencies may reject or grant waivers in whole or in part. To the greatest extent practicable, waivers should be issued at the project level and be product-specific. Overly broad waivers undermine market signals designed to boost domestic supply chains, particularly for key articles, materials and supplies in critical supply chains (i.e., critical supply chains identified in Executive Order 14017, *America's Supply Chains*). When necessary, agencies may consider issuing a waiver that has applicability beyond a single project; however, agencies should always issue, construe, and apply waivers to ensure the maximum utilization of goods, products, and materials produced in the United States, consistent with applicable law. Federal agencies may consult with MIAO when establishing or modifying criteria for granting waivers. They may also work within the Made in America Council, a practice that will help to foster consistency across agencies to the greatest extent practical and appropriate, given agency and program missions.

Federal agencies should use the following principles before issuing a waiver of any type:

- **Time-limited:** In certain limited circumstances, a Federal agency may determine that a waiver should be constrained principally by a length of time, rather than by the specific projects to which it applies. Waivers of this type may be appropriate, for example, when an item that is “nonavailable” is widely used in projects funded by a particular program’s awards. When issuing such a waiver, the agency should identify a short, definite time frame (e.g., no more than one to two years) designed to ensure that, as domestic supply becomes available, domestic producers will have prompt access to the market created by the program.
- **Targeted:** Waivers that are not limited to particular projects should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) necessary. Waivers that are overly broad will tend to undermine domestic preference policies. Broader waivers will receive greater scrutiny from MIAO.
- **Conditional:** Federal agencies are encouraged to issue waivers with specific conditions that support the policies of the Act and the Executive Order.

These principles and criteria should be viewed as minimum requirements for the use of waivers by Federal agencies.<sup>30</sup>

Nonavailability Waivers

Before granting a nonavailability waiver, agencies should consider whether the recipient has performed thorough market research, which may be accomplished with assistance from the agency, and adequately considered, where appropriate, qualifying alternate items, products, or

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<sup>29</sup> IJA § 70933(2).

<sup>30</sup> See Section IV. of this guidance for agencies that have existing regulations or guidance.

materials. Waivers should describe the market research activities and methods to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources. Agencies are encouraged to engage with the Made in America Council to develop resource lists for common items, goods, or materials.

### Unreasonable Cost Waivers

An unreasonable cost waiver is available if the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. Before granting an unreasonable-cost waiver, to the extent permitted by law, agencies should ensure the recipient has provided adequate documentation that no domestic alternatives are available within this cost parameter. Agencies may assist recipients in gathering documentation.

For requests citing unreasonable cost as the statutory basis of the waiver, the waiver justification must include, as applicable, a comparison of the cost of the domestic product to the cost of the foreign product or a comparison of the overall cost of the project with domestic products to the overall cost of the project with foreign-origin products, pursuant to the requirements of the applicable Made in America law.<sup>31</sup> Publicly available cost comparison data may be provided in lieu of proprietary pricing information.<sup>32</sup> Unreasonable-cost waivers should be no broader than necessary.

### Public Interest Waivers

A waiver in the public interest may be appropriate where an agency determines that other important policy goals cannot be achieved consistent with the Buy America requirements established by the Act and the proposed waiver would not meet the requirements for a nonavailability or unreasonable cost waiver. Such waivers shall be used judiciously and construed to ensure the maximum utilization of goods, products, and materials produced in the United States.<sup>33</sup> To the extent permitted by law, determination of public interest waivers shall be made by the head of the agency with the authority over the Federal financial assistance award.<sup>34</sup>

Public interest waivers may have a variety of bases. As with other waivers, they should be project-specific whenever possible, as what is in the public interest may vary depending upon the circumstances of the project, recipient, and specific items, products, or materials in question.

Federal agencies may wish to consider issuing a limited number of general applicability public interest waivers in the interest of efficiency and to ease burdens for recipients. The agency remains responsible for determining whether such a waiver is appropriate to apply to any

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<sup>31</sup> IIJA, § 70937(c)(2)(B).

<sup>32</sup> IIJA, § 70937(c)(2)(B).

<sup>33</sup> IIJA, § 70935(a).

<sup>34</sup> IIJA, § 70935(b).

given project; the Made in America Office will not review each application of such a waiver. The following are examples of types of public interest waivers an agency may consider issuing.<sup>35</sup>

- **De Minimis:** Ease of administration is important to reduce burden for recipients and agencies. Federal agencies may consider whether a general applicability public interest waiver should apply to infrastructure project purchases below a de minimis threshold. An agency may consider whether a public interest waiver should apply when necessary to ensure that recipients and Federal agencies make efficient use of limited resources, especially if the cost of processing the individualized waiver(s) would risk exceeding the value of the items waived. Agencies may consider adopting an agency-wide public interest waiver that sets a de minimis threshold, for example, of 5 percent of project costs up to a maximum of \$1,000,000.
- **Small Grants:** Agencies may wish to consider whether it is in the public interest to waive application of a Buy America preference to awards below the Simplified Acquisition Threshold. This type of waiver may be particularly relevant in the initial years after enactment of IJA, and may be phased out over time as agencies develop efficient waiver review capabilities.
- **Minor Components:** Agencies may wish to consider whether it is in the public interest to allow minor deviations for miscellaneous minor components within iron and steel products. A minor components waiver in the public interest may allow non-domestically produced miscellaneous minor components comprising no more than 5 percent of the total material cost of an otherwise domestically produced iron and steel product to be used. It would not be in the public interest to use a minor components waiver to exempt a whole product from the iron and steel requirements, or to allow the primary iron or steel components of the product to be produced other than domestically.
- **Adjustment Period:** Agencies should consider whether brief, time limited waivers to allow recipients and agencies to transition to new rules and processes may be in the public interest.
- **International Trade Obligations:** If a recipient is a State that has assumed procurement obligations pursuant to the Government Procurement Agreement or any other trade agreement, a waiver of a Made in America condition to ensure compliance with such obligations may be in the public interest.
- **Other Considerations:** A waiver may be in the public interest in one circumstance, but not in another, and considerations will depend upon the nature and amount of resources available to the recipient, the value of the items, goods, or materials in question, the potential domestic job impacts, and other policy considerations, including sustainability, equity, accessibility, performance standards, and the domestic content (if any) of and conditions under which the non-qualifying good was produced.

