

ORIGINAL

CONTRACT # 395-C0899

This Contract is made and entered into by and between the County of El Dorado, hereinafter referred to as "Owner", "County" or "Grantee", and PBM Construction, Inc. a California Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 3200 Mercedes Place, Roseville, CA 95747, hereinafter referred to as "Contractor".

Article 1: The Work: The Work is generally described as EL DORADO HILLS SENIOR DAYCARE CENTER, Project # 06-51. The Contractor shall complete the Work as specified in the Contract Documents.

Article 2: Contract Documents: The complete contract between the parties hereto shall consist of the following documents herein referred to as the "Contract Documents":

- Notice to Bidders
- Instructions to Bidders
- Completed Bid Proposal (Pages 1 through 11)
- This Contract including Attachment "A," Contractor's/Subcontractor's Certification Concerning State Labor Standards and Prevailing Wages;
- Bidder's Bond
- Withholding Exemption Certificate 590
- Request for Taxpayer ID Number and Certification Form W-9
- Certificate of Insurance
- Performance Bond
- Payment Bond
- El Dorado County Specifications
- Special Conditions
- Contract Drawings and Plans
- Technical Provisions
- Duly issued addenda
- Duly issued interpretations
- Supplemental Drawings issued
- Shop Drawings and Manufacturers' Instructions approved
- Approved Field Orders, Change Directives, and Change Orders

All of the above named Contract Documents are intended to cooperate and be complementary, and Work required by one and not by others shall be performed as if required by all. In the event of a conflict between the Plans and Specifications, the Plans shall generally prevail; provided, however, any such conflict shall be immediately brought to the notice of the Owner for interpretation and confirmation.

Article 3: Covenants: For and in consideration of the covenants, promises, and agreements as set forth herein, the Contractor promises and agrees with the Owner to do all the Work and to furnish at Contractor's own cost and expense all labor, material and equipment, necessary to complete in a good, workmanlike and substantial manner, in strict accordance with the Contract Documents, the entire Work for the project as indicated in the Bid Documents, and Contract Documents titled: EL DORADO HILLS SENIOR DAYCARE CENTER, Project # 06-51, Bid #

GS 08-1003 and to further perform all obligations, covenants and conditions of the Contract as set forth in the Contract Documents.

Article 4: Compensation: Owner promises and agrees to pay to the Contractor for satisfactory performance under the Contract Documents of construction of the Work, and completion of all obligations, covenants and conditions described in the Contract Documents, the sum of Two Hundred Fifty Five Thousand Six Hundred Twelve Dollars (\$255,612.00) which represents Base bid of Two Hundred Forty Nine Thousand Two Hundred Forty Nine Dollars (\$249,249.00) and an Add alternate of Six Thousand Three Hundred Sixty Three Dollars (\$6,363.00), subject to additions and deductions as provided in the Contract Documents.

Article 5: Commencement and Completion: The commencement date of the Contract for determination of the time for completion shall be set forth in the Notice to Proceed issued by the Owner, but shall not be less than ten (10) calendar days after execution of the Contract by the Owner. The Contractor shall complete all Work required by the Contract within One Hundred Twenty (120) calendar days, not including Sundays and legal holidays, after said commencement date, as adjusted and provided for in the Contract Documents.

Article 6: Liquidated Damages: The Work to be performed under the Contract shall commence on the date specified in the Notice to Proceed by the County, and the Work shall be fully completed within the time specified in Notice. The Owner and Contractor realize that time is of the essence for completion, and the County will suffer financial loss if the Work is not completed in the time specified. In the event that the Contractor does not complete all Work required by the Contract within the time specified in Article 5, liquidated damages shall be imposed upon the Contractor. After considering such a breach and all aspects of the Work including, but not limited to, the type of installation, the current and future uses of facilities and premises, the disarrangement of the premises and facilities thereof during the Work, and the additional cost and difficulty of using the disarranged facilities during the Work, the parties agree that a reasonable daily damage for such a breach, will be Eleven Hundred Dollars (\$ 1,100.00) per calendar-day, and the payment of the same, is payment of liquidated damages and not a penalty. It is understood that this Contract for liquidated damages is entered into because the amount is manifestly reasonable under the circumstances existing at the time of this Contract, and it would be extremely difficult or impossible to determine with any degree of accuracy the actual damages in case of any such breach. In case of such breach, it is agreed that the Owner may deduct the amount thereof from any money due or to become due said Contractor under this Contract.

Article 7: Equal Opportunity Compliance: Contractor agrees as follows:

1. **The Civil Rights and Age Discrimination Acts Assurances:**

During the performance of this Contract, the Contractor assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or handicap, under any program or activity funded by this Contract, as required by Title VI of the Civil Rights Act of 1964 and the Age Discrimination Act of 1975, and all implementing regulations.

2. **State Nondiscrimination Clause:**

- A) During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall ensure 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, (FCHA) and its implementing regulations, California Administration Code, Title 2, Division 4, and Government Code 11135-11139.5 and the applicable regulations promulgated there under (California Code of Regulations, Title 22, Sections 98000-98413 et seq. and Title VI of the Civil Rights Act of 1964). These applicable 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.
- B) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform Work under the Contract.
- C) The Contractor shall comply with Title V, Section 504 of the Rehabilitation Act of 1973 (29 USC, Section 947) California Government Code Section 4450, and California Administrative Code, Title 2, Division 4, Chapter 2, Subchapter 9, 7293.9, which prohibits exclusion, denial of benefits, or discrimination based solely on the basis of disabilities, and provides that employers shall notice reasonable accommodations to the physically handicapped.