All proposed waivers citing the public interest as the statutory basis must include a detailed written statement, which shall address all appropriate factors, such as potential

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<sup>35</sup> The list is not exhaustive and no agency is required to issue the types of waivers noted as examples. As with other general applicability waivers, generally applicable public interest waivers must be reviewed at least every five years and more often as appropriate.

obligations under international agreements, justifying why the requested waiver is in the public interest.<sup>36</sup>

Before granting a waiver in the public interest, to the extent permitted by law, agencies shall assess whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products.<sup>37</sup> Agencies may consult with the International Trade Administration (ITA) in making this assessment if the granting agency deems such consultation to be helpful. The agency shall integrate any findings from the assessment into its waiver determination as appropriate.<sup>38</sup> MIAO will work with ITA and agencies to develop standard processes to expedite this required assessment, such as by ensuring agencies know how to easily access lists of dumped or injuriously subsidized products.

*c. General Applicability Waivers*

The term “general applicability waiver” refers to a waiver that applies generally across multiple awards. A general applicability waiver can be “product-specific” (e.g., applies only to a product or category of products) or “non-product specific” (e.g., applies to all “manufactured products”).

General applicability waivers should be issued only when necessary to advance an agency’s missions and goals, consistent with IJJA, the Executive Order, and this guidance. For example, an agency might issue a general waiver for a product for which there are well-established domestic sourcing challenges. General applicability waivers will require appropriate justification from the Federal agency.

Federal agencies with one or more existing general applicability waivers, including public interest waivers, must review such waivers within five years of the date on which the waiver was issued. Agencies issuing new general applicability waivers must review such waivers at least every five years from the date of issuance. Agencies are encouraged to review general applicability waivers more frequently, when appropriate. In conducting a review of any general applicability waiver, the head of a Federal agency shall—

- (A) publish in the *Federal Register* a notice that—
  - (i) describes the justification for a general applicability waiver; and
  - (ii) requests public comments for a period of not less than 30 days on the continued need for a general applicability waiver; and
  
- (B) publish in the *Federal Register* a determination on whether to continue or discontinue the general applicability waiver, considering the comments received in response to the notice published under paragraph (A).<sup>39</sup>

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<sup>36</sup> IJJA, § 70937(c)(2)(C).

<sup>37</sup> Executive Order, § 5.

<sup>38</sup> Executive Order, § 5.

<sup>39</sup> IJJA, § 70914(d)(1) & (2).

For a period of five years beginning on the date of enactment of the Act, paragraphs (A) and (B) above shall not apply to any product-specific general applicability waiver that was issued more than 180 days before November 15, 2021.<sup>40</sup>

By no later than November 15, 2022, agencies with existing, non-product specific general applicability waivers that were issued more than five years before November 15, 2021 should promptly commence review of each such waiver by publishing a *Federal Register* notice as required in section 70914(d)(2)(A) of the IIJA. Should the review justify retaining the waiver, agencies should consider narrowing the waiver in a manner that would support supply chain resilience and boost incentives to manufacture key products domestically, as appropriate.

To ensure prompt commencement of projects funded by IIJA, MIAO plans to work with agencies to expedite consideration of general applicability waivers for products or categories of products for which domestic sourcing challenges have been well documented. Agencies should align such waivers with complementary policies, such as work to boost supply chain resiliency and domestic employment. General applicability waivers should include appropriate expiration dates designed to ensure that, once available, Buy America qualifying products receive appropriate consideration.

### **VIII. Preliminary Guidance for Construction Materials**

For construction materials, the Act requires that, not later than 180 days after November 15, 2021, OMB must issue standards that define the term “all manufacturing processes” in the case of construction materials. These standards must require that each manufacturing process required for the manufacture of the construction material and the inputs of the construction material occurs in the United States. They must also reflect efforts to maximize the direct and indirect jobs benefited or created in the production of the construction material.<sup>41</sup>

Although the deadline to issue such guidance has not yet passed, OMB is providing preliminary and non-binding guidance to assist agencies in determining which materials are construction materials so that agencies can begin applying Buy America requirements to those materials. This preliminary guidance addresses the requirements as set forth in section 70915(b) of the IIJA while providing sufficient time for OMB to receive additional stakeholder input.

The IIJA finds that “construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives<sup>42</sup>—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);

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<sup>40</sup> IIJA, § 70914(d)(3).

<sup>41</sup> IIJA, § 70915(b).

<sup>42</sup> IIJA, § 70917(c)(1).

- lumber; or
- drywall.<sup>43</sup>

To provide clarity to item, product, and material manufacturers and processors, we note that items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

Pending OMB's issuance of final standards on construction materials, and absent any existing applicable standard in law or regulation that meets or exceeds these preliminary standards, agencies should consider "all manufacturing processes" for construction materials to include at least the final manufacturing process and the immediately preceding manufacturing stage for the construction material. OMB is seeking additional stakeholder input before issuing further guidance identifying initial manufacturing processes for construction materials that should be considered as part of "all manufacturing processes."

Agencies should consult with MIAO, as needed, to ensure that any waiver issued for construction materials is explicitly targeted and time-limited, in order to send a clear market signal that additional standards for "all manufacturing processes" in the case of construction materials will be forthcoming.

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<sup>43</sup> See IIIA, § 70911(5).



**Appendix I: Example of Award Term - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials**

Where applicable, the Federal agency must include appropriate terms and conditions in all awards, in accordance with applicable legal requirements and its established procedures, in order to effectuate the requirements of the Act and this guidance. The following is sample language.

To achieve the greatest possible consistency across agencies and programs, agencies should send their proposed terms and conditions to MIAO for review prior to incorporating them into applicable awards. Agencies should begin including appropriate language in NOFOs published *before* May 14, 2022 to provide applicants fair notice of the Buy America conditions that will apply to funds obligated on or after that date.

\*\*      \*\*      \*\*

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) all construction materials<sup>44</sup> are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

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<sup>44</sup> Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

### *Waivers*

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

- (a) When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:
- (1) applying the domestic content procurement preference would be inconsistent with the public interest;
  - (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
  - (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [link to awarding agency web site with information on currently applicable general applicability waivers].

### *Definitions*<sup>45</sup>

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives<sup>46</sup>—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

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<sup>45</sup> Federal agencies may choose to provide definitions on a public-facing website and reference that website in the terms and conditions, rather than including all definitions in the terms and conditions itself. If an agency chooses to do provide definitions on a public-facing website, it is not considered a deviation from the terms and conditions provided and does not need to be reviewed by OMB.

<sup>46</sup> IIIA, § 70917(c)(1).

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

**COUNTY OF EL DORADO**

**PAYMENT BOND**

(Section 9550, Civil Code)

Bond No. \_\_\_\_\_

WHEREAS, the County of El Dorado, a political subdivision of the State of California, hereafter referred to as "Obligee", has awarded to Contractor

\_\_\_\_\_ hereafter referred to as "Principal", a contract for the work described as follows:

**COUNTY OF EL DORADO  
JOB ORDER CONTRACTING (JOC)  
CLASS B – GENERAL BUILDING CONTRACTOR  
BID #24-968-036**

AND, WHEREAS, said Principal is required to furnish a bond in connection with said contract, guaranteeing the faithful performance thereof:

NOW, THEREFORE, we the undersigned Principal and Surety are held and firmly bound unto the Obligee, in the sum of \_\_\_\_\_ Dollars, (\$ \_\_\_\_\_) to be paid to the Obligee, for which payment we bind ourselves, jointly and severally.

**THE CONDITION OF THIS OBLIGATION IS SUCH,**

That if said Principal or its subcontractors shall fail to pay any of the persons named in Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by such claimant, or any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Principal and his subcontractors pursuant to Section 18806 of the Revenue and Taxation Code, with respect to such work and labor, that the Surety herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the Surety will pay a reasonable attorney's fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 as to give a right of action to such persons or their assigns in any suit brought upon this bond.

Dated: \_\_\_\_\_

Correspondence or Claims relating to this bond should be sent to the Surety at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
ATTORNEY-IN-FACT

NOTE: Signatures of those executing for the Principal and for the Surety must be properly acknowledged, and a Power of Attorney attached for the Surety.

**NOTARY ACKNOWLEDGMENTS ATTACHED**

# PRINCIPAL

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

# SURETY

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**COUNTY OF EL DORADO**

**PERFORMANCE BOND**

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_

the Contractor in the Contract hereto annexed, as Principal, and \_\_\_\_\_

as Surety, are held firmly bound unto the County of El Dorado, a political subdivision of the State of California, hereinafter called the "Obligee" in the sum of \_\_\_\_\_ DOLLARS,

(\$ \_\_\_\_\_ ) lawful money of the United States, for which payment, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

Signed, sealed and dated: \_\_\_\_\_

The condition of the above obligation is such that if said Principal as Contractor in the Contract hereto annexed shall faithfully perform each and all of the conditions of said Contract to be performed by him, and shall furnish all tools, equipment, apparatus, facilities, transportation, labor and material, other than material, if any, agreed to be furnished by the Obligee, necessary to perform and complete, and to perform and complete in a good and workmanlike manner, the work of **BID #24-968-036 for the COUNTY OF EL DORADO – JOB ORDER CONTRACTING (JOC) - CLASS B – GENERAL BUILDING CONTRACTOR** in strict conformity with the terms and conditions set forth in the Contract hereto annexed, then this obligation shall be null and void; otherwise this bond shall remain in full force and effect and the said Surety will complete the Contract work under its own supervision, by Contract or otherwise, and pay all costs thereof for the balance due under terms of the Contract, and the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

This guarantee shall insure the Obligee during the work required by any Contract and for a period of one (1) year from the date of acceptance of the work against faulty or improper materials or workmanship that may be discovered during that time.

No right of action shall accrue under this bond to or for the use of any person other than the Obligee named herein.

Dated: \_\_\_\_\_, 20\_\_\_\_\_.

Correspondence or Claims relating to this bond should be sent to the Surety at the following address:

_____	_____
_____	PRINCIPAL
_____	_____
_____	SURETY
_____	_____
_____	ATTORNEY-IN-FACT

NOTE: Signatures of those executing for the Principal and the Surety must be properly acknowledged, and a Power of Attorney attached for the Surety.

**NOTARY ACKNOWLEDGMENTS ATTACHED**

**PRINCIPAL**

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



# SURETY

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**2023 Withholding Exemption Certificate****590****The payee completes this form and submits it to the withholding agent. The withholding agent keeps this form with their records.****Withholding Agent Information**

Name \_\_\_\_\_

**Payee Information**Name \_\_\_\_\_  SSN or ITIN  FEIN  CA Corp no.  CA SOS file no.

Address (apt./ste., room, PO box, or PMB no.) \_\_\_\_\_

City (If you have a foreign address, see instructions.) \_\_\_\_\_

State \_\_\_\_\_ ZIP code \_\_\_\_\_

**Exemption Reason****Check only one box.**

By checking the appropriate box below, the payee certifies the reason for the exemption from the California income tax withholding requirements on payment(s) made to the entity or individual.

 **Individuals — Certification of Residency:**

I am a resident of California and I reside at the address shown above. If I become a nonresident at any time, I will promptly notify the withholding agent. See instructions for General Information D, Definitions.