3. **Equal Opportunity Clause:** During the performance of this Contract, the Contractor agrees to comply with Executive Order 11246 that:

- A) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B) The Contractor shall, in all solicitations or advertisements for employees placed

by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

- C) The Contractor shall send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D) The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor, and with the implementing regulations of Title VI of the Civil Rights Act of 1964 of the Department of Justice.
- E) The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency, the Attorney General, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F) In the event of the Contractor's noncompliance with the discrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.
- G) The Contractor shall include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 504 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Article 8: Drug-Free Workplace Certification:

The Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and shall provide a drug-free workplace by taking the following actions and shall require all sub-contractors to take the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about all of the following:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Provide that every employee who performs work under this Contract:
 - 1) will receive a copy of the Contractor's drug-free policy statement, and
 - 2) will agree to abide by the terms of the Contractor's statement as a condition of employment of this Contract.

Failure to comply with these requirements may result in suspension of payments under this Contract or termination of the Contract or both.

Article 9: ADA Compliance: Contractor shall comply with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq) as well as all applicable regulations and guidelines issued pursuant thereto.

Article 10: Conflict of Interest of Members, Officers, or Employees of Contractors, Members of Local Governing Body, or other Public Officials: No member, officer, or employee of the County, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for grant activities to be performed in connection with the program assisted under this Contract. The Grantee and Contractor shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

Article 11: Guarantee: 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 the County, ordinary wear or tear and unusual abuse or neglect excepted, during the term of the Contract and for a period of one year from the date of final acceptance of the Work.

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 Contract at no expense to the County during the term of this Contract and for a period of one year from the date of final acceptance of the Work.

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

In the event of Contractor's failure to comply with the above mentioned conditions within ten (10) days after being notified in writing by the 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.


The Contractor shall provide a security to guarantee the performance of the Work to the County and shall maintain the security for one (1) year.

Article 12: State Labor Standards and Prevailing Wage Certification: All contractors and subcontracts shall give certification to the County within 10 days after the execution of any contract or subcontract (see Attachment A, marked "Contractor's/Subcontractor's Certification Concerning State Labor Standards and Prevailing Wages"), incorporated herein and made by reference a part hereof.

Article 13: Workers' Compensation Certification: By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the California 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 the Work of this Contract.

CERTIFICATE OF KNOWLEDGE - LABOR CODE SECTION 3700

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for the worker's compensation or 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:  Dated: 10/26/07

Article 14: Indemnity: To the fullest extent allowed by law, the Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any

economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Work, Contractor's services, operations, or performance of the Work, the Contractor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly proscribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

Article 15: Insurance: Contractor shall provide proof of policy(ies) of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that Contractor maintains insurance that meets all the requirements set forth in Article 8 of the El Dorado County Specifications.

Article 16: Employment of Undocumented Aliens: The Contractor acknowledges that pursuant to Public Contract Code section 6101 no public works or purchase contract shall be awarded to a bidder or Contractor, nor shall a bidder or Contractor be eligible to bid for or receive a public works or purchase contract, who has, in the preceding five years, been convicted of violating a state or federal law respecting the employment of undocumented aliens.

Article 17: Ineligible Contractors: Pursuant to Public Contract Code a 6109 any Contractor or Subcontractor who has violated Labor Code Section 1777.1 or Labor Code Section 1777.7 shall be ineligible to bid or work on this project.

Article 18: Cancellation of Agreement: The Owner reserves the right to terminate this Contract at any time for any reason by serving written notice to the Contractor as set forth in Article 10 of the El Dorado County Specifications.

Article 19: Administrator: The County Officer or employee with responsibility for administering this agreement is Laura S. Gill, Acting Director, Department of General Services, or successor.

Article 20: Authorized Signatures: The parties to this agreement warrant and represent that the undersigned individuals executing this agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

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COUNTY OF EL DORADO

Dated: _____

Helen K. Baumann, Chairman
Board of Supervisors

ATTEST:
Cindy Keck, Clerk
of the Board of Supervisors

By: _____
Deputy Clerk

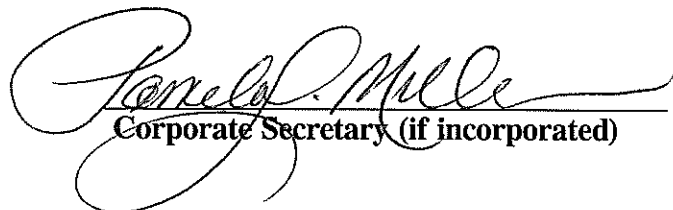
Date: _____

CONTRACTOR

Dated: 10/26/07

By: 
PBM Construction Inc.
Bruce Miller, President

Dated: 10/26/07


Corporate Secretary (if incorporated)

ADDRESS OF SURETY FOR SERVICE OF NOTICE

WESTERN SURETY CO.

101 S. PHILLIPS AVENUE

SIOUX FALLS, SD 57117