 **Corporations:**

The corporation has a permanent place of business in California at the address shown above or is qualified through the California Secretary of State (SOS) to do business in California. The corporation will file a California tax return. If this corporation ceases to have a permanent place of business in California or ceases to do any of the above, I will promptly notify the withholding agent. See instructions for General Information D, Definitions.

 **Partnerships or Limited Liability Companies (LLCs):**

The partnership or LLC has a permanent place of business in California at the address shown above or is registered with the California SOS, and is subject to the laws of California. The partnership or LLC will file a California tax return. If the partnership or LLC ceases to do any of the above, I will promptly inform the withholding agent. For withholding purposes, a limited liability partnership (LLP) is treated like any other partnership.

 **Tax-Exempt Entities:**

The entity is exempt from tax under California Revenue and Taxation Code (R&amp;TC) Section 23701 \_\_\_\_\_ (insert letter) or Internal Revenue Code Section 501(c) \_\_\_\_\_ (insert number). If this entity ceases to be exempt from tax, I will promptly notify the withholding agent. Individuals cannot be tax-exempt entities.

 **Insurance Companies, Individual Retirement Arrangements (IRAs), or Qualified Pension/Profit-Sharing Plans:**

The entity is an insurance company, IRA, or a federally qualified pension or profit-sharing plan.

 **California Trusts:**

At least one trustee and one noncontingent beneficiary of the above-named trust is a California resident. The trust will file a California fiduciary tax return. If the trustee or noncontingent beneficiary becomes a nonresident at any time, I will promptly notify the withholding agent.

 **Estates — Certification of Residency of Deceased Person:**

I am the executor of the above-named person's estate or trust. The decedent was a California resident at the time of death. The estate will file a California fiduciary tax return.

 **Nonmilitary Spouse of a Military Servicemember:**

I am a nonmilitary spouse of a military servicemember and I meet the Military Spouse Residency Relief Act (MSRRA) requirements. See instructions for General Information E, MSRRA.

**CERTIFICATE OF PAYEE:** Payee must complete and sign below.Our privacy notice can be found in annual tax booklets or online. Go to [ftb.ca.gov/privacy](http://ftb.ca.gov/privacy) to learn about our privacy policy statement, or go to [ftb.ca.gov/forms](http://ftb.ca.gov/forms) and search for **1131** to locate FTB 1131 EN-SP, Franchise Tax Board Privacy Notice on Collection. To request this notice by mail, call 800.338.0505 and enter form code **948** when instructed.

Under penalties of perjury, I declare that I have examined the information on this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare under penalties of perjury that if the facts upon which this form are based change, I will promptly notify the withholding agent.

Type or print payee's name and title \_\_\_\_\_ Telephone \_\_\_\_\_

Payee's signature ► \_\_\_\_\_ Date \_\_\_\_\_



# County of El Dorado

## OFFICE OF AUDITOR-CONTROLLER

**JOE HARN, CPA**  
Auditor-Controller

**BOB TOSCANO**  
Assistant Auditor-Controller

360 FAIR LANE  
PLACERVILLE, CALIFORNIA 95667  
Phone: (530) 621-5487 FAX: (530) 295-2535

### PAYEE DATA RECORD

(Required in lieu of IRS W-9 when receiving payment from the County of El Dorado) Version: April 2014

<b>PAYEE DATA RECORD</b>	<b>INSTRUCTIONS:</b> Complete all information on this form. Sign, date, and return to the address shown at the bottom of this page. Prompt return of the <b>fully completed</b> form will prevent delays in processing payments. Information provided in this form will be used by the County of El Dorado to prepare Information Returns (Forms 1099), for withholding on payments to nonresident payees, and for reporting to the Employment Development Department (EDD).										
<b>NAME AND ADDRESS</b>	Name (as shown on your income tax return)										
	Business name/Doing business as/Disregarded entity name, if different from above										
	Physical address (number, street, and apt. or suite)						Remittance address (if different than physical)				
	City, state, zip code						City, state, zip code				
	Phone number				Fax number (optional)				Email (optional)		
<b>FEDERAL TAX CLASSIFICATION &amp; EXEMPTIONS</b>	<b>Check appropriate federal tax classification</b> <input type="checkbox"/> Individual / sole proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Trust / estate <input type="checkbox"/> Other (see instructions) ► _____ <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation    If you are a corporation, do you provide legal or medical services? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C Corporation, S=S Corporation, P=Partnership) _____										
	<b>NOTE: IF YOU ARE A SINGLE MEMBER LLC (DISREGARDED ENTITY), ENTER THE TAX CLASSIFICATION OF THE OWNER IDENTIFIED ON THE NAME LINE.</b>										
	Exempt payee code (if any) – see instructions _____ Exemption from FATCA reporting code (if any) – see instructions _____										
<b>TAX IDENTIFICATION NUMBER</b>	<b>Tax identification number (TIN)</b>  <b>Enter your TIN in the appropriate box. If you are an individual or sole proprietor, you must enter your SSN. You may choose to provide your EIN in addition to, but not instead of, the SSN. Single member LLCs (disregarded entities) must enter the TIN of the owner identified on the Name line.</b>										
							Social Security Number				
<b>RESIDENCY STATUS</b>	<b>Check appropriate box for residency status</b> <input type="checkbox"/> California resident / exempt from nonresident withholding – qualified to do business in California or maintains a permanent place of business in California (attach CA Form 590) <input type="checkbox"/> California nonresident (see instructions)										
	<b>NOTE:</b> Payments to California <b>nonresidents</b> for services performed in California and for certain rents derived from properties located in California that exceed \$1,500 in a calendar year will be subject to 7% nonresident withholding unless you have obtained a waiver or have been approved for reduced withholding by the Franchise Tax Board. There is no withholding on payments for product and for services performed outside of California.										
	<input type="checkbox"/> Obtained Franchise Tax Board waiver of State withholding (attach a copy if applicable) <input type="checkbox"/> Obtained Franchise Tax Board approval for reduced withholding (attach a copy if applicable)										
California sales tax permit number											
(required only for California nonresident vendors that charge California sales tax)											
<b>CERTIFICATION</b>	<b>Under penalties of perjury, I certify that:</b> <b>1) the TIN shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me) and</b> <b>2) I am not subject to backup withholding and 3) I am a U.S. citizen or other U.S. person and 4) the FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.</b>										
	Authorized Payee Representative's Name (Type or Print)						Title				
	Signature				Date			Telephone			
<b>Should my residency status or any other information provided above change, I will promptly notify County of El Dorado at the address listed above.</b>											
<b>RETURN FORM TO</b>	Please return completed form to:										
	Department/office:										
	Mailing address:										
	Phone:			Fax:			Email:			23-2166 B 75 of 110	

COUNTY OF EL DORADO, PAYEE DATA RECORD (REVERSE)

<p><b>PAYEE DATA RECORD</b></p>	<p>A completed Payee Data Record is required for payments to all entities and will be kept on file at the County of El Dorado Auditor-Controller's Office. Payees who do not wish to complete the Payee Data Record may elect to not do business with the County of El Dorado. If the payee does not complete the form and the required payee data is not otherwise provided, payment may be reduced for federal backup withholding, California backup withholding and California nonresident withholding.</p>
<p><b>FEDERAL TAX CLASSIFICATION</b></p>	<p>Check the applicable federal tax classification. Note that if an LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the "Name" line.</p> <p><b>Individual:</b> Enter the name shown on your income tax return. If the account is in joint names, list first, and then circle, the name of the person or entity whose SSN you entered on the form.</p> <p><b>Sole proprietor:</b> Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as" name on the "Business name/Doing business as/Disregarded entity name" line.</p> <p><b>Partnership, C Corporation, or S Corporation:</b> Enter the entity's name on the "Name" line and any business, trade, or "doing business as" name on the "Business name/Doing business as/Disregarded entity name" line.</p> <p><b>Disregarded entity:</b> Enter the owner's name on the "Name" line. The name of the entity entered on the "Name" line should never be a disregarded entity. The name on the "Name" line must be the name shown on the income tax return on which the income should be reported. Check the appropriate box for the U.S. federal tax classification of the person whose name is entered on the "Name" line (individual/sole proprietor, partnership, C corporation, S corporation, trust/estate).</p> <p><b>Limited liability company (LLC):</b> If the person identified on the "Name" line is an LLC, check the "Limited Liability Company" box only and enter the appropriate code for the U.S. federal tax classification.</p> <p><b>Other entities:</b> Enter your business name as shown on required U.S. federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade or DBA name on the "Business name/Doing business as/Disregarded entity name" line.</p>
<p><b>EXEMPTIONS</b></p>	<p><b>Exemptions:</b> If you are exempt from backup withholding and/or FATCA reporting, enter in the exemptions box any code(s) that may apply to you. Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends. Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions. The following codes identify payees that are exempt from backup withholding: <b>1</b> – an organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2); <b>2</b> – The United States or any of its agencies or instrumentalities; <b>3</b> – A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities; <b>4</b> – A foreign government or any of its political subdivisions, agencies, or instrumentalities; <b>5</b> – A corporation; <b>6</b> – A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States; <b>7</b> – A futures commission merchant registered with the Commodity Futures Trading Commission; <b>8</b> – A real estate investment fund; <b>9</b> – An entity registered at all times during the tax year under the Investment Company Act of 1940; <b>10</b> – A common trust fund operated by a bank under section 584(a); <b>11</b> – A financial institution; <b>12</b> – A middleman known in the investment community as a nominee or custodian; <b>13</b> – A trust exempt from tax under section 664 or described in section 4947.</p> <p><b>Exemption from FATCA reporting.</b> The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. <b>A</b>—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37); <b>B</b>—The United States or any of its agencies or instrumentalities; <b>C</b>—A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities; <b>D</b>—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Reg. section 1.1472-1(c)(1)(i); <b>E</b>—A corporation that is a member of the same expanded affiliated group as a corporation described in Reg. section 1.1472-1(c)(1)(i); <b>F</b>—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state.</p>
<p><b>TAX IDENTIFICATION NUMBER</b></p>	<p>Enter your tax identification number (TIN) in the appropriate box. If you are a single member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN. <b>The TIN for individuals and sole proprietors is the Social Security Number (SSN).</b> Sole proprietors may provide their EIN in addition to but not instead of a SSN.</p> <p>The County of El Dorado requires that all parties entering into business transactions that may lead to payment(s) from the County provide their Taxpayer Identification Number (TIN). The TIN is also required by the California Revenue and Taxation Code Section 18646 to facilitate tax compliance enforcement activities and the preparation of Form 1099 and other information returns as required by the Internal Revenue Code Section 6109(a).</p>
<p><b>RESIDENCY STATUS</b></p>	<p><b>Are you a California resident or nonresident?</b></p> <p>A <b>corporation</b> will be defined as a "resident" if it has a permanent place of business in California or is qualified through the Secretary of State to do business in California. A <b>partnership</b> is considered a resident partnership if it has a permanent place of business in California. An <b>estate</b> is a resident if the decedent was a California resident at time of death. A <b>trust</b> is a resident if at least one trustee is a California resident. For <b>individuals and sole proprietors</b>, the term "resident" includes every individual who is in California for other than a temporary or transitory purpose and any individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose that will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident.</p> <p><b>Payments to all nonresidents may be subject to withholding.</b> Nonresident payees performing services in California or receiving certain rent, lease, or royalty payments from property (real or personal) located in California will have 7% of their total payments withheld for State income taxes. However, no withholding is required if total payments to the payee are \$1,500 or less for the calendar year or if payment is for product. Nonresidents who have been granted a waiver on payments of California source income from the California Franchise Tax Board must submit a copy of the waiver. For information on Nonresident Withholding, contact the Franchise Tax Board at the numbers listed below:</p> <p style="text-align: center;">Withholding Services and Compliance Section:      1-888-792-4900      E-mail address:      wscs.gen@ftb.ca.gov</p> <p style="text-align: center;">For hearing impaired with TDD, call:      1-800-822-6268      Website:      www.ftb.ca.gov</p> <p>California nonresidents charging California sales tax are required to provide their California sales tax number.</p>
<p><b>CERTIFICATION</b></p>	<p>Provide the name, title, signature, and telephone number of the authorized individual completing this form. Provide the date the form was completed. <b>NOTE:</b> You must cross out item 2 in the certification block if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.</p>

**CERTIFICATE OF INSURANCE FORM FOR CONTRACTORS, ARCHITECTS AND/OR ENGINEERS**

CERTIFICATE ISSUER		DATE EXECUTED:	
PHONE ( )		THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. COMPANIES AFFORDING COVERAGE	
INSURED	COMPANY A LETTER	COMPANY RATING	
PHONE ( )	COMPANY B LETTER	COMPANY RATING	
PROJECT DESCRIPTION	COMPANY C LETTER	COMPANY RATING	
PROJECT TITLE:	COMPANY D LETTER	COMPANY RATING	
PROJECT NUMBER:	COMPANY E LETTER	COMPANY RATING	
LOCATION:			

THIS IS TO CERTIFY that policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusion and conditions of such policies.

CL	Type of Insurance Coverage	Policy Number	Policy Effective Date	Policy Expiration Date	Limits of Liability (in Thousands)
	GENERAL LIABILITY <input type="checkbox"/> Commercial General Liability <input type="checkbox"/> Occurrence <input type="checkbox"/> Claims Made <input type="checkbox"/> Owner's & Contractor's Protective <input type="checkbox"/> General Aggregate * <input type="checkbox"/> Per Project <input type="checkbox"/> Per Location				GENERAL AGGREGATE \$ PRODUCTS-COMP/OPS AGGREGATE \$ PERSONAL & ADVERTISING INJURY \$ EACH OCCURRENCE \$ FIRE DAMAGE (ANY ONE FIRE) \$ MEDICAL EXPENSES (ANY ONE PERSON) \$ DEDUCTIBLE \$
	ARCHITECT'S AND/OR ENGINEER'S PROFESSIONAL LIABILITY <input type="checkbox"/> Claims Made <input type="checkbox"/> Project				GENERAL AGGREGATE \$ EACH CLAIM \$ DEDUCTIBLE \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos <input type="checkbox"/> Garage Liability				COMBINED SINGLE LIMIT \$ BODILY INJURY (PER PERSON) \$ BODILY INJURY (PER ACCIDENT) \$ PROPERTY DAMAGE \$ DEDUCTIBLE \$
	EXCESS LIABILITY <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Other Than Umbrella Form				EACH OCCURRENCE \$ AGGREGATE \$
	<input type="checkbox"/> WORKER'S COMPENSATION				-----STATUTORY-----
	EMPLOYER'S LIABILITY				(EACH ACCIDENT) \$ (DISEASE - POLICY LIMIT) \$ (DISEASE - EACH EMPLOYEE) \$
	OTHER <input type="checkbox"/> Installation Floater <input type="checkbox"/> Builder's Risk <input type="checkbox"/>				\$ \$ \$

\* The General Aggregate limit, under Limits of Insurance, applies separately to each of the projects away from premises owned by or rented by you.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS/ADDITIONAL INSURED: The County of El Dorado its officers, officials, employees and volunteers are made additional insured, but only insofar as the operations under this contract are concerned. OTHER ADDITIONAL ISSURED:
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CERTIFICATE HOLDER	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED OR TERMINATED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL GIVE THIRTY (30) DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, IN ADVANCE OF THE EFFECTIVE DATE OF SUCH CANCELLATION OR TERMINATION.
	AUTHORIZED REPRESENTATIVE SIGNATURE, TITLE, TYPED NAME, SSN AND PHONE NUMBER:

**COUNTY OF EL DORADO  
JOB ORDER CONTRACTING (JOC)  
CLASS B – GENERAL BUILDING CONTRACTOR**

**BID #24-968-036**

**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 Division 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 Paragraph 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 Job Order Completion Time or Job Order Price. 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 by the Contractor pursuant to a Job Order, or a series of Job Orders.

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 Division 1 through 49 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 **Construction Task Catalog®:** A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.
- 1.1.29 **Detailed Scope of Work:** A document setting forth the work the Contractor is obligated to complete for a particular Job Order.
- 1.1.30 **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. A Project may consist of one or more Job Orders.
- 1.1.31 **Job Order Completion Time:** The time within which the Contractor must complete the Detailed Scope of Work.
- 1.1.32 **Job Order Price:** The value of the approved Job Order Price Proposal and the lump sum amount a Contractor will be paid for completing a Job Order.
- 1.1.33 **Job Order Price Proposal:** A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities, and appropriate Adjustment Factor(s) required to complete the Detailed Scope of Work
- 1.1.34 **Job Order 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.
- 1.1.35 **Joint Scope Meeting:** A site meeting to discuss the work before the Detailed Scope of Work is finalized.
- 1.1.36 **Minimum Contract Value:** The minimum value of Job Orders that the Contractor is guaranteed to receive the opportunity to price under this Contract.
- 1.1.37 **Maximum Contract Value:** An estimate of the value of Job Orders that could be issued to the Contractor during the term of the contract.
- 1.1.38 **Non Pre-priced Task:** An item of work required by the Detailed Scope of Work but not included in the Construction Task Catalog®.
- 1.1.39 **Pre-priced Task:** An item of work included in the Construction Task Catalog® for which a unit price is given.
- 1.1.40 **Request for Proposal:** A written request to the Contractor to prepare a Proposal for the Detailed Scope of Work referenced therein.
- 1.1.41 **Technical Specifications:** The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.



- 1.1.42 **Unit Price:** The price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalog®. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
- 1.1.43 **Work:** All materials, labor and use of tools, equipment, and services necessary by the Contractor and/or Subcontractor to complete the Job Order.
- 1.1.44 **Normal Working Hours:** Includes the hours from 6:00 a.m. to 6:00 p.m. Monday through Friday, except for County holidays.
- 1.1.45 **Other than Normal Working Hours:** Includes the hours of 6:00 p.m. to 6:00 a.m. Monday through Friday and all day Saturday, Sunday, and County holidays.
- 1.1.46 **Notice to Proceed:** A written notice issued by the County directing the Contractor to proceed with construction activities to complete the Job Order.
- 1.1.47 **Contract:** The Agreement for Construction Services between Contractor and Owner.

## **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 issue a Supplemental Job Order 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 Job Order 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 Supplemental Job Order as set forth in Article 5 herein.

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 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 Detailed Scope of work, any 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 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 are listed in the Proposal.

3.3.2 Work or performance shall be made only as authorized by Job Orders issued in accordance with the provisions of this Article 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 lump sum 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 Maximum Contract Value is \$2,500,000 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 year and commences ninety (90) days after contract execution OR upon first Notice to Proceed, whichever occurs first.

3.3.5 Procedure for Developing a Job Order

#### A. Initiation of a Job Order.

The Owner may award an individual Job Order to any selected Contractor. Selection of the Contractor and award of the Job Order will be in compliance with established Owner procedures and based on one or more of the following criteria:

- a. Contractor's responsiveness to the Owner on Job Orders;
- b. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, design management requirements, etc.;
- c. Balancing of work load (Job Order dollar volume and construction backlog) among Contractors;
- d. Management of Job Order dollar volume within bonding limitations of the Contractor;
- e. Price, as it relates to the Owner's independent cost estimate;
- f. Rotational selection among all Contractors, unless otherwise determined by the Owner;
- g. Other appropriate criteria as deemed in the best interest of the Owner; 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.

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.

The Owner may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the Owner cannot agree on the quantities required, or for any other reason as determined by the Owner. In all such cases, the Owner shall issue a Supplemental Job Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

**B. Preparation of the Job Order Proposal.**

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 will prepare Job Order Price Proposals in accordance with the following:

1. Pre-priced Tasks: A Pre-priced Task is a task described and for which a Unit Price is set forth in the Construction Task Catalog<sup>®</sup>. For Pre-priced Tasks the Contractor shall identify the task required from the Construction Task Catalog<sup>®</sup>, enter the accurate quantity and the appropriate Adjustment Factor.
2. Non Pre-priced Tasks: Non Pre-priced Tasks shall be separately identified and submitted in the Job Order Price Proposal. Information submitted in support of Non Pre-priced 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<sup>®</sup>. 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. The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

Contractor Performed Duties:

A = The number of hours for each labor classification and hourly rates

B = Equipment costs (other than small tools)

C = Three independent quotes for all materials

Total Cost for self-performed work = (A+B+C) x appropriate Normal Working Hours Adjustment Factor or 1.15 (whichever is less and only if A & B cannot be priced out of the CTC)

For Work performed by Subcontractors:

If the Work is to be subcontracted, the Contractor must submit three independent bids from Subcontractors. If three quotes or bids cannot be obtained, the Contractor will provide the reason in writing for the Owners approval as to why three quotes cannot be submitted.

D = Subcontractor Costs (supported by three quotes unless it is a County directed subcontractor)

Total Costs of Non Pre-Priced Task = D x appropriate Normal Working Hours Adjustment Factor or 1.10 (whichever is less)

- c. After a Non Pre-priced 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 Pre-priced Task which will no longer require price justification. The Owner's determination as to whether an item is a Pre-priced Task or a Non Pre-priced Task shall be final, binding, and conclusive as to the Contractor.
- d. 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. 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 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 and fourteen 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.

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 lump sum 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.

If the Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.

C. Material Price Spike Adjustment (MPSA):

For the purpose of this clause, a “major spike” is defined as a spike in a specific material cost of more than 25% above what the cost of that material was on the date the Construction Task Catalog® was issued.

In the event a major spike occurs in a specific material cost, the Contractor may submit a request for a price modification to a Unit Price or individual Job Order. In order to initiate such a request, the Contractor shall,

- a) identify the specific material that has experienced a major spike,
- b) identify Pre-priced Task(s) or Job Orders that require the material experiencing a major spike, and
- c) demonstrate that the spike exists by submitting a minimum of three quotes on material supplier letterhead to show that the current price meets the “major spike” definition above.

The County, after review of a request, may elect to adjust the Unit Price or Job Order by considering it a NPP item. The adjustment will be for the difference between the material cost at the time the Construction Task Catalog® was issued times the quantity stated in the Job Order. The adjustment will not include any other markup, and the MPSA-NPP adjustment factor will be 1.0100.

The County, at its option, may also determine that a drastic decrease in a material cost warrants the same NPP adjustment downward in the Unit Price or a Job Order

D. 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 Contractor may choose the means and methods of construction; subject however, to the Owner's right to reject any means and methods proposed by the Contractor that:

- a. Will constitute or create a hazard to the work, or to persons or property;
- b. Will not produce finished Work in accordance with the terms of the Contract; or
- c. Unnecessarily increases the price of the Job Order when alternative means and methods are available.

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.

Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the lump sum 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<sup>®</sup> and Non Pre-priced 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 Liquidated Damages:**

1. Timely submission of Job Order Proposals prepared under this Contract is of the essence. Should the Contractor fail to prepare and properly transmit the Job Order Proposal in accordance with the General Conditions, Ordering Procedures, and provided the Contractor has not previously obtained a written extension of time from the County according to the General Conditions, a sum appropriate with the following schedule may be deducted as liquidated damages on each Job Order if applicable.
2. Timely completion of Job Orders issued under this Contract is of the essence. Should the Contractor fail to substantially complete the work specified in the Job Order in accordance with the Job Order Completion Time, and provided the Contractor has not previously obtained a written extension of time from the County according to the General Conditions, a sum appropriate with the following schedule may be deducted from each succeeding request for payment as liquidated damages on each Job Order if applicable.

**SCHEDULE FOR LIQUIDATED DAMAGES – JOB ORDER PROPOSAL PREPARATION**

<u>Days Delinquent</u>	<u>Liquidated Damages per Day</u>
1-3 (Business Days)	\$250
3+ (Business Days)	\$500

**SCHEDULE FOR LIQUIDATED DAMAGES - CONSTRUCTION**

<u>Job Order Price</u>	<u>Liquidated Damages per Day</u>
Up to \$100,000	\$50
\$100,001 to \$500,000	\$150
over \$500,000	\$430

3. If the County terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the County in completing the work.
4. If the County does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

**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.

3.3.9 **Unilateral Job Order:** If a Request for Proposal has been issued and the Contractor has failed to submit a Job Order Proposal or the parties fail to reach an agreement, the County may issue a Unilateral Job Order. Upon receipt of a Notice to Proceed for a Unilateral Job Order, the Contractor shall proceed with the work identified in the Detailed Scope of Work and complete the work within the Job Order Completion Time. Compensation for the Work shall be in accordance with the Construction Task Catalog<sup>®</sup> and terms and conditions of the Contract. The issuance of a Unilateral Job Order will not prejudice any of the Contractor's rights to make claims or appeal disputed matters. If the Contractor objects to a Unilateral Job Order, Contractor shall state, in writing, specific objections to, or specific points of disagreement with the Unilateral Job Order within thirty (30) days of receipt of such Job Order.

### **3.4 COMPUTER REQUIREMENTS**

3.4.1 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 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 Labor Code section 1815, 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 California Labor Code, 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 Labor Code 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. Labor Code section 1815 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. section 874 and 29 CFR Part 3), the Davis-Bacon Act (40 U.S.C. sections 276a to 276a-7 and 29 CFR Part 5), and the Contract Work Hours and Safety Standards Act (40 U.S.C. sections 327-330 and 29 CFR Part 5). (NOT APPLICABLE)
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. (NOT APPLICABLE)
10. Interested parties can obtain the current wage information by submitting 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.
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, 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.
- d. All contractors and subcontractors must furnish electronic certified payroll records directly to the Department of Industrial Relations.

**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 Job Order 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 Detailed Scope of Work 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 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 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, sole negligence, or willful misconduct 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 Job Order Price(s).

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 sole negligence or willful misconduct 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 Civil Code section 2778. 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.

Nothing herein shall be construed to seek indemnity in excess of that permitted by Civil Code section 2782, et seq. In the event any portion of this Article is found invalid, the Parties agree that this Article shall survive and be interpreted consistent with the provisions of Civil Code section 2782, et seq.

**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 or willful misconduct 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.

3.13.3 Ineligible Subcontractor: Contractor is prohibited from performing work with a subcontractor who is ineligible to perform work pursuant to Labor Code section 1777.1 or 1777.7.

### **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 Application and Certificate 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-Job Order 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 Detailed Scope of Work, 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 Paragraph 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 Job Order Price due to Claims shall be calculated based on the Cost Reimbursement method detailed in Paragraph 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 Completion 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 Paragraph 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)"

**4.3.8 Third Party Claims:** Owner will notify Contractor of receipt of any third party claim relating to the contract within 5 business days of receipt of such claim.

**4.4 DISPUTE 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 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.

Job Order Contracting Software: The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Information Management System ("JOC IMS"), construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by the County. The Contractor shall be required to execute Gordian's General Terms of Use and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™. The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms of this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors.

## 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 Price and Job Order Completion 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 Job Order Price Proposal based on the Construction Task Catalog<sup>®</sup>. This Job Order Price 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 Completion 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 Completion 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 Job Order Completion 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 Article 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 Article 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 lump sum amount payable by the Owner to the Contractor for performance of the Detailed Scope of Work under the Contract Documents as defined and subject to the provisions set forth, in Article 3 of the Agreement of Construction Services between Contractor and Owner.
- 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 and Certificate for Payment (Exhibit “A” of Agreement) 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.
- 6.2.3 The County will make one payment for all Job Orders that have a Job Order Completion Time of 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 and Certificate 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 and Certificate for Payment may be submitted.
- 6.2.5 Work Free of Liens: The Contractor warrants that upon submittal of an Application and Certificate 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 Application and Certificate for Payment within forty-five (45) days of receipt of an Application and Certificate for Payment approved by the Owner's representative as provided for in Article 6.2.1 above, and shall retain the remaining five percent (5%) as noted in Article 6.4.3 until the time provided for in Article 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 Code 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 Application and Certificate of Final Payment:** After the date of Substantial Completion of the Work, and before final acceptance of the Work, the Contractor shall submit with the Owner his final Application and Certificate of Payment 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 final Application and Certificate of Payment 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 submission of the final Application and Certificate of Payment 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 and Certificate for Payment, the Owner will promptly make such inspection. The Contractor shall complete all punch list items within two 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 filed, provided the Work is fully completed and the Contract fully performed, the balance due under the Contract 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 shall be solely responsible for and 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 (providing scope of coverage equivalent to ISO policy form CG 00 01) 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. County, including, without limitation, its officers, officials, employees, and volunteers shall be named as an additional insured on ISO form CG 2010 1185, or its equivalent.
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, including, without limitation, its officers, officials, employees, and volunteers, as an additional insured on Subcontractor's insurance policies using ISO form CG 2010 1185, or its equivalent. Copies of endorsements from each Subcontractor will be obtained and maintained by Contractor for the duration of the Work, and for ten years following completion of the Work.

#### **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, Charles Harrell at 3000 Fairlane Court, 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 Job Order Price or an extension of the Job Order Completion 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 Job Order Completion Time 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 Completion Time.

**“END OF DOCUMENT”**

Link to Construction Task Catalog and Technical Specifications

<https://fortive.box.com/s/kbhupnr4jfmzi7n1av1s0qahv55hnkx>